[FR] Court of Cassation Classifies Participation in Reality Television Broadcast as Employment Contract

IRIS 2009-7:1/18

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In line with the industrial tribunal and the court of appeal of Paris (see IRIS 2008-4: 13), the social section of the court of cassation delivered a noteworthy decision on 3 June 2009 upholding the claim brought by three participants in the reality television programme “l’Ile de la Tentation” for the “participant regulations” they had signed to be reclassified as an employment contract. The programme consists of “filming the day-to-day lives of couples on an island paradise in order to test the strength of their love“. The programme’s production company referred to the clauses in the documents signed by the participants (with each stating specifically that they were “taking part in the programme for personal and not professional ends”). It held that none of the elements constituting an employment contract was present - work carried out, or subordination, or remuneration. The court of cassation recalled however that “the existence of an employment relationship does not depend on either the intention expressed by the parties nor the name given to their agreement, but on the de facto conditions in which the workers’ activities are carried out”. Analysing the actual situation and the conditions for shooting the programme, the social section of the court noted that participants had an obligation to take part in the various activities and meetings; they had to abide by the programme’s rules as defined unilaterally by the producer, and were guided in the analysis of their behaviour. Moreover, some scenes were rehearsed in order to enhance important moments, and waking and sleeping times were laid down by the production team. Lastly, the rules required permanent availability on the part of the participants, who were not allowed to leave the site or communicate with anyone outside, and stipulated that any infringement of these contractual obligations could be sanctioned by being sent away. The court inferred from this that there was a degree of subordination. In response to the production company’s argument refuting the claim that work was being carried out, the court also stressed the fact that this consisted of the participants taking part in imposed activities and expressing anticipated reactions for a period of time and in a place unrelated to their usual personal lives. This activity was therefore not the same as merely recording their everyday lives.

Lastly, the court of cassation found that the sum of EUR 1525 that had been paid to each participant was indeed for the work carried out, confirming that the participants were bound to the production company by an employment contract. On the other hand, the court of cassation censured the court of appeal for its statement of the existence of concealed employment, as it had given no valid

justification for the intentional nature of such concealment. The producers and broadcasters were united in deploring the fact that this important decision challenged the economics of many television programmes.

Cour de cassation (ch. soc.), 3 juin 2009, Sté Glem c. A. Brocheton et autres

Court of cassation (social section), 3 June 2009, Société Glem v. A. Brocheton et al.