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ORIGINAL ARTICLE

# Abuse in institution: Developments in French criminal law



*Maltraitance en institution : les évolutions du droit pénal français*

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## MOTS CLÉS

Maltraitance ;  
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Délit de maltraitance ;  
Bienveillance ;  
Responsabilités  
(médecin,  
établissement)

**Summary** The abuse, which has become a societal phenomenon, is currently a key focus for social and medico-social institutions. Vulnerable persons reside in these, due to their age or disability. If recent developments in criminal law appear leading to an empowerment of the "crime of serious ill-treatment", taking into consideration the particularism of victims and employed means, the only way for the struggle against institution abuse to achieve its goals is by implementing preventive measures within these institutions. These resolutions appear as part of a "well-treatment" dynamic.

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**Résumé** La maltraitance, devenue phénomène de société, est aujourd'hui une problématique centrale pour les établissements sociaux et médico-sociaux accueillant des personnes vulnérables de par leur âge ou leur handicap. Si les évolutions récentes du droit pénal semblent mener à une certaine autonomisation du « délit de maltraitance », prenant en considération le particularisme des victimes et des moyens employés, la lutte contre la maltraitance institutionnelle ne peut espérer atteindre ses objectifs que par la mise en œuvre de dispositifs préventifs au sein des établissements s'inscrivant ainsi dans une dynamique de « bienveillance ».

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Abuse is a phenomenon not precisely described and difficult to formulate. In recent years, it paid special attention from the media on the subject of physical, psychological and drug violence... the segments of population that are the worst affected by this violence are the most vulnerable because of age or disability. Those events can occur within the family environment or more frequently, in social and medico-social services and institutions that host them, then called "institution abuse". This recent highlighting of facts has for many years been part of the long list of the violence striking our society, and has set the ill-treatment at the rank of major societal issue. This problem applies to an infinity of situations, and is not restricted to the fields of childhood and sexual violence [1].

However, instructions and departmental manuals refer preferably to "well-treatment" notion<sup>1</sup>.

There are innumerable cases grouped under the generic term of maltreatment, so it is difficult to define this notion clearly and exhaustively. There are various definitions of this concept, which differ by their greater or lesser degree of detail, and that consequently can blur the analysis of this phenomenon and impair its containment. The question of criteria and threshold qualifying an abuse arises, as intentionality constituting this act. The main issue is "to correctly locate the difficulty between two poles, the first of which would be a reductionist definition of violence (...). It would mask the reality of the phenomenon, and the second an exaggerated extension of the concept that would mitigate the specificity by including much broader issues<sup>2</sup>".

Therefore, the French legislator is widely referring, for practical reasons, to the Council of Europe's definition. He is conciliating violence and abuse concepts, and defining this notion as violence "characterized by any act or omission committed by one individual, if it harms the life, physical or psychological integrity or liberty of any person, or seriously

affect the personality development, and/or damages the financial security<sup>3</sup>". However, the General Directorate for Social Action (the DGAS in French) makes a clear distinction that is not visible in the definition given by the Council of Europe Convention. On the one hand, the council considers any act of voluntary compulsion creating a physical, mental, sexual or financial suffering for the victim as an "active maltreatment". On the other hand, "passive maltreatment" or "hollow" shall be defined as acts resulting from omissions or missteps.

Then arises the question of criminal penalties intended to prevent further expansion of this scourge.

French law does not incriminate the "crime of ill treatment", which needs de facto a necessary re-characterization of facts in offences covered by law. Nevertheless, abusive acts are punishable.

Instead, recent developments of criminal law and judicial interpretation seem to be leading to "an empowerment of the crime of serious ill-treatment [2]" taking in account the distinctiveness of victims and perpetrators of maltreatment's acts as well as the wide variety of means employed, and extending the responsibility as a result of institutional abuse to doctors, service heads and Institutional heads, whose inaction has caused occurrence or reiteration of maltreatment acts.

However, is this legal arsenal sufficient enough to take effective action against that issue, recognized as a major problem in institutions for elderly and disabled persons? What are the responsibilities for "indirect" actors of "institutional" maltreatment?

## The progressive empowerment of "crime of ill-treatment"

The media coverage of abuse cases in a sensational tone certainly gave us an insight on this societal phenomenon, but has also given a very simplistic and distorted reflection of reality. As a result, public perception is that maltreatment acts are carried out in a systematic way to the disabled and elderly patients by sadistic people who they are abandoned to. Indeed, maltreatment usually matches with series of small acts creating suffering among victims, from which rarely results particularly serious crimes<sup>4</sup>.

However, although incriminated acts, with variable perpetrators and victims, do not allow to consider maltreatment like a single infringement prescribed by the Criminal Code, we can progressively observe an empowerment of the "crime of serious ill-treatment".

## Maltreatment: particularism of victims and means employed

Historically, maltreatment has been associated with children at risk. From the end of 1980s, this concept has

<sup>1</sup> Some examples:

Circular DGAS/2A no. 2008-316 of the 15th of October 2008 relating to the strengthening of the inspection and control missions as part of the struggle against maltreatment of the elderly and the disabled persons; OB Health – Social Protection – Solidarités no. 2008/11 of the 15th of December 2008, Page 165.

Delegate Ministry in charge of Social Security, Elderly, Disabled persons and Family, "Development plan of well-treatment and reinforcement of the struggle against maltreatment", 14th of March 2007, Philippe BAS, minister in charge of Social security, Elderly, Disabled persons and Family.

Report by the ministerial task force: "Promoting the well-treatment in health institutions", Michelle Bressand, Martine Chriqui-Reinecke, Michel Schmitt, with the help of the students directors of the association EHESP Advice. Delivered to Mister Xavier Bertrand, minister of Labour, Employment and Health, January 2001, <http://www.sante.gouv.fr/IMG/pdf/Rapport-bien-traitance-dans-les-etablissements-de-sante.pdf> "Le déploiement de la bien-traitance", Guide intended for professionals in health institutions and EHPAD, Group Well-treatment FO-RAP-HAS, May 2012: [http://www.has-sante.fr/portail/upload/docs/application/pdf/2012-10/bien-traitance\\_-\\_rapport.pdf](http://www.has-sante.fr/portail/upload/docs/application/pdf/2012-10/bien-traitance_-_rapport.pdf).

<sup>2</sup> Maltraitance envers les personnes handicapées : briser la loi du silence (Volume 1, report), Enquiry Committee report of the Senate no. 339 (2002–2003) from MM. Jean-Marc Juilhard et Paul Blanc, made on behalf of the Investigation commission, lodged on 10th of June 2003. Notes from French and Norwegian delegations regarding Council of Europe's definition of maltreatment.

<sup>3</sup> Council of Europe definition from 1992.

<sup>4</sup> Maltraitance envers les personnes handicapées : briser la loi du silence (volume 1, report). Enquiry Committee report of the Senate no. 339 (2002–2003) de MM. Jean-Marc Juilhard et Paul Blanc, made on behalf of the Investigation commission, lodged on 10th of June 2003.

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