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Publication of the Decree relating to the contribution to legal aid

From now on, any proceedings initiated before a court pertaining to civil, commercial, labor, social or rural matters or before an administrative court are subject to the payment of a fee of 35 Euros.

This *"legal aid contribution"* is payable when the proceedings are initiated. It is payable by the party initiating the proceedings. The General Tax Code provides for certain exceptions to the obligation to pay such contribution, namely:

- proceedings initiated by persons receiving legal aid;
- proceedings before the Commission for the Compensation of Crime Victims, the Children's Court, the Magistrate for Custody and Detention and the Guardianship Court;
- procedures dealing with the excessive debt of private individuals and corporate restructuring and judicial liquidation procedures;
- actions initiated before an administrative court against any individual decision pertaining to a foreigner's entry into, residence in or deportation from French territory and the right to asylum.

A Decree dated 28 September 2011 has amended the Code of Civil Procedure and the Administrative Justice Code, stipulating the conditions applicable to the implementation of such contribution. It stipulates in particular that the payment of the contribution, whenever it is due, shall constitute a pre-condition to the admissiblity of a claim. The Decree also sets out various clarifications in relation to the scope of application and the practical procedures by which a party subject to trial must demonstrate payment of the contribution or the grounds exempting him from doing so.

This Decree shall apply to proceedings initiated from 1 October 2011 onwards (**Decree No. 2011-1202 of 28 September 2011 relating to the fees to be contributed to the remuneration fund for the profession of avoué [Appeal Court Counsel] and the legal aid contribution**).

Case Law

Is a pre-election memorandum of understanding which does not satisfy the double majority condition stipulated by the Labour Code necessarily irregular?

The local branch of the CGT union applied to the Magistrates' Court of Martigues for an order cancelling pre-election memoranda of understanding and the elections of staff representatives and members of the works committee.

As its claims were dismissed by the Magistrates' Court, the CGT filed an appeal with the French Supreme Court.

By way of a reminder, Article L.2314-3-1 of the Labour Code stipulates that the validity of a pre-election memorandum of understanding concluded by the employer and the union organisations concerned is subject to its signature by the majority of the union organisations having taken part in the negotiation thereof, including the representative union organisations which obtained the majority of votes cast at the previous works elections or, whenever such results are not available, the majority of the union organisations representing employees within the company.

In support of its appeal to the French Supreme Court, the CGT argued that the conditions stipulated by the Labour Code were not satisfied and that the Magistrates' Court had not verified whether or not the CFTC, a union which had signed the pre-election memoranda of understanding, actually represented employees within the meaning of the statutory provisions.

The French Supreme Court dismissed the appeal of the local CGT branch.

It found that *"save for any statutory provision to the contrary, the provisions of a pre-election memorandum of understanding are subject to the conditions governing its validity as set out in Articles L. 2314-3-1 and L. 2324-4-1 of the Labour Code; it follows, on the one hand, that whenever the pre-election memorandum of understanding satisfies such conditions, it may only be challenged before the courts to the extent that it contains*

provisions contrary to public policy, in particular insofar as they fail to comply with the general principles of electoral law; on the other hand, whenever such conditions are not satisfied, this fact does not render the pre-election memorandum of understanding irregular but has the effect of permitting an interested party to bring an action before a trial judge with an application for an order stipulating the procedures for the organisation and conduct of the ballot."

By ruling that the lack of a majority does not make a memorandum of understanding irregular, the French Supreme Court upheld its decisions prior to the Law of 20 August 2008 relating to the reform of democracy in the workplace and working hours (**Cass. Soc. 6 October 2011, no. 11-60035**).

In order to assess the influence of a trade union, is it permissible to take into account the actions of such trade union when it was affiliated with a confederation of trade unions from which it subsequently disaffiliated?

The trade union SNRTGS, which was affiliated to the CFTC until June 2009, in letters dated 2 April 2010 appointed an employee as union representative and central union representative. The company applied to the Magistrates' Court of for an order cancelling such appointments.

As its claims were dismissed, it filed an appeal with the French Supreme Court.

It contended in particular that whenever a trade union has disaffiliated from one of the five union organisations which are recognised as representing employees at national level, in order to be entitled to appoint a union representative during the transitional period implemented by the Law of 20 August 2008, it is mandatory for the trade union in question to prove that it is representative of the employees within the company on the date of appointment by demonstrating that it satisfies the criteria stipulated by the Labour Code and that, in demonstrating its influence, the SNRTGS was not entitled to invoke the activities it pursued and the experience it acquired prior to its disaffiliation from the CFTC.

The French Supreme Court dismissed the appeal, ruling that *"in order to assess the influence of a trade union, a criterion relevant to whether it is sufficiently representative, which is characterised first and foremost by its activities and experience, the Court must take into account all of its actions, including those pursued when it was affiliated with a confederation of trade unions from which it subsequently disaffiliated"* (**Cass. Soc. 28 September 2011, no. 10-26545**).

May an employee receiving at least 10% of the votes in the first round of works elections when affiliated to one trade union be validly appointed as the union representative of another trade union?

When affiliated with the CFDT, an employee obtained at least 10% of the votes cast in the first round of elections to a works committee held on 19 February 2010. She was appointed as a union representative by the trade union SNBC FE CGC on 9 July 2010.

The Ile-de-France CFDT banks and financial companies trade union applied to the Magistrates' Court for an order cancelling this appointment.

When its application was dismissed, the CFDT filed an appeal with the French Supreme Court. It argued that trade unions representing employees within a company may not appoint as a union representative an employee whose candidacy in the works elections received votes when on a list of candidates put forward by another trade union.

The French Supreme Court dismissed the appeal brought by the CFDT.

Article L.2143-3 of the Labour Code stipulates, amongst other conditions, that in order to be appointed as a union representative, an employee must have received at least 10 % of the votes cast in the first round of the most recent elections to the works committee or for sole staff delegation or staff representatives.

According to this highest Court, votes are cast on a personal basis. The candidate may therefore rely on such votes to be appointed as the union representative of a union organisation representing employees within the company which is different from the union organisation under whose aegis the candidate took part in the elections (**Cass. Soc. 28 September 2011, no. 10-26762**).

May a trade union affiliated with a national category-based inter-professional confederation put forward candidates in various representative bodies?

The company *France Loisirs* challenged before the Magistrates' Court the right of the CFE-CGC, a trade union representing managerial staff in the publishing, bookselling and broadcasting industries, to present lists of candidates within the "employees" representative body in the first round of elections to the works committee and staff representative elections.

The Court upheld its application and cancelled the first round of voting. It found that the amendment of the trade union's bye-laws occurred only eighteen days prior to the signature of the pre-election memorandum

of understanding and that, during such a short period, it could not have acquired the ability to represent the "employees" body simply by amending its bye-laws.

The French Supreme Court reversed the trial court's decision.

It ruled that a trade union *"may present candidates for representative bodies which its bye-laws permit"* and that *"whenever a trade union affiliated with a national category-based inter-professional confederation presents, in compliance with its bye-laws, candidates for several representative bodies, its ability to represent them is established in accordance with the votes cast in all of the said boards."*

In the case under consideration, the bye-laws of the trade union, amended before the signature of the pre-election memorandum of understanding and the presentation of the candidate lists, stipulated that the trade union was entitled *"to represent together all professionals with or without managerial responsibilities, as well as professionals who have managerial aspirations, who are undergoing training, awaiting a first job or a promotion, and also retired employees of undertakings, associations, and private or public establishments whose principal activity is publishing, book-selling, distribution, or exhibition spaces, conferences and museums."* The French Supreme Court deduced therefrom that the trade union was authorised in accordance with its bye-laws to present candidates for the works elections in the "employees" representative body (**Cass. Soc. 28 September 2011, n°10-26693**).

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