



The long road from research misconduct to disciplinary sanction.

A 30-year review of case law in French higher education

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Why does higher education case law matter?

We draw attention to the disciplinary sanctions taken by French universities against academics and students involved in RM.

- Are the people whom the RIOs consider to have committed research misconduct (RM) subject to disciplinary proceedings in their employing institutions?
- Have the alleged perpetrators of RM been convicted, and if so to what penalties?



Background: Legal regulation of scientific integrity in France



- Professional discipline has long been regulated by “deontological rules” (rules formalizing professional practice). Specially so as regard civil servants.
- Legal regulation of RI introduced in the mi-2010s, and incorporated into the law in 2020-2021 :

RI applies to all academics, whether or not they are civil servants, and to students researchers.

Universities and research institutions must appoint a RIO.

=> Consequence: except for the recent years, disciplinary sanctions for research misconduct cannot be approached solely by RI terminology.



What we do



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- Disciplinary decisions taken by universities in the first instance can be appealed to a single body, the Conseil national de l'enseignement supérieur et de la recherche [National Council for Higher Education and Research] (CNESER).
- = access to **all disciplinary decisions handed down on appeal against faculty staff and students, including doctoral students.**
- **Research question: how does the CNESER handle research misconduct?**

Typical workflow



RIO report in the university



first instance disciplinary procedure within the university



appeal before the CNESER : may be called either by the alleged perpetrator, or by the president of the institution, or the representative of the State



appeal to the highest administrative court (*le Conseil d'Etat*)



Our data: what we do have



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- Accessing and analyzing all decisions handed down by the CNESER between 1991 and 2023 : n= 1827. Involve academics and students.
- Decisions digitally published in the official bulletin (from 2007 = 1333) and unpublished, with derogation from the Ministry, concerning the 1991-2008 period (n=494).
- Decisions from the *Conseil d'Etat* = 75 (available online).
- Total = 1902 decisions. Far from all related to research integrity.
- 333 decisions related directly or indirectly to research integrity (18,71%), involving academics (313) and doctoral students (20). FFP + QRP.

An overview of CNESER case law

Alleged facts	Academics	PhD students/PhDs	Total
Failure to meet service obligations	65	0	65
Sexual assault, sexual harassment, rape	52	0	52
Abusive language and/or disrespectful behaviour	37	1	38
moral harassment	18	0	18
Physical assault	12	1	13
Deteriorating working conditions	11	0	11
Conflicts of interest	8	0	8
Plagiarism	8	13	21
Research misconduct	1	0	1
Falsification of documents	4	4	8
Racist statements	4	0	4
Refusal to accept authority	3	0	3
Defective doctoral supervision	3	0	3
Others	29		29
Unspecified facts ¹⁰	58	1	59
Total	313	20	333



Bridging professional deontology and research integrity

- The concepts of “RI” and “deontological rules” fulfil a similar function in the CNESER’s disciplinary decisions.



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“it is clear from the debates and the documents in the case file that Mr XXX falsified the content of his CV to include [plagiarised] publications, in order to obtain a position as a university professor; in the eyes of the appeal judges, such behaviour, which makes him guilty of the acts of which he is accused, **constitutes a serious breach of the deontological obligations incumbent on all academics** and exposes the defendant to a disciplinary sanction appropriate to his misconduct” (CNESER, no. 891, 27 January 2015)



Bridging professional deontology and research integrity



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- This conceptual pluralism has the disadvantage of putting France out of step with the international discussion on research integrity, which makes virtually no reference to “deontology”, even though it has long been central in France.
- But notion of “RI” seems to gain ground : of the 18 plagiarism cases involving academics or doctoral students since 1991, 12 were dealt with during the 2016-2023 period = period when universities became more aware of research integrity issues.



Distinguishing research misconduct from disciplinary offence



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- Travelling from “research misconduct” to “disciplinary offence/fault”.
- To assess whether a faculty member has committed a “fault” justifying a disciplinary sanction, the CNESER analyses not only their behaviour, but also the context in which their activity takes place :
 - quality of professional context in which the scientist works ;
 - university’s intervention, or lack thereof, to ensure a favorable working environment ;
 - any mitigating circumstances relating to the personal situation of the accused : illness, social situation, etc. Case-by-case analysis.



Distinguishing research misconduct from disciplinary offence

- Dual responsibility of scientists and their institution to behave in a manner consistent with RI.



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Example 1: “The President of the University of YYY accused Ms XXX of behaviour contrary to her statutory obligations, in particular that of exercising her freedom of expression in accordance with the principles of tolerance and objectivity or that of respecting the principles of dignity, integrity and neutrality / in view of the documents in the file, it appears that Ms XXX's position was badly perceived **in a climate of very high tension** and that the appeal judges were convinced by the explanations provided by the defendant” (CNESER, no. 1472, 11 Feb 2021).

Example 2: “Although all students should be aware that they are forbidden to produce written material by copying documents of which they are not the author without specifying the passages borrowed by placing them in inverted commas, [this new tool] nevertheless **requires specific information and warnings** given the ease of access to this documentation, which is incomparable to that of access to written documents, and the particularities of this new form of fraud” (CNESER, no. 420 and 421, 28 June 1994).



Isolating research misconduct from other allegations

- RM is only exceptionally the sole accusation against scientists : RM + insults ; plagiarism + long-term conflicts with colleagues ; RM + moral harassment, etc.



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“the respondent is accused of having behaved inappropriately by failing to fulfil his professional obligations, in particular his obligation to obey his superiors. Mr XXX is also accused of behaviour likely to worsen working conditions and of having behaved inappropriately by creating a noxious and toxic atmosphere by blocking his colleagues’ publications and criticising said colleagues in the scientific community. Mr XXX is also accused of not performing his teaching duties for several years” (CNESER, no. 1745, 11 July 2023).

- Difficult to distinguish between what is a sanction for research integrity and what is a sanction for other misconduct.



Take home messages



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- **From RM to disciplinary offence:** There is nothing automatic about the transition from a finding of research misconduct to the imposition of a disciplinary sanction. The need of a clear division of roles between the RIOs and the disciplinary panels ;
- **Impact of the university's duty of care on the disciplinary fault reproached to scientists.** Individual and institutional duties interact.
- **Building a shared understanding of RI is needed among the institutions in charge of disciplinary sanctions.** Contrasting shared views in the scientific communities with possible divergence in case law.



Thank you for your attention !



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Thanks to our colleagues in the CRISP research project.

Our article : Leclerc, O., & Klausser, N. (2024). From research misconduct to disciplinary sanction: an empirical examination of French higher education case law. *Research Ethics*, 0(0). <https://doi.org/10.1177/17470161241240241>

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