[FR] Glimmer of Hope for Tele-reality Producers

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It will be remembered that just a year ago a surprising judgment was handed down by the court of appeal in Paris in a dispute between participants in the tele-reality programme called *L'Ile de la Tentation* and the programme's producer. By upholding the candidates' claims (and awarding each of them EUR 27,000 in compensation in passing), the court stated clearly that the contract between the production company and the participants had all the features of an employment contract, such that the rules governing irregular breaking of the contract also applied (see IRIS 2008-4: 13).

Note should therefore be taken of the recent decision of the industrial tribunal of Saint-Etienne, as this re-opens the debate by opposing the court's solution. Presumably tempted by the amount of the compensation awarded to the "employees", a participant in the programme in 2006 took the matter to his local industrial tribunal so that his "participant rules" could also be re-classified as an employment contract. The participant put forward the jurisprudence from Paris as the basis for his application to the tribunal, claiming the existence of the three elements that constitute an employment contract (work carried out, in exchange for remuneration, with a degree of subordination). He described the days he spent as a "tempter", taking part in imposed activities, being available at all hours, and being required to follow instructions. He felt that this round-the-clock availability justified payment for overtime, and claimed almost EUR 40,000 in various allowances for having his services reclassified as an employment contract, failure to abide by the procedure for dismissal, and concealed employment, etc.

The tribunal began by recalling the need for the work carried out to be actual work. It found, however, that "the seeking through various activities, of a playful, sporting or other nature, to test a person's power of seduction in tourist establishments did not constitute organised work, as the applicant was at liberty to exercise this at any time". It also noted that "the posting of the daily programmes for the candidates could not be assimilated to in-house regulations or an obligation to work" and that "the exercise of seductive powers involved certain feelings or types of behaviour that were not in the nature of actual work". On the notion of legal subordination, the tribunal observed that there were some constraints on the participants in the television programme, and rules that had to be kept, but that subordination to regulations did not imply either the power of control over what was done or the power of sanction that was characteristic of an

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employment situation. In the present case, there was nothing to prevent the programme's candidates from refusing to participate in any of the activities, as indeed the party concerned had declared, "nobody forced me to do anything". Thus "what the applicant had done did not correspond to actual hours of work inasmuch as the tele-reality of *L'Ile de la Tentation* was not part of his professional life but, on the contrary, was part of his personal, affective and romantic life". Lastly, on the question of remuneration, the industrial tribunal recalled that participants did not receive any remuneration in return for their participation in the filming and that the EUR 1,525 paid corresponded to the transfer of their derived rights. The tribunal concluded that the essential elements of an employment contract were therefore not present, and rejected the participant's claim.

The industrial tribunal of Boulogne-Billancourt, for its part, in response to an application from 23 former candidates of the programme, decided on 3 February 2009 to refer the matter to a professional judge at the court of first instance for a decision on the matter. This was perhaps a way of gaining time pending the much-anticipated position of the court of cassation, to which last year's decision by the court of appeal in Paris has been referred.

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