[FR] Court of Cassation reviews application of collective agreement of the audiovisual production sector to a company

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Amélie Blocman
Légipresse

On 24 June 2015 the Court of Cassation delivered a judgment it decided to have published in the official gazette because it usefully defined the scope of application of the collective agreement applicable to the audiovisual production sector. In the case at issue, an employee who had been recruited by the French audiovisual group AB as a video technician with the status of a worker in casual employment in show business and had had 589 fixed-term contracts in the space of nine years had taken her case to the industrial tribunal, with claims concerning both the performance of the contractual relationship and its termination. The court of appeal had upheld her claims, requalifying the various successive fixed-term contracts that had been concluded as one contract of undetermined duration (permanent contract). The company AB Productions, whose registration referred to the activity of 'making, producing, distributing, exhibiting, importing, exporting, and acquiring cinematographic and television films and audiovisual works', appealed to the Court of Cassation. It claimed in particular that the court of appeal had stated that it was covered by the collective agreement applicable to the audiovisual production sector and that the employee ought to have the benefit of its provisions. Under Article L. 132-23 of the intellectual property code (Code de la Propriété Intellectuelle - CPI), an audiovisual work's producer is the natural person or legal entity who takes the initiative and responsibility for producing the work. The national collective agreement applicable to the audiovisual production sector states that an audiovisual producer is the natural person or legal entity who takes the initiative and responsibility for producing a programme comprising animated images and sounds. The company bringing the case on appeal argued that the producer of an audiovisual work was its owner, and was therefore - regardless of the actual funding - involved in all the financial, commercial and artistic responsibilities, provided the driving force, and fulfilled the roles of management, and coordination. It claimed that the court of appeal, in deciding whether the employee could claim the advantage of application of the provisions of the national collective agreement applicable to the audiovisual production sector, had assimilated the audiovisual services provided by the company AB Télévision to the 'production of a work', without considering whether the company AB Télévision had taken the initiative and responsibility for producing the works in question.

The Court of Cassation noted that the court of appeal, having recalled that the CPI defines production as the realisation of a work, had found that the company AB Télévision could not maintain any confusion between its 'audiovisual services' activity which in 2010 generated turnover of EUR 35,117,780.31 and its 'production' activity which in the same year generated a turnover of zero, since the company's audiovisual services in fact involved production which could be analysed as the completion of a work. The court of appeal had therefore been correct in concluding that the collective agreement applicable to the audiovisual production sector did indeed apply to the employer, and that this alone legally justified its decision.