

# RACISM, ANTI-SEMITISM:

# COURSES OF ACTION IN HIGHER EDUCATION

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Racism and anti-Semitism are expressed in the streets, on the walls of places of worship, on social networks and in discussion forums. For too many people, they result in insults, intimidation, physical aggression and discrimination. Higher education is not exempt from this issue.

**The involvement of everyone is imperative.**

The National Plan to fight against Racism and Anti-Semitism (2018-2020), presented by the Prime Minister on 19 March 2018, involves all ministries. Led by DILCRAH (the inter-ministerial delegation to fight against racism, anti-Semitism and anti-LGBT hatred), this plan is intended to strengthen **the network of racism-anti-Semitism advisers** in Higher Education Institutions. The organisation of training and national working groups, the collection of good practices and the partnership with associations fighting racism and anti-Semitism all enable the advisers to become resource persons within their institutions and to react in the event of a racist or anti-Semitic incident.

**This document aims to support them in the prevention and treatment of racist, anti-Semitic and discriminatory phenomena.**

## I. Racism does not fall under freedom of expression

Freedom of opinion and expression, and fundamental rights, are guaranteed in research and teaching activities, as well as in student life. **However, freedom of expression is subject to limitations: it is not absolute, and cannot be invoked to justify a racist or anti-Semitic word or act.**

Higher Education abides by the law as elsewhere and unambiguously punishes expressions and behaviours "of a racist and anti-Semitic nature, including those that manifest themselves under the guise of "humour" or "traditions".

There is no justification for degrading and humiliating acts, whether racist or anti-Semitic, to be inflicted on students through peer pressure. There is no such thing as good-natured hazing (being subjected to harassment or ridicule) or peer pressure, these are crimes. This is the responsibility of your institution.

### **Racist and anti-Semitic statements: abuses of freedom of expression punishable by law**

The law defines specific penalties for different types of racist criminal statements: racist insults, racist defamation, incitement to racial hatred and discriminatory harassment. These crimes have in common that they are aimed at "a person or group of people because of their origin or membership or non-membership of a particular ethnic group, nation, race or religion".

Racist statements are more heavily punished if they are made publicly, i.e. when **they can be heard or read by an audience that is unrelated to both the person making them and the victim** (in the media, during a public meeting or demonstration, on a poster, on a social network, online etc.).

- **An insult** is a term of invective or contempt that violates honour or consideration.

**Racial insult:** When it is public, the perpetrator faces up to 1 year in prison and a fine of €45,000 (Articles 29, paragraph 2 and 33 paragraph 3, the law of 29 July 1881).

*Example:* A research-professor is called a "dirty Arab" in the corridors of the establishment.

- **Defamation** mobilises false information of a stigmatising nature in order to undermine the honour of an individual or a group of individuals.

**Racial defamation:** When it is public, the perpetrator faces up to one year in prison and/or a fine of €45,000 (Articles 29, paragraph 1 and 32 paragraph 2, the law of 29 July 1881). When it is not public, it is punishable by a maximum fine of €1,500 (Article R.625-8 of the Penal Code).

*Example:* When handing back work, a professor says, "Student X is African. He's not used to working, it's obvious that he has plagiarised this text".

- **Incitement to racial hatred** seeks to instil in third parties a desire for violence likely to encourage action (discrimination, violence).

**Racist incitement:** When it is public, the perpetrator faces up to five years in prison and/or a fine of €45,000 and additional penalties (Articles 24, paragraphs 6 and 8, the law of 29 July 1881).

*Example:* "Keep Europe white" and "Niggers go home" tags are found on the walls of a university.

When it is not public, it is punishable by a maximum fine of €1,500 (Article R.625-7 of the Penal Code).

**Clarification: Neither criticism of a religion nor "blasphemy" are crimes. Higher education guarantees freedom of conscience.**

- Racist and anti-Semitic statements are also prosecuted when they take the form of **public defence of war crimes, crimes against humanity or when they contest the existence of these crimes** (Gayssot law of 13 July 1990). The perpetrator faces up to one year in prison and a fine of €45,000.

*Example:* At a sports event, students wave a banner with the words "Dachau must go on!" and chant "And one, and two and third Reich!".

- **Discriminatory harassment**

**Article 1 of the law of 27 May 2008** prohibits "any act related to any of the grounds mentioned [including membership, true or supposed, of an ethnic group or race and religion], suffered by a person and having the purpose or effect of violating that person's dignity or creating a hostile, degrading, humiliating or offensive environment".

*Example:* Ms. A., an administrative secretary, is regularly the victim of racist comments from two of her colleagues, to an extent where she is off work with a medical certificate. Here, Ms. A. is the victim of discriminatory harassment on the basis of her ethnic origin.

**The law also applies to social networks:** the user of a Facebook or Twitter account or any other social network is responsible for the comments they publish. Even if the user is not the author of the comments, and is only posting, sharing or retweeting criminal messages, that person becomes responsible for their publication and can be prosecuted in the same way as their perpetrator.

### ***A priori prohibition of events disturbing public order and peace***

In order to guarantee freedom of expression, the law prohibits prior censorship and only punishes racist and anti-Semitic statements when they have actually been made, orally or in publications. In Higher Education Institutions, the head of the institution may also prohibit demonstrations, meetings or performances if they are likely to cause a disturbance to public peace and order within the university. In the event of a risk of disturbing public order, the judge may, exceptionally and as a last resort, prohibit publication or the organisation of a gathering.

## **Publications**

It is not the responsibility of the head of an institution to exercise a priori control over publications in their establishments. An action may be considered if the contentious remarks come to their attention as part of the activity of the institution. Reporting content to the criminal justice system should only be done if the comments made constitute an offence. Comments of an excessive nature or in bad taste do not necessarily contain sufficient elements to be qualified as defamation, insult, incitement to discrimination or harassment.

However, in the event of a disturbance to the public order within an establishment, several responses are possible (and depending on the case, they may be combined):

- disciplinary proceedings against identified persons (students or staff), if their remarks, messages or published comments have resulted in prejudice to a student or staff at the establishment.
- inform the victim of the possibility of filing a complaint in the event of publication of illegal content.
- notify the Public Prosecutor of the acts committed, on the basis of Article 40 of the Penal Procedure Code.

Furthermore, if the statements disseminated are likely to constitute "threats, violence, assault, insulting or defamation acts or insults" to a staff member, the latter may request the administration to grant functional protection (law of 13 July 1983 on the rights and obligations of civil servants). This protection may, in particular, include assisting staff in their efforts to obtain the withdrawal of any infringing publications posted online.

## **II. Discrimination: racism and unequal access to rights**

**To qualify as discrimination in the legal sense, three conditions** must exist according to law no. 2008-496 dated 27 May 2008. This act must be reflected by:

### 1. unfavourable treatment...

2. ... in connection with a criterion prohibited by law such as origin, physical appearance, family name, membership or non-membership, true or assumed, of an alleged specific race, ethnic group, nation, or religion (but also gender, sexual orientation, disability, etc.)

3. ...consisting of **an act, practice, rule:**

- **in employment:** refusal to hire or provide **internship**, refusal of promotion, training, difference in remuneration, dismissal, etc.
- **in access to a public or private good or service: housing** (refusal to lease or sell a flat, etc.), **education** (refusal of enrolment by the establishment, etc.), **access to a public or private building** (refused entry to a museum, night club, etc.), etc.

*Examples:* X., a black student, is refused entry to an event organised by a student association whereas Y., a white student, has been admitted just before X. Z., a student of Moroccan origin, studying HSE at an IUT, sent 1,500 CVs when seeking an internship and only obtained two interviews, whereas her classmates whose surnames do not suggest any foreign origin only sent about ten CVs and all obtained an internship.

However, differences in treatment in the sphere of private life (friendly, family or personal relations) do not constitute discrimination in strictly legal terms.

Discrimination is punishable under the Penal Code (Article 225-1 and 225-2). The perpetrator is liable to a fine of €45,000, 3 years' imprisonment and the obligation to fully compensate the harm caused by the prejudice.

## III. Racism and anti-Semitism: aggravating circumstances for all common law crimes and offences

Physical violence is prohibited and punishable by the judicial system. The racist nature of any crime or offence involving physical violence is an aggravating circumstance.

Article 132-76 of the Penal Code provides for increased penalties "when a crime or offence is committed, accompanied or followed by remarks, writings, images, objects or acts of any kind which harm the honour or consideration of the victim or a group of persons to which the victim belongs by reason of their true or supposed membership or non-membership, real or supposed, of a specific alleged race, ethnic group, nation or religion, etc."

This applies to violence as well as material damage (tags, destruction/damage to the premises of an association, etc.). The perpetrators face 2 years' imprisonment and a fine of €30,000, and are liable to 3 years' imprisonment and a fine of €45,000 if the acts are motivated by racism, anti-Semitism or anti-LGBT hatred.

## IV. What should you do?

### Long-term actions

The role of the racism and anti-Semitism adviser subscribed to an **overall institutional policy that is the responsibility of the governors and the governing board**. The institution must clearly indicate on **its Internet site**, in the **internal regulations and the student guide**, the role and contact details of the racism and anti-Semitism advisor.

### In the event of an incident

No comments, no racist or anti-Semitic acts must be left unanswered.

Responding to a racist or anti-Semitic act involves alerting the competent bodies (Legal affairs, presidency and branch), collecting all the information necessary for neutral assessment of the facts, supporting and accompanying the person who has suffered the prejudice.

### Alerting

Any person can be alerted regarding a situation of violence. It is incumbent on that person to inform the advisor of the facts. The latter, in conjunction with the legal affairs department and the institution's governors, shall ensure the safety of the person, guide them according to their needs and advise them to gather for themselves all the elements enabling a case to be built if legal proceedings are to be initiated. It is the advisor's responsibility to bring this information to the attention of the institution as soon as possible, while respecting the **presumption of innocence**.

- When a staff member, regardless of their status, witnesses or is a victim of an act punishable by law, they must bring this to the attention of the advisor and their superior. **Article 40 of the Penal Code** stipulates that "any constituted authority, public officer or civil servant who, in the performance of their duties, acquires knowledge of a crime or offence shall be required to inform without delay the Public Prosecutor of this and to transmit to that public prosecutor all information, reports and acts relating thereto". In this case, the person undertaking this action must inform their superior and the presidency of the institution.
- **Filing a complaint:** If the person and/or institution decides to file a complaint with the police, it is necessary to collect as much information as possible (date and place of the events, name of the perpetrator, medical certificate, witness statements, videos, screen shots, CCTV surveillance recordings) and to contact a police station, or the Public Prosecutor by post.

#### **Important! There are specific deadlines for lodging a complaint:**

3 months for non-public racist insults / 1 year for public racist insults, defamation, provocations, public defence or denial of crimes against humanity / 3 years for discrimination and violence (assault and battery, etc.). While it is recommended to act quickly to report an incident, it is important not to remain silent about an incident known after the fact, especially if the limitation periods have not been exceeded.

## Supporting and testifying

**The witness** of a physical or verbal, racist or anti-Semitic attack must take the lead: they must go to the person who has been subjected to this violence and offer to contact the advisor in order to testify and then be advised and accompanied if they wish to initiate proceedings.

If the person has been the victim of assault: a medical examination must be carried out by a doctor or in the emergency department of a hospital in order to record the traces of assault or even psychological trauma. The advisor must inform the institution's Preventive Medicine department.

Witnesses must write down the facts seen or heard with as much detail as possible on a separate sheet of paper, indicating their name and contact details. Even if a person does not testify right away, their contact details may be helpful if their testimony is sought later.

### REPORTING RACIST OR ANTI-SEMITIC CONTENT ON THE INTERNET

If a person has been confronted with racist or anti-Semitic content on the Internet, they must report this on PHAROS, the official portal of the Ministry of the Interior

## Support

The advisor can inform the victim or witness that it is also possible to refer to a victim support association. Free legal services are also available:

- in [justice and law firms](#);
- in legal access points in some town halls;
- in victim support offices located in all the regional courts (*tribunaux de grande instance*).
- via LICRA, by phone (01 45 08 08 08) or online: <http://www.licra.org/signaler>

## Additional resources (in French)

- [Guide juridique sur la prévention et la lutte contre les incivilités, les violences et les discriminations dans le sport](#), Ministry of Sports, 2018.
- [Le harcèlement sexuel dans l'enseignement supérieur et la recherche Vademecum à l'usage des établissements](#), ANEF, C.P.E.D. and CLASCHES, 2017.
- [La laïcité dans l'enseignement supérieur](#), CPU, 2015.
- [Compétences et responsabilités des présidents d'université et de COMUE](#), CPU, 2016.
- [Guide juridique](#), LICRA, 2012.
- [Discriminations liées à l'origine : prévenir et agir dans le monde du travail](#), AFMD-FACE, 2016.
- [L'inclusion dans les organisations : de la posture à la pratique](#), Patrick Scharnitzky and Pete Stone, AFMD, 2018.
- [Le racisme et la discrimination raciale au travail](#), Anais Coulon, Dorothee Prud'homme.



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