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CRIMINALISATION OF "STREET HARASSMENT" IN BELGIUM AND FRANCE: TWO DIFFERENT LEGISLATIVE APPROACHES TO "SEXIST" ACTS

Abstract: In the fight against "street harassment", both France et Belgium adopt laws which make sexism an offence. However, the legislators follow different approaches. This article compares the rationale behind these laws, the way in which the notion of "sexism" is understood in these two legal systems and the forms of effectiveness that French and Belgian legislators intend to give to the legal measures put in place.

Key words: Street harassment – Sexist outrage – Belgium – France – Criminalisation

INTRODUCTION

01. – The issue of "street harassment" is given a specific criminal response in both France and Belgium. This response is, in fact, part of a slightly broader legal framework which covers the fight against sexist comments and behaviours.

In Belgium, the Law of 22 May 2014 *aimed at combating sexism in the public space and amending the Law of 10 May 2007* (hereinafter – the Anti-sexism Law) makes "sexism" an offence[1].

As for France, it adopts the Law no 2018–703 *reinforcing the fight against sexual and sexist violence* (hereinafter – the Sexual and Sexist Violence Law). This legisla-

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1 Anti-sexism Law [BE], 2014), art. 2 and 3. The Anti-sexism Law of 22 May 2014 was appealed to the Constitutional Court. The appellants invoke the breach of the principle of legality in criminal matters, freedom of expression, principle of equality and non-discrimination, as well as the right to self-determination. In its judgement no. 72/2016 issued on 25 May 2016, the Constitutional Court rejected the appeal in its entirety. It simply ruled that the adverb "essentially" ("essentiellement") in the French version of the abovementioned law, for which there is no corresponding term or expression in the Dutch version, should be removed, which in its view constitutes a violation of the principle of legality in criminal affairs.

tion adds a new title to the Criminal Code entitled "Sexist outrage"[2]. The behaviour qualified as such is made a violation in Article 621–1 of the aforementioned code. Law no. 2018–703 of 3 August 2018 also amends Article 222–33 of the Criminal Code, which concerns the offence of "sexual harassment"[3] – the latter now also covers acts of a sexist nature. It is largely through this offence and the offence of sexist outrage that the French legislature intends to provide a specific criminal response to the phenomenon of "street harassment".

02. – Although Belgium and France are among the few States that have opted for the criminal prosecution of sexist acts, it is clear that they both follow very different approaches.

These discrepancies can be seen in the strategies adopted by these States – which is what this study focuses on. They are not limited to the inclusion of these offences either in the Criminal Code or in *ad hoc* legislation – France having followed the first of these avenues and Belgium the second. More fundamentally, these differences are witnessed at the following three levels: the rationale behind these laws and the values they are intended to protect **(1)**; the understanding of "sexism" as a phenomenon in its own right or, on the contrary, as part of a specific criminal field, broader than sexism alone **(2)**; the forms of effectiveness that legislators intend to give to the legal measures put in place **(3)**. These three sets of considerations, which are expressed differently in France and Belgium, are at least partly in response to each other. They also refer to the specific features of the legal systems of each of these two States.

1. CONTEXTS AND LOGICS OF SEX (AND GENDER) REGULATION

03. – The adoption of the Belgian and French legislation is part of a context characterised, at an international level, by a strong demand for greater equality between individuals of different sex or gender and by a sustained plea for greater protection of certain categories of the population. The "#MeToo" movement is one of the most visible expressions of this. Also, these laws are generally based on a common set of values, including the human being's "dignity" – as a person or as a species.

However, the rationale behind these Belgian and French initiatives is far from being entirely similar. The Belgian legislator considers the issue of "street harassment" more from the angle of combating the various forms of discrimination, whereas its French equivalent tends to focus on the fight against "sexual violence" or the like. The reason for this can be found, at least in part, in the context of the development and adoption of these legal provisions.

2 Sexual and Sexist Violence Law [FR], 2018, art. 11.

3 Sexual and Sexist Violence Law [FR], 2018, art. 15.

04. – In Belgium, the issue of "street harassment" received considerable attention in 2012 following the broadcasting on a Flemish television channel of the documentary "Femme de la rue" (Woman in the street) directed by Sofie Peeters as part of her end-of-study project. This film, shot with a hidden camera, depicts the numerous sexist and aggressive taunts to which she is exposed while strolling in a working-class Brussels neighbourhood marked by both a certain precariousness and the history of Belgian migration[4]. The national and international press widely echoed this documentary and, in the wake of it, several public authorities undertook initiatives to tackle this phenomenon[5].

It is in this respect that the Federal Government submitted a bill to the House of Representatives in January 2014 *aimed at combating sexism in the public space (...)*[6]. The bill, introduced by the Deputy Prime Minister and Minister for Internal Affairs and Equal Opportunities, Joëlle Milquet, and her Justice counterpart, Annemie Turtelboom, follows a preliminary draft submitted by the Federal Government to the Council of State for advice.

This preliminary draft aims to criminalise "sexism" by incorporating this offence in the Law of 10 May 2007 *aimed at combating discrimination between women and men*[7]. This legislation forms a whole with two other texts adopted on that same date, namely the Law *aimed at tackling certain forms of discrimination* and the Law *amending the law of 30 July 1981 to punish certain acts inspired by racism and xenophobia.*

It is thus clearly from the point of view of equality and non-discrimination that the criminal prosecution of sexism is envisaged in Belgium, even if the Federal Government finally decides to review its copy and submit a bill limited to this theme alone to the House of Representatives. This choice follows the opinion of the Council of State. According to the latter, the preliminary draft of the bill "undermines" the "internal coherence" of the aforementioned Law of 10 May 2007 and, by extension, the "coherent body of anti-discrimination legislation" formed by the three texts adopted on that date[8]. In fact, the scope of application of the draft articles, which aim to penalise sexism, does not correspond to that of these different laws. According to parliamentary documents, the Federal Government has not envisaged including the offence of sexism in the Criminal Code – nor has the Council of State requested it to do so[9].

The text of the Anti-sexism Law of 22 May 2014 is identical to that of the bill. It was adopted by a very large majority after scant parliamentary discussions – the few amendments tabled in the House of Representatives were all rejected.

4 /Gayet-Viaud, Dekker, 2021:9/

5 Sofie Peeters' documentary is, however, only very rarely explicitly mentioned in the preparatory work for the Law of 22 May 2014 (not. S. [BE], 2014, p. 6).

6 Milquet, Turtelboom, 2014a.

7 Draft Legislation, art. 4 and 5; Milquet, Turtelboom, 2014b, pp. 10 and 11

8 State Council, 2013, p. 15.

9 State Council, 2013, p. 17. The State Council concluded its opinion in the following terms: "coherence and legal certainty would be better served by the adoption of a specific law on harassment and sexual harassment in the public space".

05. – In France, it is Law no. 2018–703 of 3 August 2018 that defines sexist outrage as a criminal offence. This measure is based on a bill *reinforcing the fight against sexual and sex-based violence*[10], presented to the National Assembly on behalf of the Prime Minister, Edouard Philippe, by Nicole Belloubet, Keeper of the Seals, and Marlène Shiappa, Secretary of State to the Prime Minister, responsible for equality between women and men. This text echoes the political priorities expressed by the President of the Republic, Emmanuel Macron, who has declared equality between women and men a "great national cause" of the quinquennium[11].

The legislative work that has resulted in the adoption of Law no. 2018–703 of August 2018 is one of the outcomes of a long series of reports and other works conducted on sexual and gender-based violence in France – some of which were undertaken before Emmanuel Macron's presidency. Thus, whilst two high-profile court cases have influenced the development of this text, especially on the issue of a minor's consent to a sexual act, the legislative work is largely based on what amounts to a solid *corpus* of data and other information. That said, the bill is subject to an accelerated procedure – limiting the number of readings of the text by the National Assembly and the Senate to one. Some parliamentarians therefore regret the haste with which the legislative work is being conducted[12].

Largely disregarding the issue of equality and non-discrimination[13], Law no. 2018–703 of 3 August 2018, which is the result of this legislative work, is very clearly in line with a repressive logic in the fight against sexual offences: the "strengthening of the legislative arsenal" should lead to an "improvement in the fight against this violence"[14]. The aim is to "better condemn sexual offences", "better punish the perpetrators" and "better protect the victims"[15]. In this respect, one of the objectives is to provide an "effective and concrete response" to sexual offences[16] which implies above all "putting an end to the impunity" of their perpetrators[17]. This fight is also presented as a necessity in a "State governed by the rule of law" where sexual and gender-based violence is considered "intolerable"[18]. According to the bill, this is a "civilisation issue"[19].

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10 National Assembly [FR], 2018b.

11 National Assembly [FR], 2018c, p. 8); S. [FR], 2018, p. 112.

12 E.g., S. [FR], 2018, p. 10.

13 It is only on rare occasions and in a rather formal manner that Law no. 2018–703 of 3 August 2018 is considered from the perspective of equality between women and men. E.g. National Assembly [FR], 2018a, p. 53, where it is argued that "[t]he creation of a criminal offence of sexist contempt will place public action in an assertive fight against sexist behaviour, in line with the law of 27 January 2017 on equality and citizenship".

14 S. [FR], 2018, p. 112.

15 S. [FR], 2018, p. 113.

16 National Assembly [FR], 2018b, p. 6.

17 National Assembly [FR], 2018a, p. 4. Attention is regularly drawn during the preparatory work to the "persistence of sexist and sexual violence of which women and children continue to be victims on a massive scale" (National Assembly [FR], 2018b, p. 3).

18 National Assembly [FR], 2018b, p. 6.

19 Milquet, Turtelboom, 2014a, p. 3.

2. – WAYS OF UNDERSTANDING THE SEXISM PHENOMENON

06. – The "sexist phenomenon" as an object of regulation is defined very differently in the Belgian and French legal systems. This discrepancy reflects both with the logic underlying the legal provisions penalising it, and with the contexts in which they were elaborated and adopted.

07. – The Belgian legislature views "sexist issues" as a "general phenomenon in its own right"[20], which consequently requires a specific response in terms of regulation. It has resolutely embarked on this path by adopting the Law of 22 May 2014, the main purpose of which is the criminal repression of sexism.

In this vein, the Belgian legislature, unlike its French counterpart, undertakes to explicitly define the notion of "sexism". According to Article 2 of the Law of 22 May 2014, the latter is defined as the act of "expressing contempt" towards individuals, of "considering [them] as inferior" or of "reducing [them] to [their] gender dimension", on account of "[their] gender"[21]. In fact, in the *Explanatory Memorandum* to the Law, the concept of "sexism" seems to primarily refer to a hierarchical set of mental representations or value judgements on what would constitute the "nature" of individuals based on their affiliation to one sex or another. This is, in any case, the standpoint expressed by the Ministers who initiated the bill when they seek to narrow down sexism to the "fundamental belief in the inferiority of one sex"[22].

Although far from ideal, this definition does have the advantage of offering a certain legal certainty[23]. The Constitutional Court has ruled in this sense when it establishes that the principle of legality in criminal matters has not been violated – if not for one of the terms in the French version of the law[24]. One must especially remember that besides this concern for a certain legal certainty, the legislator intends, by the choice of terms used to define "sexism", to allow for an "evolving interpretation" of the latter notion[25] – which must be linked to the desire to gradually transform societal thinking on sexism, as explained below[26].

Finally, it should be noted that, although the legislator considers the issue of "street harassment" from the perspective of combating certain differences in treatment, "sexism" is seen as a reality in its own right, clearly distinct from that of "discrimination" between men and women[27] – at least formally[28]. For instance, the Fed-

20 For there to be an offence, the comments or behaviour must "manifestly" fall within the scope of at least one of the three hypotheses listed above and, moreover, result in a "serious attack on [the] dignity [of the persons targeted by these acts]" (Anti-sexism Law [BE], 2014), art. 2).

21 Milquet, Turtelboom, 2014a, p. 4.

22 Milquet, Turtelboom, 2014a, p. 4.

23 Milquet, Turtelboom, 2014a, p. 5.

24 See no 01.

25 H.R. [BE], 2014b, p. 10; see also (H.R. [BE], 2014a, p. 5.

26 See no 10.

27 Milquet, Turtelboom, 2014a, p. 4.

28 Some deputies regret that beyond this formal distinction, the themes of discrimination and sexism are addressed in a rather confused manner (see H.R. [BE], 2014b, p. 8).

eral Government indeed argues that sexism can possibly be the "driving force" of discrimination or one of its "manifestations", but without being confused with it[29].

08. – In French legislation, as developed earlier[30], Law no. 2018–703 of 3 August 2018, which criminalises sexist outrage, adheres to the logic of criminalising sexual violence in general.

This incrimination of sexist outrage is therefore a response to a double set of considerations. On the one hand, it is a matter of filling a "legal vacuum" in a field that is already very widely covered by criminal legislation on sexual violence[31] – or similar. "Street harassment" is thus presented as a "blind spot" in positive law[32], which should be removed. On the other hand, the aim is to "lower society's tolerance threshold for ordinary sex-based violence"[33]. The challenge is to "integrate into the criminal law" this "grey area" of "socially disapproved behaviour [that] does not necessarily fall under the criminal law"[34].

Sexist offences thus become part of a "*continuum* of offences of varying severity"[35], forming an "additional rung" at the "bottom of the sexual and sexist violence ladder"[36]. This new offence is all the more fundamental, according to the parliamentary documents, as this *continuum* of the legal arsenal corresponds to a pattern of escalation in terms of criminality: repressing sexist offences seeks to "limit the acting out of more serious acts as a first level of punishment"[37].

In these circumstances, explicitly defining "sexism" – or, more accurately, acts "with a sexist connotation" – does not appear to be a necessity for the French legislator. In fact, this option does not offer the greatest legal certainty, far from it. It leads us to rely on the meaning that this notion – or this expression – has in ordinary language. Its many and varied meanings make this operation, assuming it is feasible, a major undertaking.

The failure to properly define "sexism" and even, more fundamentally, the lack of reflection on this "reality" during the preparatory work, combined with the criminalisation of sexist outrage in the context of sexual violence prevention, has led the French legislator to considerably broaden the scope of criminal repression, while at the same time obscuring both its purpose and limitations. Indeed, in the law, the criminalisation of sexist outrage is modelled on that of sexual harassment. However, two different elements distinguish them. The first concerns the "recurrence of events" which is characteristic of the offence of sexual harassment[38]. This is

29 Milquet, Turtelboom, 2014a, p. 4.

30 See no 05.

31 National Assembly [FR], 2018c, p. 147.

32 E.g., S. [FR], 2018, p. 114.

33 National Assembly [FR], 2018c, p. 158.

34 National Assembly [FR], 2018a), p. 49; see also p. 53.

35 National Assembly [FR], 2018c, p. 145.

36 National Assembly [FR], 2018c, p. 157.

37 National Assembly [FR], 2018c, p. 148.

38 It should be noted that the Criminal Code "assimilates" certain acts to sexual harassment which do not necessarily have the characteristic of repetition (Criminal Code [FR], Art. 222–33-II).

the only difference which, according to the authors of the bill, makes it possible to distinguish these two offences[39]. To this extent, sexist outrage is a perfect extension of sexual harassment. As for the second element of differentiation, it seems to have eluded the bill's drafters: sexual harassment only refers to "remarks or behaviour with sexual connotations", whereas sexist outrage also refers to acts with a "sexist" connotation. In the National Assembly, the latter adjective will be added to the definition of sexual harassment. According to the author of this "amendment for consistency", the only purpose of this addition is to "align" both definitions "with the exception of the recurrence [of events]"[40]. It does, however, lead to a substantial broadening of the scope of sexual harassment by extending it beyond acts with sexual connotations to comments and behaviour that can be described as "sexist" – something to which no consideration was given in either the National Assembly or the Senate. Sexual harassment thus seems to be undergoing a strong expansion with Law no. 2018–703 of 3 August 2018 which, although unintended, tends to change its nature.

3. – FORMS OF EFFECTIVENESS ASSOCIATED WITH LEGAL PROVISIONS

09. – According to parliamentary documents, the criminal punishment of sexist outrage in France follows a two-fold logic in terms of efficiency. An "expressive function" as well as an "educational virtue" are both inherent to Law no. 2018–703 of 3 August 2018. This first dimension is coupled with a "concern for operability"[41]: "pragmatic" solutions should allow for the effective repression of sex-based offences[42]. This second component determines many aspects of the legal status of this offence. On the other hand, it is largely overlooked or even disregarded by the Belgian legislator. The effectiveness of its repressive measures is primarily based on the performative nature of the powerful "symbol" that the criminalisation of "sexism" by a specific law represents.

10. – More specifically, in Belgium, the main objective of the Law of 22 May 2014 is to "reinforce the existing legal arsenal by developing instruments to tackle sexist phenomena" – as its *Explanatory Memorandum* very clearly emphasises at the outset[43].

Consequently, the achievement of this objective will take a form that depends, among other things, on the way in which the legislator conceives both society's representations of sexism and the properties of its own action in terms of regulation and, more broadly, governmentality.

39 National Assembly [FR], 2018b, p. 5.

40 Amendment no 208; see also S. [FR], 2018, p. 54.

41 National Assembly [FR], 2018c, p. 19.

42 E.g., National Assembly [FR], 2018c, p. 159.

43 Milquet, Turtelboom, 2014a, p. 3; see also S. [BE], 2014, p. 2.

As mentioned above[44], in the *Explanatory Memorandum* of the Law of 22 May 2014, "sexism issues" are envisaged as a "general phenomenon in its own right"[45] and, as a result, must be treated as such. In this regard, the adoption of this text aims to "formally establish the concept of sexism in the criminal field"[46]. This approach should give this issue a form of "autonomy" – which, as explained below, helps to give it a strong symbolic impact, seen as a guarantee of effectiveness.

Moreover, the Belgian legislator does not perceive its involvement in the field of sexism as a form of legal consecration of values commonly shared within society, which the adoption of the Law of 22 May 2014 would aim to protect. Although he highlights a certain "awareness" that is "gradually" taking place in society, he can only but conclude that many people see their "freedom of movement" hampered by sexist acts, as well as their "right to respect for human dignity" flouted[47].

In this context, the Law of 22 May 2014 clearly plays a "symbolic" role. As a member of Parliament from an opposition party constructively reminds, it is a matter of "setting the boundaries of what a society deems acceptable or not"[48].

Even so, the legislator intends to confer true effectiveness[49] to this legal framework, particularly through its symbolic dimension, which is missing in the legal framework then in force[50]. The challenge is to effectively change the collective consciousness on the issue of sexism[51], so that the actions of citizens comply with the requirements that the very notion of the "rule of law" seems to impose in this respect[52]. The legislator's conviction in the effectiveness of the legal framework is based on the experience acquired in the fight against racism, which he considers to be conclusive[53]. That being said, the profound transformations expected, insofar as they concern the "societal way of thinking", can only take place "progressively" – something the Minister for Equal Opportunities is well aware of[54].

According to the *Explanatory Memorandum*, this change in collective consciousness goes hand in hand with a "revival" of the "right to respect the individual

44 See no 07.

45 Milquet, Turtelboom, 2014a, p. 3.

46 H.R. [BE], 2014a, p. 4.

47 Milquet, Turtelboom, 2014a, p. 3.

48 H.R. [BE], 2014b, p. 9.

49 Some deputies are concerned that the legal provision is only symbolic and is not actually enforced – which in itself does not prevent it from contributing to a change in attitudes towards the issue of sexism (e.g., H.R. [BE], 2014b, p. 9 and p. 11).

50 In this regard, see H.R. [BE], 2014a, p. 3, where the Minister for Equal Opportunities states that there has been an "admission of failure" in terms of "the legislator's intervention in the field of gender equality".

51 However, some deputies question the need for a criminal law provision to combat sexism (e.g., H.R. [BE], 2014b, p. 7 and p. 8). Others stress the need, in order to provide a satisfactory response to acts of sexism, to link the criminal response to other types of measures. One might think, for example, of information or awareness-raising among the population or certain categories of it. See H.R. [BE], 2014b, p. 9 and p. 10.

52 Milquet, Turtelboom, 2014a, p. 3.

53 E.g., Milquet, Turtelboom, 2014a, p. 3; H.R. [BE], 2014b, p. 10.

54 E.g., H.R. [BE], 2014a, p. 3; see also S. [BE], 2014, p. 5.

[...] as a member of one sex or the other"[55]. It must also provide an incentive to counter the "impunity of perpetrators" of sexist acts, as well as the "resignation of victims"[56]. This includes equipping victims, and other actors such as the Institute for the Equality of Women and Men, with "proper legal means" – something they "often lack"[57]. This aspect occupies a marginal place in the preparatory work, and even appears to be incidental, if not purely formal. In any case, it is hardly convincing. Nothing in the legal status attached to the offence of sexism can, at the very least, lead one to believe that the changes introduced by the Law of 22 May 2014 are designed to facilitate its implementation in practice. Experience, which is reduced to a few court decisions, tends to confirm this very fact.

11. – In France, Law no. 2018–703 of 3 August 2018 is intended to fulfil an "expressive function" and has a "pedagogic virtue"[58] – which leads, among other things, to the inclusion of a specific title in the Criminal Code for this offence[59]. Indeed, the legislator intends to "define" and "establish" a "clear social ban" on sexist acts[60]. The latter is set at a high level or, at the very least, beyond the limits commonly accepted in this field – one of the objectives being, as indicated above, to "lower society's tolerance threshold"[61]. Also, in this perspective, the drafting of the law is seen as an opportunity for a "societal debate" – which was indeed the case. It should allow for the "raising of awareness" and "education of citizens, litigants [and] professionals"[62]. The incrimination of "street harassment" is thus presented as a "strong symbol in the *cultural* fight against such conduct"[63].

It is the importance given to this expressive function by the government that led it to favour the legislative route – instead of the decretal one – to establish the offence of sexist outrage[64]. This procedure has been widely contested, notably by the Council of State[65]. Indeed, under the Constitution, the determination of offences and their penalties falls *a priori* within the regulatory power[66]. As for the government, it has chosen to use the legislative route in order to "firmly and decisively" establish this new prohibition[67], which the Minister of Justice describes as a "form

55 Milquet, Turtelboom, 2014a, p. 4; see also S. [BE], 2014, p. 2.

56 Milquet, Turtelboom, 2014a, p. 4.

57 Milquet, Turtelboom, 2014a, p. 7.

58 National Assembly [FR], 2018c, p. 150 and p. 152.

59 National Assembly [FR], 2018c, p. 152. Before the work carried out in committee by the National Assembly, the text provided for the inclusion of "recourse to prostitution" and "sexist offence" in a single title mentioning these two offences.

60 National Assembly [FR], 2018c, p. 158; S. [FR], 2018, p. 114; National Assembly [FR], 2018a, p. 53.

61 National Assembly [FR], 2018c, p. 158.

62 S. [FR], 2018, p. 18.

63 S. [FR], 2018, p. 66; see also p. 79.

64 S. [FR], 2018, pp. 117 and 118.

65 CE [FR], 15 March 2018, no 394437, p. 8, no 34. This criticism is made repeatedly in parliamentary proceedings (e.g., National Assembly [FR], 2018c, p. 157; S. [FR], 2018, pp. 21 and 22, as well as p. 24).

66 Const. [FR], esp. art. 34 and 37.

67 National Assembly [FR], 2018c, p. 120.

of civilisational ratchet"[68] – the Council of State, it should be noted, having already accepted the use of this procedure in the past[69].

12. – However, although the Law no. 2018–703 of 3 August 2018 and its adoption process should contribute to society's "awareness" and "turnaround" on the issue of sexual and sex-based violence[70], the law's effectiveness is mainly determined by its implementation *in situ*. This measure must indeed allow for effective, "immediate" and "visible" repression of sexist offences[71]. The legal regime attached to this offence is thus largely cast in this perspective of "operationality" – this being at least the intention of the French legislator[72].

In fact, Law no. 2018–703 of 3 August 2018 allows for the use of the fixed fine procedure, provided for in Articles 529 to 536–6 of the Criminal Procedure Code with regard to contraventions[73]. This type of procedure allows for criminal repression that reconciles both "efficiency" and "visibility"[74]. The fine must be paid immediately or within forty-five days of the finding of the infringement or of the sending of the notice of finding[75] – such payment terminates the legal proceedings[76]. This procedure therefore offers a rapid response to observed acts of sexism, without having to resort to a judge – unless the offender contests the alleged fact[77]. It is also with this in mind that the National Assembly prefers a fourth-class fine to a higher one[78]. It is argued therein, as well as in the *Impact Assessment* of the bill, that the fixed fine procedure for fifth-class offences is not yet operational[79].

Furthermore, the decision to make sexist outrage a contravention (minor offence) seems to be – unjustly – dictated by the desire for rapid and immediate repression of acts of this nature *in situ*. In fact, it is based on the desire to allow for a *flagrante delicto* observation without a prior complaint"[80] – which is surprising

68 S. [FR], 2018, p. 118. Another argument put forward by the Minister of Justice is that, in the past, legislative provisions have already established contraventions and their penalties, for example to prohibit and punish the wearing of the "full veil" (S. [FR], 2018, p. 120).

69 /Delage, 2018/

70 National Assembly [FR], 2018c, p. 8.

71 National Assembly [FR], 2018a, p. 50; National Assembly [FR], 2018c, p. 149.

72 National Assembly [FR], 2018c, p. 19; S. [FR], 2018, p. 62.

73 Criminal Code [FR], art. 621–1-II, provides that the contravention of sexist work "may be subject to the provisions of the Criminal Procedure Code relating to fixed fines, including those relating to the reduced fixed fine". However, Criminal Procedure Code [FR], art. 529, para. 2, states that the procedure does not apply "if several offences, at least one of which cannot give rise to a lump-sum fine, have been detected simultaneously or if the law provides that the recurrence of the contravention constitutes an offence".

74 National Assembly [FR], 2018a, p. 50.

75 Criminal Procedure Code [FR], art. 529–1.

76 Criminal Procedure Code [FR], art. 529, al. 1.

77 S. [FR], 2018, p. 65.

78 It should be noted that the Senate intended to make the offence of sexist insult an offence and to apply to it the fixed fine procedure provided for this class of offence by Articles 495–17 to 495–25 of the Criminal Procedure Code.

79 National Assembly [FR], 2018a, p. 50 and p. 51.

80 S. [FR], 2018, p. 62; National Assembly [FR], 2018c, p. 159.

since certain contraventions (minor offences) can lead to prosecutions and convictions without a prior complaint from the victim[81]. The Secretary of State for Equal Opportunities perceives this circumstance as a condition for the effectiveness of the implemented system. She is indeed convinced that "no woman will file a complaint because three strangers followed her in the street and repeatedly asked for her telephone number"[82] – without the aetiology of this type of behaviour being addressed.

This logic of criminal repression based on *flagrante delicto* is, let it be noted, part of one of the reforms initiated under the Presidency of Emmanuel Macron, the *Daily Security Police*. One of the characteristics of this police policy is the "reinforced presence" of the forces of law and order, namely through more pedestrian patrols, contact brigades and cycling teams – which, among other things, should "facilitate contact and proximity with the local residents"[83].

The legislator has also decided to broaden the categories of individuals authorised to record sexist outrages[84]. In addition to the officers and agents of the judicial police, there are now deputy judicial police officers[85] – who are currently allowed to record certain offences under the highway code – and civil servants and agents authorised to record offences under the railway or guided transport police[86] – for example, sworn agents assigned to the internal security services of the SNCF and RATP.

It is in a similar vein that the National Assembly wishes to allow certain associations to act as civil parties in sexist outrage proceedings[87]. The amendment adopted by this assembly was justified by the effort to make the existing legal system more effective – with associations playing a "role in supporting women" and "major players in the fight against [sexual] violence"[88]. Although the Senate has backtracked on this decision, the reason provided deserves to be emphasised as it also marks the desire for the effective repression of sexist outrages, but above all for immediate and visible action. It truly is a matter of favouring a "rapid and effective sanction": allowing certain associations to exercise the rights granted to civil parties "would prevent recourse to simplified methods of prosecution or judgement"[89]. This is the Senate's point of view, which was finally adopted in Law no. 2018–703 of 3 August 2018.

The desire to engage in general and targeted prevention that is fully effective *in situ* is reflected in the introduction of a new additional sanction, specifically focused on this issue, the "training course on the fight against sexism and awareness of equality between women and men"[90]. This additional penalty follows on from

81 S. [FR], 2018, p. 66.

82 S. [FR], 2018, p. 124.

83 Ministry for Internal Affairs, 2019.

84 National Assembly [FR], 2018c, p. 23 and p. 151.

85 Criminal Procedure Code [FR], art. 21.

86 Transport Code [FR], art. L.2241–1-I, al. 1.

87 This possibility already exists for a series of sexual offences. The exercise by associations of the rights granted to civil parties is conditional on the agreement of the victims or, in the event of death, of their beneficiaries.

88 Amendment no CL132.

89 Amendment no COM-72.

90 Sexual and Sexist Violence Law [FR], 2018, art. 15–1. Justice Reform Law no. 2019–222 of 23 March 2019 amends Article 621–1 of the Criminal Code with regard to additional penalties.

others already provided for in the Criminal Procedure Code, which can also be used to punish sexist outrages: the citizenship training course, the awareness-raising training course to counter the purchase of sexual acts and the responsibility training course for preventing and combating domestic as well as sexist violence. The new training course is seen as a "pedagogical and individualised response" to the sexism phenomenon[91], which places the legal system adopted by the French legislator in a logic of both education and accountability of "sexist offenders". This decision may be interpreted as an indication of a clear desire to speed up and systematise the repression of acts of this nature and, at the same time, of a more or less marked renunciation of social treatment of this type of delinquency[92].

CONCLUSION

13. – French and Belgian legislators are tackling the issue of "street harassment" by, *inter alia*, adopting legal provisions specifically criminalising certain comments or behaviours described as "sexist". These are symbolically strong reactions, which are underpinned by ambitious "political" projects – at least formally. They aim to bring about a profound transformation – in conjunction with other parallel initiatives, for instance in the fields of awareness-raising or education – of societal way of thinking about sex and gender relations. These responses from French and Belgian legislators call for observations, two of which are briefly recounted here. In particular, they would appear to be based on collective thinking that dispenses with an in-depth analysis of the "aetiology" of this type of "delinquency", which raises questions about their relevance. More fundamentally, it is permissible to question the use of the "criminal justice tools", both in terms of legitimacy and effectiveness, to address offences which, beyond their obviously harmful impact on a significant part of the population, are widespread and often ignored or tolerated within society – or even in some way encouraged or valued.

Regardless, the path of criminal proceedings is the one followed – along with others – by both the French and Belgian legislators. It is, however, applied rather differently within these legal systems. Thus, the Belgian Anti-sexism Law of 22 May 2014 appears to be, first and foremost, a political response to the societal debate sparked by the broadcast of a documentary on "street harassment". Sexism is seen as a phenomenon in its own right, related to issues of discrimination, which requires a specific approach and solution. Its largely "symbolic" penalisation is essentially part of an incantatory and performative logic – the expected transformation of collective consciousness should, nevertheless, only occur progressively. As for the French Law no. 2018–703 of 3 August 2018, which is part of a wider political project, it only incriminates sexist outrage, so as to close a legal loophole in the fight against sexual violence (or similar). That said, this offence broadens the existing repressive *contin-*

However, the changes made are limited, since instead of mentioning these penalties, Article 621–1-IV now refers to Article 131–5–1 of the same code, which includes the training courses in question.

91 National Assembly [FR], 2018a, p. 51.

92 /Van de Kerchove, 2005/

uum in this field by becoming the first step. Similarly, it could contribute, through a form of "contagion", to fundamentally transforming this *continuum* by extending it to acts with a sexist connotation – something that is already apparent in the case of so-called "sexual" harassment. Moreover, whilst Law no. 2018–703 of 3 August 2018 holds an "expressive function" and "pedagogic virtue", as does the Belgian legislation, it differs from the latter in the underlying concern for "operationality".

These various elements need to be taken into account in order to fully grasp the meaning and scope of the rules of positive law, both French and Belgian, which incriminate sexist acts as such. The present study illustrates this, specifically with regard to the explicit definition of "sexism" in the law or its omission, the type of penalty, and certain rules of criminal procedure, such as those relating to the identification and pursuit of offences. These elements would also benefit from being used to study other matters related to these repressive measures. For instance, the role of "subjectivity" – whether that of the offender, the victim or even the "community" – in the assessment of sex and gender-based offences and in the implementation of legal measures to prosecute them.

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KRIMINALIZACIJA „UZNEMIRAVANJA NA ULICI" U BELGIJI I FRANCUSKOJ: DVA RAZLIČITA ZAKONODAVNA PRISTUPA U REGULISANJU „SEKSISTIČKOG" PONAŠANJA

APSTRAKT

Francuski i belgijski zakonodavci su se problemom uznemiravanja na ulici pozabavili, između ostalog, i usvajanjem zakonskih odredbi kojima se kriminalizuju određeni komentari ili tipovi ponašanja koji se mogu opisati kao seksistički. To su i simbolički snažni oblici reakcije, koje podupiru ambiciozni politički projekti – barem formalno. Oni imaju za cilj da promene način na koji društvo razmišlja o pitanjima roda i pola.

Oba krivična zakona se, generalno govoreći, zasnivaju na zajedničkom sistemu vrednosti, koji podrazumeva i vrednost čovekovog dostojanstva – kao osobe ili kao pripadnika ljudske vrste. Međutim, razlog koji stoji iza belgijskih i francuskih zakonodavnih intervencija uistinu nije nimalo sličan.

Belgijski zakonodavac posmatra pitanje uznemiravanja na ulici prevashodno iz ugla borbe protiv raznih oblika diskriminacije. On posmatra seksistička pitanja kao specifičnu pojavu, koja, sledstveno tome, zahteva specifičan odgovor. Odlučno je krenuo ovim putem usvajanjem Zakona od 22. maja 2014. godine, čiji je glavni cilj krivičnopravno kažnjavanje seksizma. U tom smislu, belgijski zakonodavac odlučio se za eksplicitno definisanje pojma seksizma.

Nasuprot tome, francuski Zakon br. 2018–703 od 3. avgusta 2018. godine, kojim se kriminalizuje seksističko vređanje, pridržava se već postojećeg metoda kriminalizovanja seksualnog nasilja uopšte. Ovo novo krivično delo postaje deo čitavog korpusa krivičnih dela različite težine, formirajući „dodatni stepenik" na „dnu lestvice seksualnog i seksističkog nasilja". Propust da se definiše seksizam u zakonu i čak, fundamentalnije, nedostatak razmišljanja o ovoj „realnosti" tokom pripremnog rada, u kombinaciji sa kriminalizacijom seksističkog vređanja u kontekstu prevencije seksualnog nasilja, navelo je francuskog zakonodavca da značajno proširi obim krivične represije, u isto vreme zamagljujući i njenu svrhu i ograničenja.

Pored toga, krivičnopravna reakcija na seksističko vređanje u Francuskoj prati dvostruku logiku u smislu efikasnosti. Zakonu br. 2018–703 od 3. avgusta 2018. inherentna je i „ekspresivna funkcija" i „vaspitna vrlina". Prva dimenzija je povezana sa brigom o „operativnosti". Zaista, Zakon sadrži niz odredbi i mera koje bi trebalo da omoguće efikasno, neposredno i vidljivo kažnjavanje krivičnih dela koja su motivisana pripadnošću oštećenog određenom polu. Druga dimenzija određuje mnoge aspekte pravnog statusa ovog krivičnog dela (npr. fiksna novčana kazna, proširenje kategorija državnih službenika ili agenata ovlašćenih da evidentiraju krivična dela, mere za izbegavanje sudskog postupka).

Za razliku od Francuske, pitanja operativnosti su u velikoj meri zanemarena ili čak prenebregnuta od strane belgijskog zakonodavca. Efikasnost njegovih represivnih mera se prvenstveno zasniva na simbolici koju ima propisivanje seksizma kao krivičnog dela posebnim zakonom.

Ključne reči: uznemiravanje na ulici, seksističko vređanje, Belgija, Francuska, kriminalizacija