

LABOUR AND EMPLOYMENT LAW

February 2008

Applications to courts for termination of an employment contract followed by dismissal

In a decision dated 15 May 2007, the French Court of Cassation ruled that *“when an employee requests the termination of this or her employment contract due to acts which he or she accuses his or her employer of having carried out, while continuing to work for the employer, and the latter then dismisses him or her, a judge must determine whether the request was justified; if so, the judge shall deem that the termination date was the date on which the dismissal letter was sent”* (French Court of Cassation (Labour and Employment Law Chamber) ruling, 15 May 2007, no. 04-43.663).

Accordingly:

1. The judge must carry out a **chronological examination of the grounds** advanced.

The judge must, therefore, first of all, analyse the merits of the employee's application to the courts for termination of his or her employment contract.

There are two possible outcomes:

- If the judge deems that the application is well-founded, he or she shall rule that the contract was terminated due to faults committed by the employer. The termination shall then produce the effects of a dismissal without real and serious cause (ref. as regards personal reasons: French Court of Cassation (Labour and Employment Law Chamber) ruling, 16 February 2005, no. 02-46.649 and French Court of Cassation (Labour and Employment Law Chamber) ruling, 15 May 2007, no. 04-43.663; ref. as regards economic grounds: French Court of Cassation (Labour and Employment Law Chamber) ruling, 21 June 2006, appeal no. 05-44.020);
- It is only if the judge deems that the application by the employee was without foundation that he or she shall analyse the grounds put forward by the employer in the dismissal letter.

2. In any event, **the termination date of the employment contract shall be deemed to be the date on which the dismissal letter was sent**, even in cases in which the application made by the employee to the courts for termination of the contract was well-founded.

Regarding this last point, the ruling thus introduces an exception to the rule according to which a contract is cancelled on the date of a decision ruling that it has been terminated (ref. French Court of Cassation (Labour and Employment Law Chamber) ruling, 11 January 2007, no. 05-40626).

AREAS OF LEGAL PRACTICE

• **MERGERS & ACQUISITIONS**

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

• **CAPITAL INVESTMENTS AND LBOS**

Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

• **COMPANY LAW**

"Long-term capital" transactions, capital increases, issuance of composite securities (convertible or repayable in shares, investment certificates, priority dividend shares etc.), stock option agreements, company founder share plans, temporary business combinations, management fees and cash management agreements, changes to charter/by-laws and legal secretariat services.

• **SECURITIES LAW**

IPOs and preparatory work, drafting of prospectuses, legal secretariat services for listed companies, relations with market authorities, securities litigation.

• **BANKING AND FINANCE**

Advice on loan and financing agreements, warranties/guarantees, syndication, banking regulations, financing of acquisitions and structured asset financing (particularly of real estate).

• **COMMERCIAL CONTRACTS / ECONOMIC LAW**

Advice and litigation with commercial contracts, i.e. service, sale, distribution, concession, franchise, commercial agent agreements, distributor/supplier relations, general terms of purchase/sale, commercial partnerships, manufacturing and subcontracting agreements, business sale agreements, management leases, consumer law, public and private procurement contracts.

• **ADVERTISING / MARKETING**

Advice and litigation work in advertising and marketing law (validation of advertising or promotional campaigns on all media and related litigation).

• **LABOUR AND EMPLOYMENT LAW**

Advice and litigation work in collective and individual disputes as well as in social security law and criminal labour law.

• **INTERNATIONAL LITIGATION / ARBITRATION**

Advice and litigation work covering all facets of business, company and securities law, as well as collective procedures and white-collar crime. Representation at all stages of the dispute, from pre-litigation to litigation before judicial or arbitral courts, protective measures and enforcement.

• **REAL ESTATE LAW**

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

• **REAL ESTATE LAW**

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

• **COMPETITION LAW (FRENCH AND EU)**

Advice and litigation work in respect of industrial cooperation agreements and structuring of distribution networks. Advice and representation before the competition authorities and courts in cartel, anti-competitive practices, abuse of a dominant position and unfair competition cases. Advice on the control of concentrations (conduct of feasibility studies, preparation of notification files, negotiation with the national and Community control authorities) and on State aids/subsidies.

• **NEW TECHNOLOGIES AND INTELLECTUAL PROPERTY LAW**

Advice and litigation work, notably in IT matters (development and integration of software, licenses, assignments and other software-related contracts, facilities management, maintenance of IT systems and software, software infringement), in the field of new technologies (multimedia, Internet, e-commerce). Creation and hosting of websites, affiliation, partnership, online auctions, ASP licenses.

• **INTELLECTUAL PROPERTY**

Literary and artistic property rights & neighbouring rights. Distribution license, rights of performing artists, infringement litigation. Industrial property, trademark, patent and/or design and model applications, licenses and assignments, transfers of technology and/or know-how, trademark, patent and/or design and model litigation (infringement, opposition proceedings, etc.).

• **AUDIOVISUAL AND MULTIMEDIA LAW**

Advice and litigation work in connection with the production, publishing, co-production, distribution and licensing agreements, in France and abroad, of motion picture and/or audiovisual and/or multimedia works and related agreements. Navigation of audiovisual and motion picture regulations and assistance with financing.

• **TELECOM**

Legal advice and preparation of applications for telecom operator licenses, legal aspects of foreign investments in the telecom sector, link leasing (cable and fibre), co-leasing, leasing of capacity, service and/or capacity supply agreements and general terms of service and/or capacity supply, legal aspects and local loop unbundling.

• **COLLECTIVE PROCEDURES**

Alert, restructuring and reorganisation procedures, conciliation and ad hoc representation procedures. Court-ordered reorganisation, preparation of reorganisation plans, sale and recovery plans, liquidation. Representation and assistance of creditors, company officers (action to make good the shortfall in assets, extension procedures, etc.).

Wide network of foreign correspondents

The Firm has developed a wide network of foreign correspondents in most industrialised countries and in certain developing countries.

ISO 9001

The Firm was the first Paris law firm to obtain ISO 9001 certification back in 1998.

31, avenue Hoche, 75008 Paris

Telephone: 33 (0)1 56 88 30 00

Fax: 33 (0)1 56 88 30 01

www.bersay-associés.com

cb@bersay-associés.com