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Session 7 - Labor Law, and its applications in sport

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LABOR LAW

Le droit du travail regroupe l'ensemble des règles qui régissent les relations entre l'employeur et le salarié dans le secteur privé. Cette branche du droit social porte notamment sur la formation, l'exécution et la rupture du contrat de travail.

Labor law includes all the rules that govern the relationship between the employer and the employee in the private sector. This branch of social law deals in particular with the training, the execution and the termination of the employment contract.

INTRODUCTION: GENERAL CONCEPTS OF LABOR LAW

Labor law applies to relations between employers and employees only. Its purpose is to protect an employee placed under the direction of his employer. Labor law defines the rights and obligations of workers and employers.

It covers 2 main areas:

• Working conditions (hours of work, part-time work, fixed-term contracts, posting of workers)

• Information and consultation of workers (especially in the case of collective redundancies or business disposals)

CHAP. I: SOURCES OF LABOR LAW

SECTION 1: External Sources

A - The universal standards of the ILO

The International Labor Organization (ILO) has been a specialized agency of the United Nations since 1946. Its mission is to bring together governments, employers and workers from its Member States, with a view to joint action to promote rights at work, encourage the creation of decent jobs, develop social protection and strengthen social dialogue in the field of job. The eight fundamental ILO Conventions are: the Convention on Freedom of Association and Protection of the Right to Organize, the Right to Organize and Collective Bargaining Convention, the Forced Labor Convention, the Convention on the abolition of forced labor, the Minimum Age Convention, the Worst Forms of Child Labor Convention, the Equal Remuneration Convention, the Convention on Discrimination. France has ratified more than 110 ILO Conventions, which has led to reforms of national legislation and a profound change in the labor law.

An ILO Convention can be directly invoked by employees against their employer because once ratified, the international convention takes precedence over a contrary national law, even if the law pre-dates the Convention.

B - Regional standards

1. The Council of Europe

The European Convention for the Protection of Human Rights and Fundamental Freedoms (CESDH), created in 1950 and ratified by France in 1974, is an integral part of the French legal order. This convention established the European Court of Human Rights (ECHR) before which the provisions of the ECHR can be invoked.

The Court of Cassation makes the provisions of the CESDH directly applicable to French disputes (example: Cass Soc 12 Jan. 1999, free choice of the employee's home).

2. The law of the European Union

Primary law:

The European Treaties are the foundation of the European Union (EU). The main EU treaties are the Treaty establishing the European Coal and Steel Community, the Treaty of Rome, the

Brussels Treaty, the Single European Act, the Maastricht Treaty, the Treaty of Amsterdam, the Treaty of Nice and the Treaty of Lisbon.

The derived law:

EU enacts regulations and guidelines.

For regulations, their application in domestic law is not subject to any particular procedure. They are general in scope, binding in their entirety and directly applicable in the domestic legal order.

Directives are general, binding as to the objectives they assign to the Member States, but leave them with the choice of legal means to ensure their implementation. Directives must therefore be transposed into national law within a specified period.

Unlike the relationship between a private person and the state, the guidelines are not directly applicable in a dispute between an employee and a private employer. They must be transposed into domestic law to be invoked by an employee.

Three institutions are involved in the European legislative process: the European Parliament, the Council of the European Union and the European Commission.

Two other institutions play a key role: the Court of Justice of the European Union (CJEU), which ensures compliance with Community law and the Court of Auditors, which controls the financing of the Union's activities.

All provisions relating to labor law adopted within the framework of the primary and derived law of the European Union but also by the decision-making institutions of the EU are required by French law.

SECTION 2: Internal Sources

A - General sources of labor law

1. The Constitution

The 1958 Constitution contains only a substantive provision in social matters.

It is the "constitutionality block" that must be referred to for the rules and guidelines on labor law. The "constitutional bloc" refers to all the texts of which it has been given constitutional status, namely the Declaration of the Rights of Man and the Citizen of 1789 (DDHC), the preamble to the Constitution of 1946, the principles the fundamental principles recognized by the laws of the Republic (freedom of conscience, freedom of association, etc.), which emerged from the jurisprudence of the Constitutional Council from 1971 onwards.

Some norms of the constitutionality block are directly relevant to social law, and are sometimes invoked by supreme courts to justify their decisions. The Court of Cassation thus referred to Articles 1 and 75 of the 1958 Constitution and to several articles of the DDHC to break certain judgments.

2. The law

The law is the expression of the sovereign will of the people. The law is adopted by the authorities having the legislative power that is to say the National Assembly and the Senate.

The French Labor Code is an organized collection of most of the laws and regulations applicable in the field of labor law, and which mainly concerns employees under private law employment contracts, public sector employees being generally subject to statutes. individuals.

In 2008, the entry into force of a new Labor Code. This new code adopts a 4-digit numbering and a structure divided into parts, books, titles and chapters.

It consists of a preliminary chapter and 8 parts:

Preliminary chapter on social dialogue

 Part one: The individual working relationships

 Second part: Collective labor relations

 Part III: Hours of work, salary, profit-sharing, participation and employee savings

 Part 4: Occupational health and safety

 Part Five: Employment

• Part 6: Vocational training throughout life

• Part 7: Special provisions for certain professions and activities

• Part 8: Supervision of the application of labor legislation

3. Jurisprudence

Jurisprudence refers to all court decisions rendered for a given legal issue. These are previously issued court decisions that illustrate how a legal problem has been resolved. Jurisprudence consists first of all of decisions rendered by the highest national courts, but also, with a lesser weight, of those rendered by the first level of jurisdiction.

In our judicial system, the Court of Cassation has a decisive place. The Court's task is exclusively of a legal nature: it is responsible for verifying that the contested decisions comply with the legal rules and ensuring the harmonious application of those rules by all courts. But its role is not limited to a mechanical application of the rules, it also has a power of interpretation of the texts.

B - Specific sources of labor law (so-called professional sources)

Expression of legal pluralism, the State delegates or authorizes the creation and implementation of rules of which it is not the author. These professional standards are an important source of labor law. They are heterogeneous, that is, they take multiple forms; they are the result of either an agreement or a unilateral act. There are collective labor agreements,

atypical agreements, unilateral commitments of the employer, the internal rules of the company, the employment contract.

1. Collective labor agreements

97% of employees are covered by a collective agreement.

The Preamble to the 1946 Constitution states that the French people also proclaim, as particularly necessary for our time, the following political, economic and social principles: every worker participates, through his delegates, in the determination collective working conditions and the management of enterprises.

Article L.2231-1 of the Labor Code states that:

"The agreement or agreement is concluded between:

• On the one hand, one or more trade union organizations of representative employees within the scope of the Convention or the Agreement

• On the other hand, one or more employers 'organizations, or any other employers' association, or one or more employers individually

Employers' associations set up in accordance with the provisions of the law of 1 July 1901 on the association contract, which are competent to negotiate conventions and agreements, are assimilated to trade union organizations for the powers conferred on them by this title ".

The collective agreement deals with conditions of employment, vocational training and work as well as their social guarantees (Article L. 2221-1 Labor Code).

Example: The National Collective Agreement on Sport (CCNS) or the Professional Football Charter, also known as the National Collective Agreement on Football Professions, determines the conditions of work and employment in sport.

The provisions of the CCNS play an important role in the field of social law of sport. Indeed, the CCNS is intended to apply for all sports professions.

The CCNS is regularly the subject of many questions for general consideration. It is essential to read it in its entirety and study it conscientiously.

The Professional Football Charter, for its part, is quoted in this course for information purposes, it is only in the program of the specific examination of March.

2. Company use and unilateral commitments of the employer

A business use corresponds to a practice introduced by the employer in his company which is concretized by the attribution of a benefit to the benefit of the employees.

Examples: payment of an annual bonus, granting of additional leave, breaks.

An employee who avails himself of a use must prove it. The use is characterized by an actual practice (material element) and this practice is thought to be obligatory (subjective elements).

3 conditions are necessary for a usage to create a right:

• A generality. Generality means that it is an advantage granted to all employees or to a category of them.

• Consistency. The advantage is granted in a constant way, which supposes a repetition in its attribution.
Example: a premium paid for several years regularly

• Fixity. The use is fixed, which implies that it is determined according to pre-established and precise rules.
Example: a premium whose method of calculation depends on a specific criterion even if its amount varies.

If these conditions are met, the right born by way of use is imposed on the debtor, the employer in this case. These standards may only contain more favorable provisions than the stipulations of the employment contract, collective agreements applicable in the company or legal provisions.

Unilateral uses and commitments may be called into question by the entry into force of a collective agreement. In order for the advantage granted by the unilateral use or commitment of the employer to disappear, the collective agreement must have exactly the same purpose (Cass Soc 26 Sept. 2012).

3. The company's rules of procedure

Internal regulations are mandatory in companies or establishments employing at least 20 employees (Article L.1311-2 Labor Code).

It is a unilateral act of the employer that makes provisions binding on employees in a defined area. This area, which is set by the legislator, includes health and safety measures and general and permanent rules relating to discipline. The regulation recalls:

1. Provisions relating to employees' rights of defense

2. The provisions relating to moral and sexual harassment provided for in the Code (section L.1321-1 Labor Code)

3. The general and permanent rules relating to the discipline. Thus, the rules of procedure must provide for the nature and scale of the sanctions that may be taken by the employer; failing which the latter can not take a sanction not appearing there except the dismissal for fault.

The El Khomri law amended the rules of procedure on 8 August 2016.

Indeed, it is now necessary that the rules of procedure contain provisions relating to sexist behavior as well. The most important change is the creation of Article L.1321-2-1 of the Labor Code. This article states that:

"The rules of procedure may contain provisions establishing the principle of neutrality and restricting the expression of employees' convictions if these restrictions are justified by the

exercise of other fundamental rights and freedoms or by the requirements of the proper functioning of the undertaking and if they are proportionate to the aim pursued. "

The Labor Code subjects certain legal acts of the employer to the same legal regime as the internal regulations, as long as they have the same purpose. These are notes, circulars, charters, codes of conduct, etc.

The rules of procedure are not incorporated into the employee's employment contract.

All workers are subject to it: employees of the employer but also workers not bound to the employer by an employment contract but working in the company (temporary workers, employees made available, trainees).

The rules of procedure must, to be opposable to employees, respond to a certain formalism.

The employer is the author of the rules of procedure, it must write it in French (article L.1321-6 Labor Code) and send it for opinion to the representative institutions of the personnel of the company (IRP). The rules of procedure may only be introduced after having been submitted to the opinion of the works council or, failing that, to the staff representatives and, for matters falling within its competence, to the opinion of the committee of hygiene, safety and working conditions (CHSCT) (article L.1321-4 paragraph 1 C.Tra.).

Then, the rules of procedure must be sent to the labor inspector for a check of its legality, that is to say a verification of the procedure and the content of the regulation. In the absence of a response from the labor inspector within 1 month of filing, the rules of procedure apply.

Finally, the rules of procedure must be filed in duplicate with the labor court and posted in the workplace.

4. The employment contract

The employment relationship between an employer and an employee is above all a contractual one. The employment contract has a dual function.

In the first place, the employment contract, as a legal act, establishes the condition of the employee by placing him under the subordination of the employer. In this sense, the employment contract establishes not only a contractual relationship but also a power relationship for the benefit of the employer. The employment contract also determines the application of standards: the law and the regulations, the collective labor agreements which determine the conditions of employment and work. Thus, the employment contract welcomes, without incorporating, many state and professional rules.

But, secondly, the contract of employment has a contractual dimension. As such, it is a source of rights and obligations in its own right.

The writing is not necessary for the validity of the contract but as mode of proof; except for certain types of work contract, especially in sports matters.

ESSENTIEL

Labor law has multiple sources: the law, collective agreements, company rules, etc.

All these sources may be subject to modification or evolution; That's what makes labor law a living right.

CHAP. II: THE MAIN ACTORS IN LABOR LAW

Section 1: Employee and Employer
Section 2: Representative Staff Institutions
- A - The unions
- B - Staff delegates
- C - The works council
- D - The CHSCT
- E - Membership thresholds

Section 3: The Labor Inspectorate
Section 4: The specific players in football

SECTION 1: Employee and employer

The employer is a person who employs salaried staff. The employee and the employer are bound by an employment contract which may take the form of a fixed-term contract (CDD) or an indefinite-term contract (CDI).

The employee remains under the subordination of his employer.

The relationship of subordination is inherent to any employment contract and refers to the fact that an employee must comply with the instructions of the employer and perform the work entrusted by the latter.

SECTION 2: Representative Staff Institutions

A - The unions

The unions are exclusively aimed at defending the individual and collective interests of employees. They can take legal action in place of the employee to enforce his rights, they can assist the employee in his actions against the employer and can take legal action to enforce compliance with a collective agreement. They can negotiate agreements and collective agreements with the employer.

They are present in the company via the union delegate.

B - Staff delegates

Staff representatives are responsible for presenting the employee's remarks and complaints to the employer and ensuring the application of labor law rules. They can also seize the labor inspectorate in case of employer failures.

The employer must conduct employee delegate elections in companies with 11 or more employees.

The National Collective Agreement on Sport provides for the presence of staff representatives for companies in its field of application with 7 employees.

C - The works council

The works council is an institution representing staff.

He has the right to look at the organization of work, the rules of procedure, certain dismissals. The election of members of a works council is mandatory in companies with 50 or more employees. He also has a representative function of employees and must be informed of any project affecting the organization, management and general running of the company.

D - The CHSCT

The Committee for Health and Safety and Working Conditions, like the works council, is compulsory in companies with at least 50 employees.

It is concerned with hygiene and workplace safety issues in order to eliminate the risks of accidents and diseases by establishing and verifying standards in this area.

E - Staffing thresholds (or social thresholds)

For the establishment of staff representative institutions in particular, reference is made to the staff of the enterprise.

Articles L.1111-2 and L.1111-3 of the Labor Code have harmonized the procedures for counting the workforce.

In accordance with the provisions of Article L.1111-3 of the Labor Code, are not taken into account in the calculation of the workforce of the company:

- The trainees

• Holders of an initiative-employment contract, during the financial assistance allocation period

• Holders of an employment support contract during the financial assistance award period

• Holders of professionalization contracts up to the term provided for in the contract when it is for a fixed term or until the end of the professionalization action when the contract is for an indefinite period

However, these employees are taken into account for the application of the legal provisions relating to the pricing of the risks of accidents at work and occupational diseases.

Method of calculation of the workforce: Appendix 1 (P. 116)

SECTION 3: The labor inspectorate

The labor inspectorate brings together inspectors and labor inspectors to ensure the proper application of labor law in the enterprise. Labor inspectors are subject to various obligations

(impartiality, confidentiality, discretion, respect for professional secrecy, information, probity). They are agents outside the company.

The Direccte (Regional Directorate of Enterprise, Competition, Consumption, Labor and Employment), is the main decentralized service of the labor inspectorate.

SECTION 4: The specific players in football

The Legal Commission established by the Professional Football Charter is only for relations between a club and a player or an educator. Its purpose is, in particular, to try to reconcile the parties in the event of breach of the obligations arising from a contract, to homologate the contract of employment, or it may rule on all claims other than the questioning of contracts (Articles 50 and following of the Professional Football Charter + Articles 265, 271 and 657).

The National Paritary Appeals Committees they know in appeal disputes between clubs and players or between clubs and leaders / educators (Article 61 and following of the Charter of professional football).

ESSENTIAL

Labor law does not only concern the relationship between an employee and an employer. Many actors intervene so that the rules in force are respected. On the side of the Administration it is the role of the labor inspector, whereas in the companies, this mission belongs to the representative institutions of the personnel.

TITLE 1: THE WORK CONTRACT

CHAP. I: ANALYSIS OF THE WORK CONTRACT

Section 1: The existence of the employment contract
- A - Definition and qualification
- B - Sports specificities

Section 2: The content of the employment contract
- A - The classic clauses
- B - Prohibited clauses
- C - Sports specificities

SECTION 1: The existence of the employment contract

A - Definition and qualification

The employment contract is the contract by which a person agrees to provide a work performance for the benefit of another by placing himself in a state of legal subordination and for remuneration.

An employment contract therefore exists when 3 elements are combined:

• A work performance (example: a sporting, intellectual ...).

• Remuneration, whatever its form.

• A bond of subordination. This is the determining factor in the existence of a working relationship.

The case law identifies the link of subordination with the help of 3 components: giving orders, controlling their execution and sanctioning the breach (Cass Soc 13 Nov. 1996).

According to the Court of Cassation, the exercise of such prerogatives assumes that the employer does not merely provide the worker with a certain number of tasks to be performed, but that he determines and organizes unilaterally (in the form of directives, instructions or instructions) their conditions of execution (purpose, means and methods of work, time limits, scope and place of performance, etc.) and finally that they verify their implementation in conformity with its requirements and sanctions the possible failures by the employee.

Intellectual independence or autonomy does not necessarily exclude the existence of a relationship of subordination.

The existence of an employment relationship does not depend on the qualification given by the parties to the contract, the judge must requalify it according to the factual conditions of its execution. The judge verifies the existence of this relationship even if the contract used is not called contract of employment. The qualification of the employment relationship therefore does not depend on the name of the contract, nor on the will of the parties, it is dependent on reality alone.

Judges will use all the clues given to them to verify the existence of a contract of employment (example: schedule provided by the employer, possible sanctions ...).

There are presumptions of salary for certain trades (examples: the VRP, the journalists, the models ...).

An employment contract results from an agreement on: the identity of the parties, the functions of the employee, the remuneration, the hours of work, the applicable collective agreement. It is strongly recommended to also include the place of work, the duration of paid holidays, etc.

No part of the contract of employment can go against the rules of the Labor Code or collective agreements unless it is more favorable to the employee.

Any contract that is executed on French territory must be written in French (Article L.1221-3 Labor Code). Foreign employees working in France may request to have a translation of it.

If the two documents were to contain discrepancies, only the text in the language of the employee could be invoked.

Article L.1221-1 of the Labor Code provides that the employment contract is subject to the rules of common law. Thus, the contract of employment is a kind of contract; Whenever no specific rule is provided for in the Labor Code, it is the general rules of contract law of the Civil Code that will apply.

B - Sports specificities

Many sporting contracts are currently requalified in employment contracts.

Judges watch if the player is placed in a work situation according to the 3 criteria mentioned above. In particular, they requalified several "amateur" contracts involving compensation between the club and the athlete when these expenses did not correspond to the sums actually incurred by the athlete to practice his discipline.

In sports, the case-law seems to differentiate between subordination (that is, the performance of work under the authority of an employer who has the power to issue orders and directives, to control its execution and to punish the subordinate's failings) and what is the inherent practice of sport.

Thus, an offensive-oriented player placed on the left-back due to the evolution of the match or the number of squad members will not be considered in a position change situation within the meaning of the labor law.
In the same spirit, a player who fails to satisfy his coach for not following the instructions could not complain of having been disciplined for being recalled to the bench. The link of subordination between a player and a club must therefore be verified in a more global way.

SECTION 2: The content of the employment contract

According to Article L.2254-1 of the Labor Code, the clauses of the employment contract may derogate from the law or collective agreements only in a sense more favorable to the employee.

Article L.1121-1 of the Labor Code states that: "No person may make any restrictions to the rights of individuals and to individual and collective freedoms that are not justified by the nature of the task to be performed or proportionate to the aim pursued. ". This article applies to all clauses of the employment contract, the content of the contract must always conform to it.

A - The classic clauses

Objective bonus clause: the employment contract may provide that the payment of a bonus will be subject to the achievement of objectives set annually by mutual agreement between the employee and the employer. They must not have the effect of reducing the remuneration to a level below the SMIC (or the minimum remuneration provided for in the applicable collective agreement). The objectives must be reasonable, realistic, compatible with the market and beyond the control of the employer.

Clause of indivisibility: a clause provides that 2 contracts are indivisible. They can not produce their effects without one another. The existence of an indivisibility clause does not conflict with any public policy provision.

Example: to have the management of a hotel establishment taken over by a couple and insert an indivisibility clause between the two work contracts of the spouses. This clause provides for the automatic break of the 2nd contract if the 1st is broken.

• Mobility clause: clause by which the employee consents in advance, to change his place of work at the request of the employer within a fixed scope. To be valid, the clause must be clear and precisely delimited. It must be proportionate and justified by the post.

• Non-competition clause: clause intended to prevent the employee from performing an activity that is concurrent with that of his employer after the termination of his employment contract.

The non-compete clause to be valid must be:

• Indispensable to the protection of the legitimate interests of the company

• Limited in time

• Limited in space

• Take into account the employment of the employee

• Provide for a non-derisory financial contribution paid back at break

If the employee does not respect the competition clause of his employment contract, the employer can claim damages. The employer may in certain cases waive this clause within a reasonable time.

• Employment guarantee clause: clause that ensures the employee's job stability for a certain period of time. This clause often results in a ban on dismissal except in case of serious or serious fault of the employee. If the employer does not respect it, he must pay the wages to the employee until the end of the guaranteed period.

• Training deduction clause: a clause whereby, in return for a training entirely paid for by the employer, the employee undertakes to remain for a certain period of time after his training and to pay compensation in case of early departure.

There are conditions for this clause to be valid:

• The cost of training must exceed the amount of employer participation required by law or collective agreement

• The amount of the training allowance must be proportionate to the training costs incurred

• The clause must not have the effect of depriving the employee of his right to resign

• The clause must be concluded before the beginning of the training

• The clause must specify the date, the nature, the duration, and the actual cost of the training for the employer as well as the terms of reimbursement of the employee in case of early departure

• Exclusivity clause: clause that prohibits the employee from working for another employer during the duration of his employment contract. It must be indispensable to the protection of the legitimate interests of the undertaking, to be proportionate to the aim pursued and justified by the nature of the task to be performed.

B - Prohibited clauses

Clauses that are contrary to public order, laws or those affecting the fundamental freedoms of employees are prohibited.

Article 6 of the Civil Code expressly states that "special laws may not derogate from laws which concern public order and good morals".

The presence of clauses prohibited by the Labor Code is sanctioned, in any type of employment contract, by the nullity of the clause.

Examples of prohibited clauses:

• Salary indexation clause: clause that indexes the remuneration on the SMIC or on the general price level

• Jurisdiction clause: clause providing for the jurisdiction of a jurisdiction other than the labor tribunal with territorial jurisdiction

• Clause providing a specific reason for termination of the employment contract

• Clause authorizing the employer to unilaterally modify the employment contract

• Discriminatory clause: clause based on ethnicity, religion, disability, age of employee ...

Clause Clause: clause providing for the automatic termination of the contract as soon as the employee reaches a certain age

C - Sports specificities

• Residence clause: the professional footballer must live less than 50 km from the club unless the latter has written authorization (Article 274 Professional Football Charter). The educator, meanwhile, must live within 75 km of the club.

• Prohibition of risky practices clause: clause forbidding the player, outside of matches or training, to practice football, to ride a horse, to ski, to take a seat in a passenger plane or to to practice any other sport without the authorization of the club president after consulting the coach (article 278 Professional Football Charter).

• Criminal clause: clause providing that in case of unilateral and abusive breach of the contract (or in case of non-performance or improper performance of the employment contract), the party initiating the breach (or the author of the contractual fault) shall pay compensation to the other party. Its amount must not be excessive or derisory otherwise the judge may modify it. It must be fixed according to the damage suffered by the anticipated break.

A classic clause, it is commonly used in professional sports.
Many media reports frequently mention release clauses in the employment contracts of football players, clauses that would release players from their contract against the payment of a predetermined amount of money. These clauses are formally prohibited in the CDD of football players. They are contrary to the provisions of the Professional Football Charter and above all, they are contrary to the provisions of the law, to the extent that the payment of a sum of money does not constitute one of the 4 cases of termination of the employment

contract to fixed term (ie breaking for serious misconduct, for unfitness, by mutual agreement or due to force majeure).

ESSENTIAL

The existence of a contract of employment is decisive because it engenders the application of rules relating to labor law in particular.

An employment contract is characterized by:

• performing a work performance

• a relationship of subordination

• payment of remuneration

The judge has the power to qualify the contract according to its content, not important the qualification that the parties have attributed.

CHAP. II: THE DIFFERENT CONTRACTS OF WORK

Section 1: The indefinite contract (CDI)
Section 2: The fixed term contract (CDD)
A - The general rules
B - Sports specificities
Section 3: The Temporary Work Contract (TTC)
Section 4: Training Contracts
A - The apprenticeship contract
B - The professionalization contract
Section 5: The Single Integration Contract (CUI)
Section 6: The intermittent employment contract
A - The general rules
B - Sports specificities

SECTION 1: The contract of indefinite duration (CDI)

Article L.1221-2 of the Labor Code provides that an employment contract of indefinite duration is the normal and general form of the employment relationship. With the exception of certain sectors as in sport for players and coaches.

The CDI is concluded without limitation of duration, full-time or part-time between an employer and an employee.
However, the employment contract may contain a term fixed with precision as soon as it is concluded or resulting from the achievement of the object for which it is concluded in the cases and under the conditions mentioned in Title IV relating to the fixed-term employment contract.

SECTION 2: The fixed-term contract (CDD)

A - The general rules

In principle, recourse to the fixed-term contract must remain exceptional.

It can not have the purpose or the effect of permanently providing a job related to the normal and permanent activity of the company (Article L.1242-1 Labor Code). It must be used for specific and temporary tasks (Article L.1242-2 Labor Code).

The CDD can only be concluded in certain cases defined by law. They are called recourse cases. The Labor Code gives a limiting list.

Thus, the authorized recourse cases of the CDD are:

• Temporary increase of activity

• Replacement of a sick or absent employee

• Waiting for the arrival of an employee on permanent contract

• Custom CDD

• Seasonal contracts

• Specific fixed-term contracts (senior fixed-term contracts, defined-object fixed-term contracts for engineers and executives ...)

The law also lists the cases of prohibited recourse of the CDD:

• Replace a striker employee

• Perform particularly dangerous work

• Providing a permanent job

• Temporary increase in activity within 6 months following dismissal for economic reasons

The fixed-term contract is obligatorily a written contract of employment, it must be given to the employee within 2 days of taking office and must include the reason for his / her appeal.

In the event of non-respect of these 3 fundamental rules, the contract is requalified automatically in CDI.

In case of requalification, the employee receives a minimum compensation of 1 month salary and severance payments because the requalified CDD has not been broken most often according to the procedure of the CDI.

The fixed term contract must have a specific term set out in the contract.

Only the replacement CDD can be provided "until the return of the absent employee", that is to say without fixed term.

At the end of this contract, and with certain exceptions (example: fixed-term contract), the employer can not re-employ the same employee on the same job with a fixed-term contract. It must provide for a waiting period between the two (ie a waiting period).

This time is:

• Half of the contract period for CDDs under 14 days

• 1/3 of the contract period for CDDs of 14 days or more

The penalty for non-compliance with the waiting period is the requalification of the fixed-term contract (CDS Soc 30 September 2014).

The CDD can be renewed. Renewal means the possibility for the parties to the contract to modify the initial term of the fixed-term contract and to shift it in time. The interest for the parties is not to have to conclude a second fixed-term contract and not, ultimately, expose themselves to the obstacle of the waiting period applicable in case of successive fixed-term contracts. The other elements of the employment contract (hours of work, functions, remuneration, etc.) must, however, remain unchanged.
Article 55 of Act No. 2015-994 of 17 August 2015 on social dialogue and employment has modified the regime for renewing the fixed-term contract. The amended article L.1243-13 of the Labor Code henceforth stipulates that the fixed-term contract may be renewed twice.

At the end of the fixed-term contract, the employee benefits from a precarious indemnity equal to 10% of his total gross remuneration except for seasonal fixed-term contracts, fixed-term contracts, if the employer proposes to transform this fixed-term contract into a permanent contract or in the event of early termination for serious misconduct of the employee or force majeure.

Previously, access to the individual right to training (DIF) was open to employees with a fixed-term contract who had a minimum of 4 months of seniority, consecutive or not, during the last 12 months in the same company. From now on, and since 1 January 2015, a new means of access to training has been set up through the Personal Training Account (CPF). This personal account supplied with training hours can be used by any employee, throughout his working life, to follow a qualifying training. The CPF replaces the individual right to training (DIF) since January 1, 2015, but employees do not lose their hours they can mobilize until December 31, 2020. The CPF is for any employee.

B - Sports specificities

Professional sport is a sector in which it is customary not to resort to CDI because of the nature of the activity performed and the temporary nature of these jobs for players and coaches (article 12.3.2.1 CCNS).

The world of sport is attached to the CDD. Nevertheless, many disputes have challenged the use of the customary DDC in sports and multiple court decisions have come into question the use of the CDD, sometimes questioning very clearly the temporary aspect of the needs of clubs. Indeed, where the clubs consider that their activity is temporary (because the durability of the company is linked to the sporting hazard and the results), the judges began to note that whatever the status (professional or amateur) of a club, he will always need a goalkeeper (or any other player), which proves the permanent aspect of the job. The use of the customary

CDD was therefore particularly threatened, as the conditions of appeal were not considered to be fulfilled by the judges.

The requalification of fixed-term contracts for non-compliance with the rules of form is very common in sports and is very expensive for clubs. Many were condemned to pay severance payments because it was considered that they had broken without the appropriate procedure a CDD requalified in CDI.

This is why sporting specificity has been firmly affirmed by the intervention of the legislator.

On November 27, 2015, the Braillard law (n ° 2015-1541) put an end to this legal uncertainty of the fixed-term contract. It provides for the use of a specific fixed-term contract by excluding the application of the common provisions of the Labor Code for the fixed-term contract.

The law of March 1, 2017 has come to refine this regime of the CDD of the sportsman. Thus, the new regime of the athlete's fixed-term contract has a defined scope of application, it applies automatically to professional sportsmen and salaried professional coaches. With the agreement of the parties, it applies to sportsmen and women in the France team and their coach who supervises them principally and the referees and professional judges employees of federations.

These legislative novelties make it possible to bypass the list of the mandatory appeal cases for the CDD. Then, the CDD of the salaried professional sportsman and the other sports actors concerned does not have to fulfill the conditions of a case of recourse, it is enough to be in the camp of the application of the law of 2015 so that the CDD can be concluded.

On the side of clubs, it allows them to know the consistency of the workforce for the following seasons, it is a question of visibility. As for the athlete, we know that athletes have short careers. Paradoxically, this is a way to secure their situation. The fixed-term contract is very difficult to terminate by the employer, unlike the CDI.

It also makes transfers easier. The transfer being the price of the termination of the employment contract. Attention, in sports, the use of the CDD is mainly provided in professional sports, even if some CDD are provided for amateur players (example: the federal contract of the F.F.F.).

The maximum duration of the CDD for professionals is 5 sporting seasons (60 months). For players under 18, the fixed-term contract has a maximum duration of 3 sports seasons.

The CDD ends imperatively the day before midnight of the beginning of a sporting season.

SECTION 3: Temporary employment contract (TTC)

The temporary employment contract is also called the temporary contract. The rules of appeal and prohibition are almost the same as for the CDD.

The CTT is used to execute a time-limited task, called a mission. The temporary worker is employed by a temporary work agency that makes it available to an employer. The assignment contract must be concluded in writing and sent to the employee no later than 2 working days after taking office. It can not be broken before the end, except in case of serious fault or force majeure.

The TTC is considered in a tripartite relation composed of 2 contracts:

• A temporary employment contract, also called a contract of employment, between the temporary employee and the temporary employment company

• A contract of making available between the temporary work enterprise and the user enterprise of the temporary worker

The employer is therefore the temporary work enterprise that sanctions and remunerates the employee.

The TTC must indicate:

• Reasons for recourse to temporary work (with the name and qualification of the employee replaced)

• The term of the mission or the minimum duration of the mission

• Job characteristics and required qualification

• Location and work schedule

• The amount of remuneration with bonuses

When the term of the mission is fixed precisely, it can be advanced or postponed at a rate of one day for 5 working days. Renewal is impossible.

The duration of the contract can not exceed 18 months for the same mission (24 months in some cases).

At the end of each assignment, the employee receives:

• An end-of-mission allowance equal to at least 10% of the total gross remuneration received during the contract

• Compensation for paid leave, if the employee could not take them

SECTION 4: Training Contracts

A - The apprenticeship contract

The apprenticeship is based on the principle of alternating between theoretical training in apprentice training center (CFA) and teaching of the trade with the employer with whom the apprentice has signed his contract.

The apprentice follows a general, theoretical and practical education in the apprentice training center and works alternately with a private or public employer to implement the acquired knowledge. The apprentice is compulsorily accompanied by a master apprentice, with sufficient professional experience and qualification.

1. The scope

Any private sector company can hire an apprentice if the employer declares, take the necessary steps to organize the apprenticeship. As such, the employer must ensure that the company equipment, techniques used, working conditions, health and safety, professional and pedagogical skills of the apprentice master are likely to allow satisfactory training.

The apprenticeship contract is available for young people between 16 and 25 years old. Some publics may enter apprenticeships beyond 25 years (apprentices preparing a diploma or title higher than that obtained, disabled workers, people with a project to create or take over a business).

Young people under 15 years of age who have completed lower secondary education (end of 3rd year) as a vocational training trainee, under school status, in a vocational school or in an apprenticeship training center can enter apprenticeship when they have reached the age of 15.

2. The modalities

• Regarding the duration:

The apprenticeship contract may be concluded for a limited period of time or under a contract of indefinite duration.

When concluded as part of a permanent contract, the contract begins with the apprenticeship period of a duration equivalent to the cycle of training followed, without jeopardizing the special protection granted to the apprentice during his period of training. theoretical and practical training. At the end of the period, the contractual relationship between the employer and the employee will be governed by the provisions of the Labor Code relating to the common law, with the exception of those relating to the probationary period. of the law of March 5, 2014).

When the contract is for a limited period, it is carried out over the duration of the training cycle leading to the qualification.

The duration of the apprenticeship contract may vary from 1 to 3 years depending on the type of profession and the qualification prepared.

This duration can be adapted to take into account the initial level of competence of the apprentice. The maximum duration can be increased to 4 years when the status of disabled worker is recognized for the apprentice.

The duration of the contract or apprenticeship period for the preparation of the professional baccalaureate is fixed at 3 years. The duration of the contract or apprenticeship period may also vary between 6 months and 1 year, when the training is for the acquisition of a diploma or title:

• At the same level and in relation to a first degree or diploma obtained under a previous apprenticeship contract

• Less than a diploma or title already obtained

• Of which a part was obtained by the validation of the acquired experience

• whose preparation has been started under another status

In these cases, the number of training hours in apprentice training centers can not be less than 400 hours per year on average, prorated to the duration of the contract or apprenticeship period.

• Regarding remuneration:

The apprentice benefits from a remuneration varying according to his age, his remuneration progresses each new year of execution of his contract. The minimum wage received by the apprentice corresponds at a percentage of Smic. Conventional or contractual provisions may provide for more favorable remuneration for the employee. In the event of a succession of contracts, the remuneration is at least equal to the regulatory minimum of the last year of the previous contract.

Remuneration under the apprenticeship contract:

Appendix 2 (p. 139)

Regarding working time:

The apprentice's working time is identical to that of other employees. The employer must allow the apprentice to take the theoretical professional courses. This time is included in the actual working time.

• Regarding aid:

Apprentice employers can benefit from a number of financial aids:

• Exemption from social contributions. This can be total or partial depending on the size of the company

• An apprenticeship bonus of at least € 1,000 for employers with fewer than 11 employees. This bonus is paid annually by the region until the diploma prepared by the apprentice

• Recruitment assistance of at least € 1,000 for all employers with less than 250 employees who recruit a first apprentice or an additional apprentice, paid by the region in the year of contract signature.

• A TPE help Young apprentices for companies with less than 11 employees who recruit a young apprentice under 18 years of age. This State-financed aid consists, for the first year of the apprenticeship contract, of the payment to the employer of a lump sum aid of € 1 100 per quarter, the equivalent of the statutory remuneration and the contributions social partners.

• Additional support for the employment of a disabled worker by Agefiph (Association for the Management of the Fund for the Professional Integration of Disabled People: a joint body that promotes the professional integration and job retention of people with disabilities in private sector companies.).

• A tax credit of € 1,600 for the reception of an apprentice up to bac + 2. The amount of the tax credit is increased to € 2,200 for certain publics, particularly apprentices with disabilities.

• Tax deductions from the apprenticeship tax.

• Regarding the conclusion of the contract:

The apprenticeship contract is concluded using a standard form signed by the employer and the apprentice (or his legal representative).

The contract specifies the name of the apprentice master, and the employer certifies the titles or diplomas which he holds and the duration of their professional experience in the activity related to the qualification sought. Before the beginning of the apprenticeship contract or, at the latest, within 5 working days following the apprenticeship contract, the employer shall send the copies of the complete apprenticeship contract, accompanied by the visa of the director of the apprenticeship theoretical training establishment certifying the registration of the apprentice, to the competent consular body (chamber of trades and crafts, chamber of agriculture or chamber of commerce and industry). The consular body with territorial jurisdiction to register the apprenticeship contract is the place of performance of the contract. This registration may be refused within 15 days if the contract does not meet all the conditions provided for by the regulations. The competent consular chamber has a period of 15 days from receipt of the contract to register it. The silence kept within this period is the decision of acceptance of registration. The refusal of registration shall be notified to the parties, where appropriate by electronic means. The contract can not then receive or continue to receive execution.

Disputes relating to the registration of the apprenticeship contract or the declaration which takes the place of it shall be brought before the industrial tribunal. On this point, according to the Court of Cassation (judgment of 28 May 2008), when the apprenticeship contract is void (in this case, for lack of registration), it can not receive execution and can not be requalified. The apprentice may, however, claim payment of wages on the basis of the SMIC (or the conventional minimum wage) for the period in which the contract was performed and the compensation for the loss resulting from the termination of the employment relationship.

• Concerning rupture:

There is a probationary period during the first 2 months of apprenticeship for contracts concluded before 19 August 2015. Thus, during this period, the contract can be broken by the employer or the apprentice (or by his legal representative) without motive.
For contracts concluded as of August 19, 2015, the probationary period corresponds to the first 45 days (consecutive or not) in the company.

The unilateral termination of the contract by one of the parties during the probationary period or the mutually agreed termination shall be recorded in writing and notified to the Director of the Apprentice Training Center and to the organization that registered the agreement. contract which then transmits without delay to the Direccte.

The same rule applies when the termination occurred at the initiative of the employee following the graduation or the title of the technological education he was preparing.

B - The professionalization contract

The professionalization contract is a work contract that allows the acquisition of a professional qualification recognized by the State and / or the professional branch.

Examples: diploma, title, certificate of professional qualification ...

The objective is the insertion or return to employment of young people and adults.

1. The scope

A professionalisation contract can be concluded between:

• Young people aged 16 to 25

• Job seekers aged 26 and over

• Beneficiaries of the active solidarity income (RSA), the specific solidarity allowance (ASS) or the disabled adult allowance (AAH)

• People who have benefited from a contract

And all employers subject to the financing of continuing vocational training, with the exception of the State, local authorities and their public administrative establishments.

2. The modalities

The contract may be for a limited period of time between 6 and 12 months. This duration can be increased directly to 24 months for people without qualifications or beneficiaries of RSA, ASS, AAH or out of a contract helped.

At the end of a limited-duration contract, no end-of-contract indemnity is due.
It is possible to renew a time-limited professionalization contract once with the same employer, provided that the second qualification referred to is superior or complementary to the first, or if the beneficiary has not been able to achieve the qualification prepared for failure. on examination, maternity or adoption, illness, accident at work, failure of the training organization.

The contract may also be of indefinite duration. In this case, the maximum duration rules (12 or 24 months) relate to the period of professionalization, ie the first phase of the contract which is carried out alternately, at the end of which the contract of work continues under the aegis of common law.

Whatever the form of the contract, it may include a trial period which must be mentioned.

The holder of a professionalisation contract is a full employee. As such, laws, regulations and collective agreements apply to it under the same conditions as other employees, insofar as their provisions are not incompatible with the requirements of their training.

The amount of the remuneration varies according to the age of the beneficiary and his level of initial training.

On remuneration as part of the professionalization contract:

Appendix 3 (p. 139)

The CCNS provides slightly different percentages of common law that are more favorable to the apprentice employee.

Article 8.4.4.4 states that "during the term of the professionalization contract when it is concluded under a fixed-term contract, or during the action defined in article 8.4.3 when it is concluded on a permanent contract, the beneficiary receives a remuneration equal to 70% of the SMIC in the first year and 80% of the SMIC, when the latter is between 16 and 25 years old. The employee who is at least 26 years of age receives a remuneration that can not be less than the SMIC or 85% of the minimum conventional remuneration. "

SECTION 5: The single integration contract (CUI)

Since 1 January 2010, the CUI groups all the subsidized contracts.

It is aimed at unemployed people with particular social and professional difficulties of access to employment.

The agreement is tripartite and includes the employer, the employee and the state.

CUI includes:

• The employment support contract (CAE) for employers in the non-profit sector

• The employment initiative contract (CIE) for employers in the commercial sector

The CUI can be a 6- to 24-month fixed-term contract or a permanent contract. The common law provisions of the Labor Code apply to this contract.
Employees under this contract benefit only from accompanying measures, periods of immersion in companies. When it is for a fixed term, its minimum duration is 6 months (3 months for sentenced persons receiving a sentence adjustment) and its maximum duration, renewals and extensions included, is 2 years.

By way of derogation, the maximum duration of a CUI on fixed-term contracts may be increased at 5 years old for people:

• Social minimums and at least 48 years of age at the signing of the CUI

• Recognized workers with disabilities

• Carrying out a vocational training course in progress (in order to complete it)

SECTION 6: The intermittent employment contract

A - The general rules

The intermittent employment contract is a permanent contract with periods worked and others not worked. It is specific to certain sectors. It is necessary that a collective agreement provides for it and authorizes it.

The creation of this contract has 2 objectives:

• Take into account the specificity of professional sectors experiencing significant fluctuations in activity over the year

• Provide intermittent clients with stable relationships and certain guarantees

The intermittent employment contract is obligatorily concluded for an indefinite period.

Written, he mentions in particular:

• The qualification of the employee

• Compensation elements

• The minimum annual duration of the employee's work

• Work periods

• The distribution of working hours within these periods

B - Sports specificities

CCNS has its own rules regarding the intermittent work contract in sections 4.5 and following.

Article 4.5.1 - Definition and scope

"The intermittent employment contract is a contract of indefinite duration, concluded over a period of 36 maximum contractual weeks per 12-month period, to fill permanent positions which, by their nature, involve alternation, regular or otherwise, of periods worked. and periods not worked. This is by no means a part-time employment contract. Its purpose is to ensure employment stability for the categories of personnel concerned in sectors that experience these fluctuations in activity.
The jobs that can be filled by employees on an intermittent work contract are as follows:

• All jobs related to animation, teaching, coaching and training of physical activities and sports, as well as those related to services (cleaning, cooking ...)

• All jobs in establishments with a closed period greater than the statutory period of paid leave. "

Article 4.5.2 - Obligatory information in the contract

"The contract must contain, in addition to the particulars provided for in Article 4.2.1 of this Convention, the following particulars:

• The minimum annual working time

• Work periods

• The distribution of working hours within these periods

• The conditions for modifying these periods

• The start date of the 12-month annual cycle. "

Article 4.5.3 - Terms

"The contract of employment must indicate, on the one hand, the periods of work and the distribution of hours worked and not worked within these periods and, on the other hand, the minimum annual period of work of the employee.

Any modification of the work schedule must give rise to information to the employee at least 10 working days before its implementation.

Subject to having previously informed his employer in accordance with Article 11.2.1 of this agreement, an employee who proves an impediment related to the exercise of another salaried activity may refuse this amendment without exposing himself to a sanction.

In any case, the hours exceeding the minimum annual duration fixed in the employment contract can not exceed one-third of this duration, unless agreed with the employee. In the absence of agreement between the employer and the employee, the remuneration is smoothed over the given year from the average weekly or monthly duration. The monthly working time for calculating the remuneration will be equal to one-twelfth of the guaranteed annual working time stated in the contract, plus 10% to take into account paid vacation. "

Article 4.5.4 - Exceeding the 36-week, 12-month threshold

"It is possible to exceed the threshold of 36 weeks in a 12-month period, up to a maximum of 42 weeks. The hours worked by the employee beyond 36 weeks of activity will give rise to a paid increase of:

• 4% when the employee achieves 37 to 40 weeks of activity (excluding paid leave)

• 8% when the employee achieves 41 to 42 weeks of activity (excluding paid leave). "

In any case, regardless of the number of weeks worked per year, the employee's working time may not exceed an average of 35 hours per week per year. This article can only be waived by a company agreement with a union delegate from a representative trade union organization at the branch level.

ESSENTIAL

There is a variety of work contracts.

Whether a permanent contract, a fixed-term contract, an intermittent contract or other, all are employment contracts.

It is up to the employer, according to his needs and his means of determining which contract he wishes to propose to the employee.

Different rules provided by the Labor Code apply to each form of contract.

TITLE 2: EXECUTION OF THE WORK CONTRACT

CHAP. I: PREREQUISITES

Section 1: The pre-employment declaration
Section 2: Sports Certification
Section 3: The trial period
A - The duration
B - The break

SECTION 1: The declaration prior to hiring

The pre-employment declaration (DPAE) replaces the single employment declaration. This mandatory formality before any hiring is done only once with a single interlocutor: the URSSAF.

It brings together 6 formalities related to hiring:

• The declaration of a first job in an establishment

• The application for registration of an employee to the general social security scheme

• Application for affiliation to the unemployment insurance scheme

• Application for membership of an occupational health service

• The employee's declaration of employment with the occupational health service for the mandatory medical examination

• The list of employees hired for the pre-establishment of the annual declaration of social data (DADS)

It is up to the employer to carry out the DPAE. It is binding on all employers, whatever the conditions of practice of the profession and the duration of engagement, for any hiring of an employee under the general social security scheme.

SECTION 2: Sport certification

The employment contract of a football player must be approved by a special commission of the professional football league (Articles 254 et seq. Of the Football Charter).

Since the Braillard law of November 27, 2015, the absence of homologation of the contract may hinder its entry into force under the conditions determined by the applicable collective agreement.
Article L.222-2-6 of the Sport Code created by the Braillard law provides that: "The rules of the sports federation or, if applicable, the professional league may provide for a procedure for the homologation of the employment contract. the athlete and the professional coach and determine the terms of the homologation as well as the sporting consequences in case of absence of homologation of the contract. The conditions under which the absence of approval of the contract may hinder its entry into force are determined by a national collective agreement or agreement. "

In labor law there is a heavy formalism. However, sports texts add this formality of the homologation. Its purpose is to allow the sports authority to verify that purely sporting rules are respected.

Examples: contracts are concluded within the authorized period, the maximum number of contracts is not exceeded ...

The homologation does not serve so much to verify that the contract is in conformity with the law (the judge does it) but rather to reinforce the sports authorities in their mission of "police of the competitions".

SECTION 3: The trial period

The trial period is not mandatory. It must be provided for in the employment contract.

The purpose of the probationary period is to enable the employer to assess the employee's professional skills. It is also intended to enable the employee to assess whether the positions held suit him (section L.1221-20 of the Labor Code).

A - The duration

The law provides that for IDUs the maximum duration of the probationary period is:

• 2 months for workers and employees

• 3 months for supervisors and technicians

• 4 months for executives

For a fixed-term contract, the duration will be equivalent to 1 day per working week within the maximum limit of 2 weeks if the contract is 6 months or less, and within the limit of 1 month maximum if the contract is of a longer duration at 6 months.

In the case of a contract or training period preceding the hiring with a probationary period, this must be deducted from the period already spent in the company by a maximum of half.

Collective agreements and the contract of employment may provide for shorter maximum periods.

The employer can renew the trial period only:

• If he could not appreciate the qualities of the candidate

• If the renewal is provided for in the employment contract

• If an extended branch agreement authorizes it These 3 conditions are cumulative.

The National Collective Agreement on Sport provides specific provisions for the probationary period in Article 4.2.2:

"The duration of the probationary period is fixed as follows:

• For workers and employees: 1 month

• For technicians and supervisors: 2 months

• For executives: 3 months

The renewal of the trial period is exceptional. It must be motivated and served in writing.

These durations apply to contracts of indefinite duration. "

B - The break

In principle, the rules of the Labor Code governing the termination of the employment contract do not apply during the probationary period. Each of the parties may terminate the employment relationship in a discretionary manner and without specific formalities. But this freedom is not unlimited, it must be exercised only in respect of the purpose of the trial period and the rights of the employee, the abuse being sanctioned by the courts.

The principle is that of the rupture without motive, formalism or notice. However, a notice period must be respected. The employee must inform his employer 48 hours before the actual break if he has 8 days or more of presence, otherwise the deadline is 24 hours. For the employer, this period is:

• 24 hours if employee has less than 8 days of presence

• 48 hours if employee has between 8 days and 1 month of presence

• 2 weeks after 1 month of presence

• 1 month after 3 months of presence

This notice must be inserted in the trial period and must not extend it.

The employer must break the probationary period only with respect to the employee's skills. If there is another reason then the break will be abusive. In this case, the employee may request before the industrial tribunal the requalification of the termination of dismissal without real and serious cause and obtain compensation accordingly.

ESSENTIAL

The declaration prior to hiring is an administrative formality that the employer must execute with the URSSAF.

In sporting matters, a particular formality has recently been codified: homologation. It is planned by the federations and the leagues in order to exert some control over the recruitments.

Finally, any contract may contain a trial period. This period consists of a phase of the employment contract in which the parties "test" the conditions of performance of the contract and may terminate the contractual relationship without special conditions.

CHAP. II: REMUNERATION

Section 1: General Compensation Characteristics
Section 2: The Sports Specifics of Compensation
A - The specificities of the world of sport
B - The specificities of the world of football

SECTION 1: General Compensation Characteristics

Compensation includes all amounts agreed as base salary, benefits in kind, bonuses, bonuses, gratuities ...
It does not include reimbursement of business expenses.

The remuneration may be fixed or partly fixed, partly variable or entirely variable.
The salary can be defined as a flat rate in hours over the week or the month. He will then understand in advance the payment of a certain number of overtime hours.

A distinction should be made between gross salary (including employee contributions) and net salary (after deduction of employee contributions).

Remuneration is in principle freely fixed between the employee and the employer. However, there are several limitations:

• Respect of the SMIC

• Respect of the minimum provided for by collective agreements and agreements

• Respect for the principle of equal work, equal pay

Any change in the remuneration constitutes a modification of the employment contract, the agreement of the employee is necessary.

The only professional category difference is not enough to justify the difference in pay. The difference in treatment must be based on relevant elements.

The pay sheet is mandatory. The fact that the employee accepts his pay slip without making a reservation does not prevent him from subsequently claiming the sums due to him. The prescription is 3 years for actions in claiming wages.
The pay slip must mention in particular all the references concerning the employer (name, address, Siret number, APE code, etc.) and the employee, the applicable collective agreement, the classification of the employee, the nature and the hourly volume, social security contributions, the date of payment of the net salary, the paid leave remaining. All amounts paid to the employee must appear on the pay slip, otherwise it is hidden work called "moonlighting". It is a criminal offense of which the employee is a victim because he is unprotected in case of an accident at work, of illness and he does not contribute.

Given its food character, the salary is protected against the seizures of creditors of the employee. They can thus only seize a portion of the salary and must leave the employee a subsistence level. In case of reorganization or liquidation procedures of the company, wage guarantee insurance advances sums due to employees within the limits of legal ceilings. This allows employees to collect their wages and benefits in the event of an employer's insolvency.

SECTION 2: Sports specificities of remuneration

A - The specificities of the world of sport

The CCNS contains compensation provisions. It sets a conventional minimum wage (SCM).

Article 4.1.1.1 of the CCNS reiterates the principle of gender equality, particularly with regard to remuneration.

Articles 9.3 et seq. Of the CCNS classify employees into different groups and provide minimum remuneration for each group: Appendix 4 (P. 140).

Once the employee's group is determined, reference is made to the provisions of Article 9.2 of the CCNS which organizes the remuneration of full-time and part-time employees:
Appendix 5 (p. 141).

A seniority bonus is mentioned in article 9.2.3: "The seniority bonus must appear on a separate line of the payslip. It is paid monthly in proportion to the actual working time. Each employer shall set up a seniority system in accordance with the following provisions for employees in groups 1 to 6. "

Article 9.2.3.1 relates to seniority: "A premium equal to 1% of the MSC Group 3 is granted to employees:

• Justifying 24 months of effective work after the date of extension of this agreement

• Or, if applicable, 24 months of actual work after hiring when the employee was hired after the date of extension of this agreement.

In addition, an exceptional seniority bonus equal to 5% of the Group 3 MSC will be paid to Group 1 employees after 3 years of service in the company.

As long as the total rate of the seniority bonus is not equal to 15%, the rate of this bonus is increased by 1% after each new period of 24 months of actual work. "

Article 9.2.3.2 relates to salary adjustment: "For employees receiving a gross salary lower than the MSC of their group at the date of extension of this agreement:

• When there was no way of taking seniority into account in the company

• And that the employee has at least four years of seniority in the company at the date of extension of this agreement.

A seniority bonus of 2% of the MSC Group 3 is attributed to them on the date of extension of this agreement.

This bonus is increased by 1% after each period of 24 months of actual work as long as the total rate of the seniority bonus does not equal 15%. "

For professional athletes submitted to CCNS, reference should be made to Article 12.6.1, which provides for the possibility of bonuses based on objective and precise criteria.

The minimum remuneration for these athletes is: "Except for young athletes in training, the remuneration defined in Article 12.6.1 paragraph 1 must be at least equal for a full-time athlete to 12.60 salary gross conventional minimum per year excluding benefit in kind.

The minimum wage is set in accordance with the provisions of Article 9.2.1 of this Convention. "
As a reminder, the conventional minimum wage is 1386.35 €.

Minimum remuneration for coaches submitted to CCNS is provided: Appendix 6 (P. 142).

B - The specificities of the world of football (Provisions of the Professional Football Charter)

Minimum compensation is provided by the Professional Football Charter for apprentices, aspiring, trainees, elite and professional contracts. Players receive an attendance bonus in case they are entered on the score sheet (article 763), bonuses (article 764), grading premium (article 765) and premiums of France (article 766). In the same way, the minimum remuneration of the coach in charge of the first team is planned.

The provisions of the Professional Football Charter are referred to here only for the general culture of the student. No questions related to the Professional Football Charter will be asked during the general examination.

ESSENTIAL

The remuneration is regulated in its amount as in its formalities.

Indeed, a minimum threshold is provided by the Labor Code and the publication of a pay slip is mandatory.

In sports, the remuneration is organized by categories of employee and premiums are provided.

CHAP. III: THE DURATION OF WORK

Section 1: Working time
- A - Effective working time
- B - Full time
- C - Part-time
- D - The fixed price agreements

Section 2: Holidays
- A - Paid holidays
- B - Other holidays

Section 3: Sports specificities

A - Working time in sporting matters
B - Sports leave

SECTION 1: Hours of work

A - Effective working time

The legal duration of work is fixed at 35 hours of actual work per week.

Effective working time is the period during which the employee is at the disposal of the employer and must comply with his instructions without being able to freely pursue his personal activities.

Dressing and undressing time is not actual working time, unless otherwise stated. However, when the wearing of work clothes is required by law, the collective agreement, the rules of procedure or the contract of employment, then the time of dressing and undressing must give rise to a consideration either financial or under form of rest time.

Travel time is not actual working time unless it exceeds the normal commuting time between home and the usual place of work in which case, it must give rise to a consideration either financial or in the form of time rest.

The penalty is a particular working time. An employee is on call if he has the obligation, without being at the permanent and immediate disposal of his employer to remain at his home or nearby to be able to intervene to perform work in the service of 'business. Only the intervention times are actual working hours.

The Court of Cassation clarified that if the employee has the obligation to remain in premises imposed by the employer then it is not a penalty but effective working time (Cass Soc 2 April 2003).

There are 11 days of legal holidays: 1st of January / Monday of Easter / 1st of May / 8th of May / ascent / Monday of Pentecost / 14th of July / Assumption / 1st of November / 11th of November / 25th of December.

With the exception of May 1st, unemployment on statutory holidays is not compulsory and there is no increase when an employee works on a legal holiday unless there is a more favorable collective agreement or agreement.

The day of solidarity, it was instituted to ensure the financing of actions for the autonomy of the elderly or disabled. This is an additional day of unpaid work, within the limit of 7 hours of work during the day. For part-time employees, the limit of 7 hours is reduced in proportion to the contractual duration of work.

B - Full time

The employee must perform a maximum of 10 hours of actual work per day and a maximum of 48 hours per week. He must have 11 hours of minimum daily rest between each day worked.

The employee can not work more than 6 days a week and must work 35 hours a week.

A collective agreement can adjust working time and organize the distribution of hours of work over a period longer than a week and at most equal to the year. Failing this, the employer can organize it for a maximum of 4 weeks.

The Labor Code provides that the weekly rest period must in principle be Sunday (Article L.3132-3). However, there are "permanent" and "temporary" exemptions. The right to Sunday rest is protected by the principle of the "right to a normal family life" (Article 8 ECHR and Article 9 of the Civil Code).

Any hour worked beyond the legal duration (35 hours) or, if it is less, of the conventional working hours, is an additional hour. They are calculated per week.

For these hours, there is an increase of the payment:

• 25% of salary for the first eight hours of overtime

(36 to 43 hours)

• 50% of the salary for the following

A collective agreement may provide for a higher or lower markup. For this, it is subject to two conditions:

• The minimum of the increase is 10%

• The branch collective agreement must have been extended by the Minister of Labor

The employer may require the employee to work overtime. The opposite is impossible.

The employer may have a maximum of 220 additional hours per employee per year (except for a collective agreement that provides for a different number). This is called the overtime quota. The employer must inform the representative staff institutions of the use of this quota.

Beyond the quota, the employer must seek the opinion of the representative institutions of the personnel to be able to ask the employees to carry out other overtime hours. For these hours, the employee will benefit from compensation in time of rest (50% for companies with 20 employees or less, 100% for companies with more than 20 employees).

A collective agreement may provide for compensatory rest in lieu of the increase and / or payment of overtime.

C - Part-time

A part-time contract is a contract whose working time is less than the 35-hour statutory working week. A fixed-term contract or a permanent contract can be part-time. The part-time contract must obligatorily provide for the distribution of the employee's hours between the days of the week or the month and the means of communicating these hours to the employee.

A great deal of formality surrounds the conclusion of the part-time contract. Article L.3123-14 of the Labor Code provides that:

"The contract of employment of the part-time employee is a written contract. He mentioned :

1. The qualification of the employee, the elements of the remuneration, the expected weekly or monthly duration and, except for the employees of associations and home help companies and employees covered by a collective agreement concluded pursuant to Article L. 3121-44, the distribution of hours of work between the days of the week or the weeks of the month;

2. The cases in which a possible modification of this distribution may occur as well as the nature of this modification;

3. The manner in which the hours of work for each day worked are communicated in writing to the employee. In associations and home help companies, the working hours are communicated in writing each month to the employee;

4. The limits within which additional hours may be completed beyond the period of work fixed by the contract.

5. The amendment to the employment contract provided for in article L.3123-22 mentions the conditions according to which additional hours may be worked beyond the duration fixed by the contract. "

The social chamber of the Court of Cassation has long held that the absence of writing does not entail a requalification of full-time employment contract part-time work contract. The absence of a writing merely leads to the presumption of a full-time contract, which the employer can reverse by showing that it was a part-time contract and that the employee does not he was not in a position to predict how quickly he had to work and that he did not have to be constantly at the disposal of the employer (Cass Soc., 25 February 2004). The High Court, however, specified that the employer had to provide evidence "of the exact weekly or monthly agreed duration" (Cass Soc., 9 April 2008).

The hours worked between the part-time period and the 35 hours of full-time work will be additional hours and therefore paid without any increase except for hours worked in excess of 1 / 10th of the duration of the part-time contract.

Example: in a 20-hour fixed-term contract, the employee can perform 2 paid complementary hours normally and any hours worked beyond that will be increased.

There is a principle of equality between full-time and part-time employees, ie they all have the same rights, regardless of their working time.

Part-time employees have priority over the full-time positions of the company.

D - The fixed price agreements

A flat-rate agreement is a contract that sets a certain amount of time worked as well as a flat rate salary including increases for a certain number of overtime hours or days of reduced working time. There are several types of packages:

Annex 7 (p. 143).

The Labor Code provides that flat-rate work must be subject to the agreement of the employee and an individual flat rate agreement drawn up in writing.

The El Khomri law of August 8, 2016 modified the regime of fixed price agreements.

From now on, article L.3121-63 of the Labor Code states that "The annual fixed rates in hours or in days over the year are set up by a collective agreement of company or establishment or, failing that, by a branch agreement or agreement. ". Article L.311-64 of the same code lists the terms and conditions that this agreement must determine.

Lastly, the law of August 8, 2016 creating article L.3121-65 reversed the previous regime by providing henceforth that in the absence of contractual stipulations provided for in article L.3121-64, an individual flat-rate agreement in days may be validly concluded subject to compliance with a number of listed provisions.

The fixed price agreements must therefore provide for a certain number of terms to be validly effective.

SECTION 2: Holidays

A - Paid holidays

The employee acquires a right to holidays from the first day worked (and no longer after 10 days). It benefits from 2.5 working days of leave per month of actual work. Employees are entitled to the same number of days off regardless of the working time stipulated in the contract. The employer must take the initiative to inform the employee of his rights to paid leave.

The following are considered periods qualifying for paid leave:

• Effective working time

• Periods of paid leave

• Periods of maternity, paternity and adoption leave

• Compulsory counterparties at rest for overtime

• Periods of suspension due to an accident at work or occupational disease for a maximum of 1 year

The period of taking paid holidays is in principle fixed by collective agreement between May 1st and October 31st. The employer determines the order of departures after consulting the representative institutions of the personnel. However, he must take into account the constraints of employees and not abuse his right. It sets the holidays based in particular on the employee's family situation and his seniority. The duration of the leave can be taken in one time can not exceed 24 working days is 4 weeks. This means that the 5th week of leave must not be contiguous to this so-called main holiday. For employees facing particular geographical constraints, this provision may be waived.

Lorsque le salarié a été dans l’impossibilité de prendre ses congés au cours de l’année en raison d’absences pour maladie, accident du travail, ou à cause de l’employeur, il doit obtenir un report de ses congés. Dans les cas inverse, ils sont perdus.

If the employer has made it impossible for the employee to take his leave, a compensatory indemnity is paid to the employee. The same is true in case of termination of the employment contract. The paid vacation pay is equal to 1 / 10th of the total gross remuneration received by the employee during the reference period.

There are special paid holidays, they correspond to:

• 4 days for marriage or remarriage or PACS

• 3 days for adoption or birth

• 2 days for death of the spouse or partner of PACS or a child
• 1 day for a child's wedding

• 1 day for the death of the father, the mother, the father-in-law, the mother-in-law, a brother or a sister

These are not necessarily taken on the day of the event but within a reasonable time.

B - Other holidays

• Maternity leave: it is 16 weeks in principle and can be increased in some cases (twins ...). The employee may take her leave 6 weeks before the expected date of birth and until 10 weeks after the date of the birth. The employee receives social security benefits. At the end she must find her job or an equivalent job.

• Parental education leave: it is open to employees with at least 1 year of seniority in the company at the date of birth or arrival of an adopted child under 16 years of age. It can sometimes be renewable twice. Often it follows maternity or adoption leave. It can be full-time or part-time parental leave of minimum 16 hours a week. The employee informs his employer by registered letter with acknowledgment of receipt. At the end, the employee must return to his job or an equivalent job. During the leave, the contract is suspended without remuneration.

• Sabbatical leave: the employee can apply for unpaid leave of 6 months to 11 months without cause.
This requires fulfilling certain conditions:

• Have 36 months of seniority in the company consecutive or not

• Have at least 6 years of professional experience

• Not to have been on sabbatical leave, business leave or individual training leave in the last 6 years

The employee must inform his employer by registered letter with acknowledgment of receipt at least 3 months before the planned departure date. The employer informs the employee of either his agreement, his postponement of leave or his refusal which must be motivated.

• Leave to start a business, takeover of a company or management of an innovative company: the employee must have at least 24 months of seniority in the company consecutive or not. It

can be done once every 3 years. It may be a part-time transfer or a suspension of the employment contract.

The maximum duration is 1 year renewable once with a notice period of 2 months minimum. The employee must inform his employer by registered letter with acknowledgment of receipt at least 2 months before the planned departure date. The employer must respond within 30 days, otherwise he is considered to have accepted. The employer may postpone the departure date by up to 6 months.

3 months before the end of the leave, the employee must inform his employer of his wish either to find his position or an equivalent position, or to terminate his employment contract without notice.

• Paternity leave: It is 11 consecutive days at most (including Saturdays, Sundays and holidays). This leave is in addition to the 3 days of absence authorized for a birth.

This leave is taken at the earliest, after the leave of the 3 days and at the latest in the 4 months following the birth of the baby.

SECTION 3: Sports Specificities (CCNS Provisions)

A - Working time in sporting matters

Article 5.1 of the CCNS incorporates the legal definition of actual working time.

Likewise, night work is considered to be the period of actual work from 10 pm to 7 am Salaried athletes benefit from compensatory rest.

Article 5.1.2 sets out the specificities for professional sportsmen. The salaried sportsman is obliged to accept the overtime up to 90 hours, then the employer must obtain his agreement:

"Overtime is hours worked beyond the legal working hours. Employers may use it within the limits of the annual quota established by law and under the following conditions:

• Up to 90 hours, the employee is required to work overtime that the employer asks him to perform

• Beyond and within the limit of the ceiling fixed by the law, the employee can refuse to carry them out. "

Overtime gives rise to counterparties.

The minimum daily rest of professional players may be 9 hours in case of traveling outside.

The minimum weekly rest will be reduced to 33 hours in this situation (Article 12.7.1.5 CCNS).

Article 5.2 provides for the possibility of modulating working time given the conditions of sports calendars and competitions. In this case the staff representatives must be consulted. The modulation must be included in the employment contract. Over 12 months, the duration of work must not exceed 1,575 hours plus the day of solidarity. The modulation ceiling is set at 48 hours per week.

Article 5.3 provides for the possibility of an annual fee in days or hours for self-employed managers. With a maximum of 214 days a year or a maximum of 1,575 hours a year.

Given the significant variations in the volume of working time in sport, the use of fixed-day, year-round would be an interesting solution since the time worked would no longer be quantified in hours. Several collective agreements have considered it but only for some coaches. With regard to athletes, this is impossible in the state of the legislation that is only for employees who have real autonomy in organizing their schedule.

B - Sports leave

1. Paid holidays

Articles 7.1 and following of the National Collective Convention on Sport deal with holidays:

Article 7.1.1 - Right to leave

"The number of days is determined in accordance with the legal provisions during the reference period from 1 June to 31 May of the following year, ie 30 working days a year.

In the event of a contract or atypical situation (modulation, CDII ...), the reference period for the acquisition and taking of paid holidays can be modified to be consistent with the contract cycle (school year, calendar year ...).). In this case, the reference period must be entered in the employment contract or by amendment. "

Article 12.7.2.2 - Duration and period of holidays Article 12.7.2.2.1 - The athlete

"The imperative of protecting their health and their personal and family life requires that professional athletes be guaranteed the development of recovery time and minimum holidays.

The annual holiday pay entitlement of the athletes shall be 3 working days per month of actual work, without the duration of the holiday due being able to exceed thirty-six working days (this arrangement excluding the additional days related to the fractionation), and this right will be implemented as follows:

• 19 consecutive days, to enable them to regenerate themselves for the next sporting season, without any constraint on the part of the employer being imposed on the athlete; these leaves must be in the period from May 1st to October 31st of each year;

• 5 consecutive days at the end of the calendar year, including at least

December 25th or January 1st;

• The balance distributed, in agreement with the employer, in a maximum of three periods, subject to sports constraints as soon as the federal calendars are defined.

In any case, part of the holidays can be taken early on the opening date of the season. "

Article 12.7.2.2.2 - The coach

"The annual leave with pay shall, for coaches, be governed by this Chapter by 2.5 working days per month of actual work without the duration of the holiday payable being more than thirty working days.

The definition of holiday periods is closely linked to the pace of the sports season and the periods of leave of the athletes, it being understood that the requirements of the coaching function are such that it is likely to be present a few days before the resumption of activity of the players and a few days after the departure on leave of them.

In any case, part of the holidays can be taken early on the opening date of the season. "

In the field of football, the Professional Football Charter provides in article 259 that players will benefit from at least 18 consecutive working days of paid vacation off-season and 6 consecutive days at the end of the calendar year, including at least 24 and December 25th.

2. Other leaves

Articles 7.3 and following of the CCNS deal with special leave.

Article 7.3.1 - Maternity leave

"During the legal duration of maternity leave (Article L. 1225-

17 of the Labor Code), the benefit of the possible maintenance of salary will be acquired under the same conditions as those provided for the occupational disease in chapter 4 article 4.3.2. Absences related to pre- and post-natal medical supervision do not entail any reduction in remuneration. "

Article 7.3.2 - Adoption leave

"Adoption leave may benefit the adoptive father, the adoptive mother, or some of them. "

Article 7.3.3 - Paternity leave

"After the birth of his child and within 4 months, the employee's father benefits from a paternity leave of 11 consecutive days or 18 consecutive days in case of multiple births, resulting in the suspension of his employment contract.

An employee wishing to benefit from paternity leave must notify his employer at least one month before the date on which he intends to take his leave, specifying the date on which he intends to terminate the suspension of his employment contract. "

Article 7.3.4 - Leave Without Pay

"Staff hired on permanent contracts with one year of service may apply for unpaid leave of up to one year. "

Article 7.3.4.1 - Procedure

"To benefit from this leave, the employee must submit his reasoned request, by registered mail with acknowledgment of receipt, at least three months before the expected date of his departure on leave, specifying the duration of this leave. The employer must reply to the

employee, by registered mail with acknowledgment of receipt, within thirty days following the presentation of the employee's letter of request, in order to signify his agreement or his reasoned refusal. After this period, the authorization of the employer is deemed acquired. After two consecutive postponements within one year, the leave is automatically entitled, unless the quota of the total number of employees is reached for this leave. This quota may not prevent at least one employee from enjoying unpaid leave in companies with less than fifty employees. "

Article 7.3.4.2 - Effects of leave without pay

"During the unpaid leave, the employment contract is suspended. "

Article 7.3.4.3 - End of leave

"Before the expiry of the unpaid leave, the employee must notify the employer of his intention to return to his employment in the company, by registered mail with acknowledgment of receipt, no later than two months before the expiry date of the leave. .

If, at the end of the leave, the employee has not applied for reinstatement, the employer may declare the termination of the employment contract under the conditions provided for in Article 4.4, it being understood that no compensation is due to the employee who can not make the notice. "

Article 7.3.4.4 - Renewal

"Leave without pay is renewable twice without exceeding a maximum of three years. A waiting period equal to 1/3 of the duration of the renewal leave included, must be respected before a new request for leave without pay. "

ESSENTIAL

The legal duration of work is fixed at 35 hours of actual work per week. The employee must work a maximum of 10 hours per day of actual work, 48 hours a week or 44 hours over a 12-week period.

The employee is obliged to accept overtime up to 90 hours, then the employer must obtain his agreement. As for the duration of the paid holidays, the employee acquires a right to leave from the first day worked. It benefits from 2.5 working days of leave per month of actual work.

Article 5.1.2 of the CCNS sets out the specificities for professional athletes.

Articles 7.1 and following of the National Collective Agreement on Sport deal with holidays.

CHAP. IV: THE EMPLOYER'S PREROGATIVES

Section 1: The disciplinary power of the employer
Section 2: The modification of the employment contract
Section 3: The transfer of business

SECTION 1: The disciplinary power of the employer

A - The sanctioning power of the employer

The employer has a power of sanction in case of fault of the employee. However, he must respect a particular disciplinary procedure, which must be provided for in the company's internal regulations.

Any action other than verbal observations taken by the employer following an act by the employee considered to be at fault constitutes a sanction, where this measure is such as to immediately or not affect the presence of the employee in the company, his position, his career or his remuneration.

The penalty can be:

• A written warning or reprimand

• Disciplinary layoff

• A demotion

• A mutation

• Dismissal for serious, serious or serious misconduct

The employer can not impose pecuniary sanctions or discriminatory sanctions.

The employee must be informed of the grievances against him.

Except for the oral warning, the employer must summon the employee to a preliminary interview by letter of convocation (by registered letter with acknowledgment of receipt or delivered by hand against discharge), specifying the purpose of this summons, the date and the location of the interview and the possibility for the employee to be assisted by an employee of the company (or if the company does not have staff representatives by an outside advisor with the address of the place where find the lists).

No wrongdoing may give rise to disciplinary proceedings in excess of 2 months from the day the employer became aware of the wrongdoing unless that fact gave rise to the same period of time for criminal prosecution.

An employer can not sanction twice an employee for the same fact, it is the principle "non bis in idem".

The proof of fault must be fair, the employer must not have breached the privacy to collect evidence of the fault.

With regard to disciplinary power, the CCNS only goes back to the fundamental principles: any disciplinary measure is taken in accordance with the provisions of the rules of procedure, itself in accordance with the provisions of the Labor Code.

SECTION 2: The modification of the employment contract

The case law (Cass Soc 10 July 1996) distinguishes the modification of the contract of employment and the change of working conditions.

• Concerning the modification of the employment contract:

The contract is composed of basic elements that the employer can not modify without the agreement of the employee, and the employee can refuse the modification. There are, in fact, fundamental elements of the employment contract: the salary, the qualification, the duration of the work ...

By way of illustration, Article 761 of the Professional Football Charter has been declared contrary to the law. Article 761 of the Professional Football Charter contains a provision that allows clubs that have been relegated to reduce the wages of their players to a certain extent without the players being necessarily in a position to win. accept or refuse the said decrease. The Court of Cassation, in a judgment of February 10, 2016, recalls that wages are among the essential elements of the employment contract and can therefore only be modified with the agreement of the parties. The provisions of Article 761 of the Professional Football Charter have therefore been censored and should be rewritten in the next version of the Charter.

To these elements, specific clauses such as non-competition can be added.
Their modification or deletion is considered as a modification of the employment contract. The express agreement of the employee is mandatory, it results in the signing of an amendment to the employment contract. The silence of the employee or the continuation of the employment contract under the new conditions is not worth acceptance. If the proposed change has an economic reason, the employer must inform the employee. In this case alone, the absence of an employee's response within 1 month after receipt of the proposal will be worth acceptance.

If the employee refuses, either the employer renounces his modification, or he can dismiss for economic reasons but only if the conditions of the redundancy are met. When the employer imposes the demotion or transfer sanction, it is a modification of the employment contract. The employee can therefore refuse it. The employer may, however, take a new sanction instead (dismissal or blame or disciplinary layoff ...).
There is a specificity concerning the workplace, it is a contractual element. The employer may move the employee to the same geographical area of work without the agreement of the employee. On the other hand, to move it outside the sector, there must be either a mobility clause in the employment contract or the agreement of the employee is necessary. On the other hand, a temporary transfer is possible without the agreement of the employee if it is justified by exceptional circumstances and is motivated by the interest of the company. The employee must be informed within a reasonable time.

• Concerning the change of working conditions:

Certain modifications decided by the employer may, on the other hand, only constitute a change in the employee's working conditions. In this case, the employer may impose these changes on the employee as part of his management authority.

Exceptionally, for a protected employee, the change of working conditions requires his agreement, the employer can not sanction him for his refusal. The employer can only propose and not impose. He must inform the employee early enough, ie within a reasonable time.

SECTION 3: The transfer of business

Article L.1224-1 of the Labor Code provides that: "When there is a change in the legal position of the employer, including succession, sale, merger, transformation of the fund, incorporation of the enterprise, all the work contracts in force on the day of the modification remain between the new employer and the company's personnel. "

Thus, it is imposed, in case of modification of the legal situation of the employer, the maintenance of the employment contracts. This means that when the company changes hands from one legal person to another, employees are transferred as well.

According to the case law, the application of Article L.1224-1 of the Labor Code requires the meeting of two conditions:

• The transfer of an autonomous economic entity

• Maintaining the identity of the entity transferred with the continuation or resumption of the activity of this entity by the buyer

When both conditions are fulfilled, the transfer takes place on the date on which the new operator is given formal notice to direct it.

The provisions of Article L.1224-1 of the Labor Code are of public order. This means that any dismissal made during a transfer is without effect. The refusal by the employee of the transfer produces the effect of a resignation. It must be express and individual.

The transfer concerns all employment contracts even suspended ones.

The employee dismissed in violation of these provisions has an option:

• It can act against the assignor and / or against the assignee

• He can claim damages and / or request the continuation of his employment contract (reinstatement)

The employment contracts are entirely transferred, the employees keep their seniority, their mandates, the clauses of their contract etc.

The employee retains his acquired rights to paid leave with the former employer. However, paid vacation pay is the responsibility of the former employer.

Previously applicable agreements and collective agreements may be called into question depending on the situation of the host company. The law considers that they continue to have effects until the entry into force of an agreement or an alternative agreement.

ESSENTIAL

The employer has disciplinary power over employees. He can punish them in case of fault on their part. The sanction can only be taken if it has been provided for in the company's internal regulations and if it respects a certain procedure.
The principle "non bis in idem" applies in this respect, a fault can not be sanctioned twice.

The employment contract is composed of contractual elements by nature that the employer can not modify without the agreement of the employee. Example: the remuneration. The employee can always refuse the modification.

Conversely, when the items are not contractual in nature, their modification is a simple change in working conditions and the employee can not refuse them at the risk of committing a fault.

Article L1224-1 of the Labor Code imposes, in case of modification of the legal situation of the employer, the maintenance of employment contracts. Thus, if two companies merge, all the employment contracts of the two companies must be maintained.

CHAP. V: EMPLOYEE HEALTH

Section 1: The disease
Section 2: The Workplace Accident
Section 3: Inaptitude
Section 4: The right of withdrawal
Section 5: Sports specificities

SECTION 1: The disease

The employment contract is suspended in case of sick leave. An employee can not be discriminated against or dismissed for illness, the dismissal will be null.

The employee must inform his employer as soon as possible (often 24 hours) and justify his absence by sending within 48 hours the medical certificate of the attending physician.

During his arrest, the employee receives daily social security benefits and an additional remuneration from the employer under certain conditions which, unless otherwise agreed, are:

• Have 3 years of seniority in the company

• Have justified within 48 hours of absence

• Be supported by social security

• To be treated on the French territory or the European Union

• Submit in case of employer's request for a counter-medical examination

SECTION 2: The Workplace Accident

An accident at work, whatever the cause, is considered to be an accident that occurred as a result of, or in the course of, the work of any employee, or who works in any capacity or place, for or several employers or entrepreneurs (section L.411-1 of the Social Security Code).

The employee must declare the accident to his employer within 24 hours (except in cases of force majeure) and the employer must declare any accident of which he became aware within

48 hours to the primary health insurance fund by LRAR. A doctor, freely chosen by the employee, will then draw up a medical certificate, which will mention in particular the foreseeable duration of the temporary incapacity.

An employee who suffers an accident at work or an occupational disease is protected.

The employment contract of the employee is suspended (article L.1226-7 of C.Tra.) And the employer can only terminate the contract if it justifies a serious fault of the employee or the impossibility to maintain the contract for a reason unrelated to the illness or accident (Example: end of the job site for which the employee was hired). The suspension period is assimilated to actual work, in particular for the calculation of a seniority bonus, a termination indemnity or the calculation of paid leave.

If at the end of the period of suspension, the employee is declared fit by the occupational physician, he must return to his job or a similar job with a remuneration at least equivalent. If at the end of the period of suspension, the employee is not declared fit, the employer must offer him another job corresponding to his abilities. If at the end of a period of one month, the employee does not

been reclassified, he must recover the benefit of his salary. In case of impossibility of reclassification, the employer may initiate the procedure of dismissal for unfitness towards the employee. He will be entitled to a double severance pay. Any dismissal pending suspension for an industrial accident will be null and the employee will have to be reinstated.

SECTION 3: Inaptitude

A - Statement of the state

The occupational doctor must give an opinion.

An examination is mandatory for an absence of:

• 8 days for work accidents

• 21 days for non-occupational diseases

There is a revision examination by the occupational physician to assess the employee's ability to return to work after a stop. After this review, the doctor has a choice:

• Declare the suitable employee. Then the employee will have to go back to work.

• Declare the unfit employee. In this case, if there is an immediate danger to the health and safety of the employee, only one visit is sufficient to declare him unfit. On the other hand, if there is no immediate danger, two visits are required. The El Khomri law of August 2016 no longer imposes this double visit, henceforth only one is sufficient in both cases.

An appeal is possible by the employer or the employee before the labor inspector. This appeal must be made within 2 months of the decision and the inspector has 2 months to respond.

The inspector will decide only on the ability or not of the employee, not on his reclassification.

B - Obligations of the employer

The employer must reinstate the capable employee after the return visit. In the case of an employee declared unfit, the employer has a reclassification obligation. It is an obligation of reinforced means, the search for reclassification must be serious, active and personalized. The employer must seek to reclassify as directed by the occupational physician. If after 1 month the employee is not reclassified or dismissed, then the employer must pay him his salary. The absence of reclassification will be considered as a dismissal without real and serious cause.

However, unfitness may lead to dismissal but must not be the reason for it (see: 2. Termination for unfitness)

SECTION 4: The right of withdrawal

An employee who is in danger at work is entitled to withdraw from this situation by warning his employer if he has reasonable grounds to believe that it poses a serious and imminent danger to his life or health. No payroll deduction or penalty is possible except for abuse.

SECTION 5: Sports specificities

The CCNS provides in its article 12.10.1 and following specific provisions on sickness and compensation of the employee in case of accident at work.

Article 12.10.1 - General Provisions

"Irrespective of their seniority, the employees referred to in this chapter benefit from the following provisions:

• Maintenance of the reference salary in the event of illness or accident at work, under the conditions defined in article 12-10.2;

• Payment of a capital in the event of death equal to at least 300% of the annual reference salary;

• Compensation for disability defined by reference to the basic social security scheme as provided for in Article L.341-4 of the Social Security Code;

The reference salary used for the calculation of these guarantees is understood as the net salary as it results from the employment contract, it is limited to slices A and B of social security. To meet these requirements, employers are free to take out insurance with the organization of their choice, subject to the terms and conditions defined by sectoral agreement. "

Article 12.10.2 - Sickness or accident at work

"In the event of absence from work justified by incapacity resulting from sickness, accident at work or from a journey duly recorded by medical certificate, the employees referred to in this chapter shall be entitled to a salary maintenance under the conditions and limits below:
Employees :

• must have justified within 48 hours this incapacity with their employer and the social security fund;

• Must be covered by the general scheme or another social security scheme.

The employer will guarantee the reference salary by supplementing the amount of daily allowances allocated by the primary health insurance fund, these allowances will be due during the duration of the work stoppage and until the 90th day of stoppage.

In all cases, the recovery by the athlete of his activity, following an accident at work or an occupational disease, is considered effective only from the moment he is able to participate in all training and, by the same token, at competitions. "

Recently, a health care plan has been put in place in CCNS.

This scheme is introduced for the benefit of all employees, including professional sportsmen and their coaches, without any seniority requirement.

It is applicable since January 1st, 2016.

The beneficiaries are all employees. Companies that are not insured with any of the recommended insurers (Allianz, B2V, Mutex and Umanens) are required to maintain the same level of collateral and are required to pay a minimum of 50% the contribution due for the employee. Contributions are divided 50% at the expense of the employer and 50% at the expense of the employee.

The health insurance scheme provides reimbursements additional to those of the Social Security for medical, surgical and hospital expenses.

Provisions of the Professional Football Charter

As regards unfitness, Article 267 of the Football Charter provides for the payment of salary for one month from the observation of the definitive incapacity to practice football. Article 276 of the Football Charter provides that in the event of an accident at work or illness, the player shall receive for at least 3 months the difference between his fixed monthly salary and the daily allowances paid by social security.

Article 12.7.3.3 of the CCNS provides for the exercise of the right of withdrawal for employees and the obligation of employer security.

12.7.3.3 - Security

"Irrespective of administrative penalties that may be imposed by a sports authority, or administrative and judicial decisions made by an employer who violates these safety rules, their non-compliance, if it materializes a state of serious risk, may justify the exercise, by the employee, of the right of withdrawal provided for in Article L.4131-1 of the Labor Code. It can also be a reason for collective conflict.

It is within the remit of the coach to contribute to the implementation:

• The general prevention and safety policy of the employer;

• The company's anti-doping policy.

Employers must inform employees, by any appropriate means, of the rules applicable to the conditions under which they carry on their activity, but also, more generally, to make them aware of the risks of the job and the psychological behavior they entail. Training is organized for the benefit of any sportsman when he concludes his first contract on the risks incurred and the rules applicable to safety. "
12.7.3.4 - Health

a) Prevention and fight against doping

Athletes, coaches and their employers are required to respect and enforce legal and regulatory provisions relating to the prevention and fight against doping.

b) Leave for pregnant employees

In case of impossibility, the employment contract is suspended at the initiative of the employer or the female employee and the benefit of the maintenance of the salary is acquired.

ESSENTIAL

The employment contract may be suspended for illness, for incapacity, for exercise of the right of withdrawal ...

Each of these situations responds to a particular regime. During the suspension of the employment contract, both the employee and the employer have obligations to fulfill, in particular to organize the return of the employee.

The most restrictive regime is that of incapacity, it provides for the intervention of the occupational doctor and prohibits the employer from dismissing the employee on the grounds of his incapacity.

TITLE 3: TERMINATION OF THE WORK CONTRACT

CHAP. I: THE BREAKDOWN OF THE CDD

Section 1: Reasons for Rupture
Section 2: The effects of rupture

The normal termination of the fixed-term contract is the occurrence of its term.

However, there are grounds for early termination of the CDD.

SECTION 1: Reasons for failure

The reasons for early termination of the fixed-term contract are limited by law. The reasons for exceptional rupture are of public order, there can be no other.

The reasons for exceptional rupture are:

• The common accord. The two parties agree to terminate the CDD. The case law verifies that the will of the employee is clear and unambiguous because it is the "weak" part of the contract.

• The force majeure. Force majeure is an unforeseeable event, irresistible and independent of the person invoking it.
• The serious fault of the employee. Serious misconduct is the fault that makes it impossible to maintain the employee in the company even during the notice.

In the case of fixed-term contracts, the termination of the contract of employment for serious misconduct constitutes a disciplinary measure which imposes to respect the formalism of the sanction (cf Section 1: The disciplinary power of the employer).

• The rupture for incapacity of the employee. Inaptitude must be established by the occupational doctor. The employer must first try to reclassify the employee before breaking the contract.

• The conclusion of a permanent contract. If the employee justifies a hiring

CDI it can break the CDD unilaterally.

• Judicial termination by the employee. In the event of serious breaches by the employer, the employee may request the termination of the contract before the judge.

Specificities of football:

In practice, the termination of the CDD of a football player because of the conclusion of a CDI is impossible, because the new contract will not be approved. The incapacity of an athlete or the liquidation of the club will not constitute a force majeure. Similarly, the catastrophic results of a professional team or the professional inadequacy of a player do not constitute a serious fault.

There are two scenarios envisaged by FIFA for which a player can break his contract: the right cause and the sporting cause. The just cause is the serious fault of the employer that allows an employee to break his contract.

In any event, FIFA's provisions will only apply in France if they do not conflict with French law.

SECTION 2: The effects of rupture

The effects of the rupture of the CDD are different according to the reason of the rupture.

• In the event of termination by mutual agreement, the employee is granted: unemployment benefits + balance paid leave + right personal training account.

• In case of force majeure, the employee is entitled to: unemployment benefits

+ balance paid holidays + CPF right + compensation equivalent to wages until the end of the contract (if the break results from a loss).
• In the event of termination for serious misconduct, the employee is entitled to: unemployment benefits + balance paid leave + CPF entitlement.

• In case of termination for incapacity of the employee, he is entitled to: unemployment benefits + balance paid vacation + CPF right + severance pay + compensation equivalent to severance pay.
The employee does not benefit from the notice indemnity if he can not do so unless the incapacity results from an accident at work or an occupational disease.

• In the event of a permanent contract, the employee benefits from: paid vacation pay + notice indemnity + leave paid on notice.
• In the event of a judicial termination by the employee at the employer's fault, the employee may claim: unemployment benefits + balance of leave with pay + CPF duty + compensation equivalent to wages until the end of the contract (and related paid holidays).

ESSENTIAL

The normal termination of the fixed-term contract is the occurrence of its term. The reasons for early termination of the fixed-term contract are limited by law: force majeure / breach of contract for serious misconduct of the employee / conclusion of a permanent contract / termination for incapacity of the employee / termination by mutual agreement / the judicial termination.

CHAP. II: THE CESSATION OF THE CDI

Section 1: The Conventional Breakdown of the CDI
Section 2: The termination of the CDI by the employee
- A - The resignation
- B - Judicial termination
- C - Acting

Section 3: The termination of the CDI by the employer
- A - Termination for personal reasons
- B- Dismissal for economic reasons

Section 4: Protected employees
- A - The beneficiaries
- B - The situations concerned
- C - The procedure
- D - The sanctions

SECTION 1: Conventional rupture of the CDI

The approved conventional rupture was established by a law of 2008, it can be achieved only for the CDI.

By the conventional break homologated, the employee and the employer can by mutual agreement break the contract of employment.

A specific procedure exists, it consists of several stages:

• An interview between the employee and the employer

• The signing of a conventional break

• A withdrawal period of 15 calendar days

• The sending by the most diligent part of the conventional break to the Labor Administration (the DIRECCTE)

• The homologation of the rupture agreement by the DIRECCTE within 15 days

• The termination of the contract on the date freely agreed by the parties

The conventional break must not contain any grievance or complaint from one party to the other because consents must be free and enlightened.

The employee is entitled to at least an indemnity equal to the legal compensation for dismissal. The employee also benefits from the right to unemployment benefits and the balance of paid holidays.

The prescription for challenging a conventional break is 12 months.

SECTION 2: The termination of the CDI by the employee

A - The resignation

The employee is free to resign to break his employment contract.

The resignation must be clear and unambiguous, ie it must not result from an ambiguous email or angry or following a dispute with the head of department for example.

The employer can not prevent the employee from resigning.

The employee does not benefit from the unemployment benefits because he does not suffer an involuntary loss of employment, except some cases of legitimate resignation (Example: follow the spouse who moves, do voluntary work ...).

In principle, the employee must give prior notice unless the employer waives it. The law fixes the notice of resignation only for the VRP, the journalists and the agricultural employees. In all other cases, it is the collective agreement or the practices that set the duration of the notice of resignation. It is usually 1 month for workers, employees and technicians and 3 months for executives. The starting point of the notice period is the date of receipt of the letter by the employer or a later date freely determined by the employee.

The CCNS provides in article 4.4.1 a specific period of notice of resignation:

"The employee may resign at any time subject to compliance with a notice period of:

• 1 month for workers and employees;

• 2 months for technicians and supervisors;

• 3 months for executives.

No compensation is payable by the employee who can not make the notice due to illness duly recorded. "

B - Judicial termination

The judicial termination is a break at the initiative of the employee but attributable to the employer. It makes it possible to break the contract to the exclusive fault of the employer. It consists in seizing the industrial tribunal (CPH) to see the termination of the employment contract for serious breaches of its contractual obligations by the employer. The employee continues to work in the company throughout the procedure.

It should be noted that, the employer can not perform a judicial termination, except for employees on apprenticeship contracts after the first 2 months of work.

C - Acting

Taking action is a breach of the employment contract at the initiative of the employee who blames his employer for serious breaches of his contractual obligations. Unlike the judicial termination, the act takes effect on the day it is made. The contract is broken upon taking action and the employee does not have to continue to execute the employment contract.

To produce effects, the employee must retrospectively refer the CPH to decide on the consequences of the break. The employee must again prove sufficiently serious breaches of the employer to justify his break.

As the break is automatic, the employee can not retract and there is no notice.

If the CPH finds that the employee had good reasons to take note of the break, he will decide that the act constitutes a dismissal without real and serious cause on the part of the employer and will award compensation to the employee.

On the other hand, if the CPH considers that the reasons put forward to justify taking action are too light, then it will decide that the rupture produces the effects of a resignation on the part of the employee.

SECTION 3: Termination of the CDI by the employer

In the case of fixed-term contracts, it is necessary to speak of "rupture" of the contract whereas for the CDI, the term "dismissal" must be used.

Dismissal is a unilateral mode of termination of the employment contract at the initiative of the employer. Any dismissal must be justified by a real and serious cause. The cause of the dismissal must therefore be existing, objective, accurate and lawful.

There is a distinction between dismissal for personal reasons and redundancy. In the first case, the dismissal is inherent in the person of the employee whereas in the second case the cause of the dismissal is external to the person of the employee.

A - Termination for personal reasons

1. Disciplinary dismissal

If the employer evokes a fault of the employee in the letter of dismissal then it will be a disciplinary dismissal. He must comply with the disciplinary procedure as provided for in the company's internal regulations and the Labor Code. The facts must not have been previously sanctioned (application of the rule "non bis in idem") nor be prescribed (the prescription of the fault of the employee is 2 months).

The employer may dismiss for:

• Serious lack. It is the reiteration of slight faults. Ex: incidents in front of the customers, ...

In this case, the employee benefits from severance pay, notice and paid leave.

• Serious misconduct. This is the fault that makes it impossible to maintain the employee in the company even during the notice. In this case, the employee only benefits from paid vacation pay and loses his right to severance pay and notice.

• Heavy mistake. It is the fault that shows an intention to harm on the part of the employee. Here the employee loses all benefits.

In all cases, the employee benefits from the right to unemployment benefits. On the other hand, he is entitled to the CPF only in case of dismissal for serious or serious misconduct.

The notice is a period of notice between the information of the break and the actual break. The duration of the notice depends on the seniority and the duties of the employee.

2. The dismissal of the incapacitated employee

Two situations are to be distinguished in the dismissal of the unfit employee.

• Unfit for work.

Dismissal for the sole reason of incapacity is discrimination. The dismissal must be made because of the impossibility of reclassification.

There is no notice or notice indemnity for the employee.

• Inaptitude of professional origin

The dismissal must follow a specific procedure: the staff representatives must be consulted before the reclassification proposal and the employee must be notified in writing of his / her inability to be reclassified.

In case of non-compliance with this procedure, the dismissal will be considered without real and serious cause.

Special allowances are granted to the dismissed employee due to incapacity of professional origin. In fact, he benefits from indemnities equivalent to the legal notice and from a redundancy indemnity higher than or equal to twice the legal indemnity of dismissal.

3. Other dismissals for personal reasons

The employer can dismiss an employee for professional inadequacy only if he can establish it by precise and objective elements.

Moreover, the loss of confidence, disagreement or incompatibility of mood are not in themselves reasons for dismissal but the elements that constitute these situations can be if they are objective and attributable to the employee.

The employer can dismiss for "characterized disturbances in the company" following facts of the private life. These disorders must be objective and important as well.

The employer can dismiss also for "disruption of the proper functioning of the company requiring the permanent replacement of the absent employee", in the case where the repeated absences of the employee disorganize the company.

4. Sports specificities

Articles 4.4.3 et seq. Of the CCNS provide for shorter notice periods and a more favorable termination indemnity for the employee. Article 4.4.3.1. Procedure

"The employer who plans to dismiss an employee must strictly observe the legal provisions. "

Article 4.4.3.2. Prior notice

"In case of dismissal, the notice period is:

• 1 month for employees whose seniority is less than 2 years

• 2 months for employees whose seniority is greater than 2 years

• 3 months for executives

In case of serious or serious fault, the employee loses the benefit of the notice. "

Article 4.4.3.3. Severance pay

"The dismissal, for whatever reason, of any employee, having at least one year of seniority in the company gives rise to the payment of compensation, except gross negligence or serious. This allowance is equivalent to:

• 1/5 of a month's salary per year, for the first five years of service in the company,

• 1/5 of a month of salary per year, from the 6th to the 10th year of presence in the company,

• 1/3 of a month of salary per year, for the years of presence in the company, beyond 10 years.

For the calculation of the number of years of presence, periods assimilated to actual working time, as defined in Article 7.1.2, shall be taken into account.

The salary to be taken into account for the calculation of the allowance is, according to the most favorable case, the average of the last 12 months, or the average of the last 3 months, it being understood that any premium or gratuity received during this period is taken into account pro rata temporis. When an employee has been successively employed on a part-time

and full-time basis, the indemnity shall be calculated successively on a pro rata temporis basis of the periods worked on a part-time and full-time basis. "

Article 4.4.3.4 - Compensatory indemnity for paid leave

"An employee whose employment contract is terminated before the taking of paid vacation leave, shall receive a compensatory indemnity for paid vacation.

The compensatory indemnity for paid leave corresponds to the fraction of paid vacations acquired and not taken. "

Article 4.4.3.5 - Leave of absence for job search in the context of a dismissal

"During the notice, for the search for a new job, full-time employees will be entitled to 2 hours of paid absence per working day.

Part-time employees will benefit from the same opportunity in proportion to their working time. In both cases, they will be able to take their hours at one time with the agreement of the employer. "

B - Dismissal for economic reasons

1. The reasons for the economic dismissal

Any dismissal for economic reasons must be justified by a real and serious cause.

To be real, the motif must consist of:

• A causal element.

Example: economic difficulties, technological changes, a cessation of activity ...

• A material element.

Example: job destruction, job transformation, ...

The seriousness of the reason consists in verifying the existence of a causal link between the causal element and the material element. Thus, judges, when an economic dismissal will be submitted to their assessment, will check that the situation of the company justifies the suppression of jobs. Then they will check that the job cuts involved a dismissal. This is where the issue of reclassification comes in.

A dismissal for economic reasons can intervene only if the reclassification of the employee is impossible. In case of non-compliance with the obligation of reclassification by the employer, the dismissal will then be without real and serious cause.

2. The various redundancies

There are 3 types of economic redundancies:

• Individual dismissal. It concerns the employee who refuses to submit to a mobility or job retention agreement. The procedure is simple, it consists of a convocation, an interview, a notification and an information of the Direccte.

• The small collective dismissal. It concerns economic redundancies of less than 10 employees over 30 days. The procedure remains simple, it is the same as for the individual dismissal with the difference that there is in addition a consultation of the representatives of the personnel.

• Large collective dismissal. It concerns economic redundancies of more than 10 employees over 30 days. His procedure is complex. Staff representative institutions should be consulted and meet to provide advice.

In addition, an employment protection plan (PSE) must be put in place by the employer to organize lay-offs.
Lastly, the Direccte (the competent social law administration) ensures a control of the established PES.

• Conservative layoff

For all these situations, the protected employee benefits from a special procedure allowing his protection.

SECTION 4: Protected employees

A protected employee is an employee to whom the law provides special protection in the enterprise with respect to decisions that may be made by the employer.

A - The beneficiaries

The protected employees are the employees who are in a particular situation.

Are protected employees:

• The candidate for the IRP elections.
• The employee having asked his employer to hold elections in the company for 6 months from the LRAR sent to the employer.

• Staff representatives during the term of office. Staff representative, representative on the works council, union delegate, representative at the CHSCT, ...
• Former representatives for 6 months from the expiry date of the mandate (12-month protection for shop stewards).
• Holders of external mandates.

Examples: CPH advisers, local elected officials, employee advisor, ...

• Other: the occupational physician, the employee mandated for the collective bargaining of the company.

B - The situations concerned

The protection offered by the law applies in certain situations provided for by the Labor Code, not only during dismissal.

Are concerned by the procedure of special protection the following situations:

• Layoffs and ruptures of employer origin

Example: retirement, judicial liquidation, ...

• Taking action by the employee

• Judicial termination at the request of the employee

• Conventional breakage

• Changing the employment contract or changing working conditions

• The transfer of business

• The break in fixed-term contracts or the non-renewal

• Conservative layoff

For all these situations, the protected employee benefits from a special procedure allowing his protection.

C - The procedure

Protected employees benefit from a special procedure that is added to the common procedure of each situation.

Although having specificities for each situation, the protection procedure includes two classic steps:

• Consultation of the works council. The EC will then issue an opinion via a vote and the minutes of the meeting will be sent to the labor inspector.

• The authorization of the labor inspector. The employer must make an LRRI request to the labor inspector at the place of performance of the contract within 15 days of the EC consultation. The labor inspector has 15 days to make a decision. During this period, he conducts a contradictory investigation and verifies if the employee is well protected, if the procedure imposed by the Labor Code has been respected, if there is no discrimination, ... The labor inspector may refuse the request of the employer for 2 reasons: social peace (example: risk of strike) and the case where the measure would lead to the suppression of any representation in the company. The silence of the labor inspector following the request is a refusal.

It is possible to challenge the decision of the labor inspector. Any action must be made before the Minister within 2 months from the notification of the decision of the labor inspector.

D - The sanctions

Failure to comply with the protection procedure leads to sanctions.

The dismissal of the protected employee without the authorization of the labor inspector is void.
The employee then has the choice between reinstatement in the company or compensation.
The total compensation of the protected employee is equal to the addition of the compensation for violation of the protective status, the classic compensation of rupture and the compensation for dismissal null.

ESSENTIAL

The conventional termination of the CDI corresponds to the situation where the employee and the employer wish by common agreement to break the employment contract. This form of rupture responds to a particular procedure in which the Administration intervenes.
The termination of the CDI by the employee is done by resignation, judicial termination or taking action.
Conversely, the termination of the CDI by the employer will take the form of a dismissal that may be for personal or economic reasons.

Employees holding mandates in particular benefit from legal protection during measures taken by the employer.

TITLE 4: THE INTERVENTION OF THE JUDGE IN LABOR LAW

CHAP. I: JURISDICTIONS AND THEIR SKILLS

Section 1: The Labor Court
Section 2: Other jurisdictions

SECTION 1: The industrial tribunal

The industrial tribunals are competent to hear individual disputes arising from a private employment contract.

Recourse to the labor tribunal is possible in the event of a related dispute, in particular:

• A dismissal

• to a disciplinary sanction

• Payment of wages or bonuses

• At working time

• On days of rest or leave

• The health and safety conditions of the workplace

• At the handing-over of a certificate for the employment center, or the work certificate

• Disputes between employees (example: harassment)

The labor tribunal judges are in charge of the conciliation of the parties and, failing that, of the judgment of the cases. For some urgent situations, there is a summary procedure to quickly obtain a decision.

The industrial tribunals are composed of 5 sections:

industry, commerce, agriculture, management, various activities.

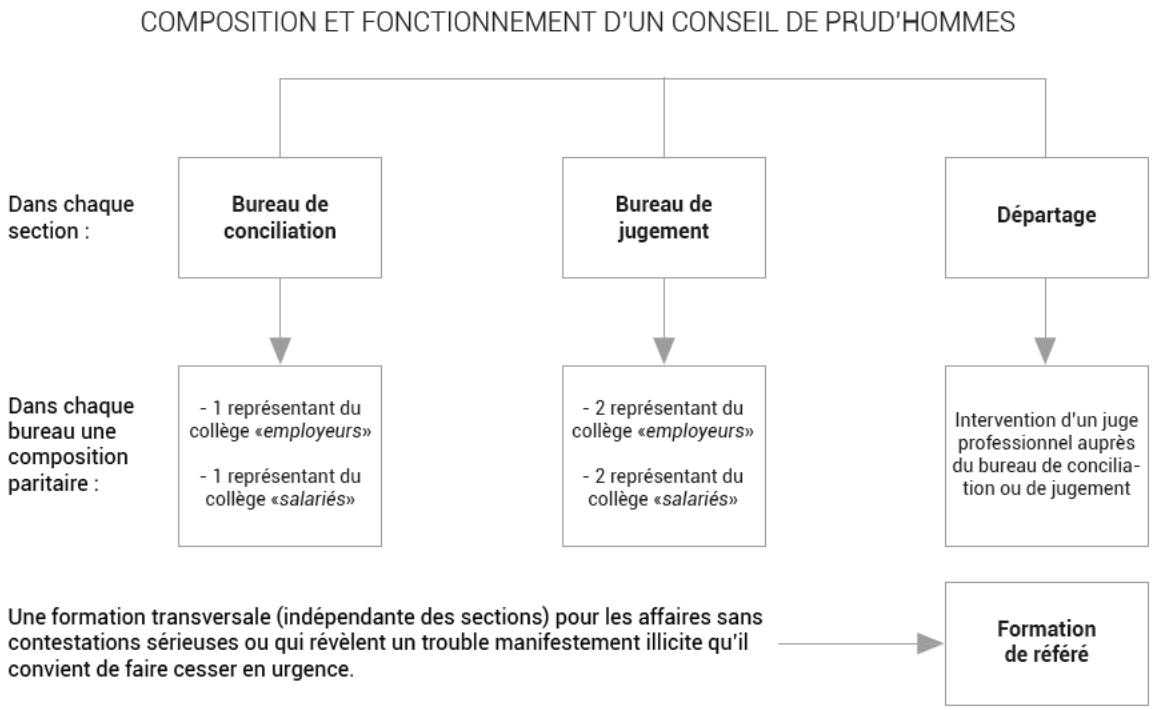
The locally competent labor tribunal is that of the place of the establishment where the work is performed.

If the employee does not work in an establishment, the competent CPH is that of the employee's place of residence.

The choice is offered to the employee between:

• The CPH of the place where the employment contract was concluded

• The CPH of the place where the employer is established



SECTION 2: Other jurisdictions

Other jurisdictions may intervene in labor law matters. The High Court (TGI) has jurisdiction for collective litigation (strikes / unions ...). The criminal court is competent in the event of criminal offenses of the employer or the employee in the Penal Code for example.

ESSENTIAL

The industrial tribunal is the main jurisdiction in labor law.

In fact, the CPH is competent for all individual disputes arising from a private employment contract.

At the margin, the IMT and the criminal courts can intervene respectively for collective labor relations and criminal offenses committed by the employee or the employer.

CHAP. II: THE PROCEEDINGS BEFORE THE BOARD OF PRUD'HOMMES

SECTION 1: The introduction of the action

A - The prescription

The action before the industrial tribunal can be extinguished by the mere lapse of a certain lapse of time, it is the prescription. Thus, the inaction of an employee or an employer for a certain period of time prevents him from taking legal action. Since the 2008 law, the prescription in principle is five years, ie 5 years.

The law n ° 2013-504 of June 14, 2013 relative to the security of the employment reduced the limitation periods to dispute the rupture of his contract of work or to obtain the payment of sums not paid by the employer before the CPH.

From now on, beyond the period of common law of 5 years, there are 2 other deadlines:

• 3 years for disputes relating to the payment or reminder of wages (article L.3245-1 of the Labor Code)

• 2 years for disputes relating to the execution or termination of the employment contract (Article L.1471-1 of the Labor Code)

The prescription is counted in calendar days, ie from date to date.

The starting point of the prescription is at the moment when the action is open, that is to say on the date of the act or the date of knowledge of the facts if they were not known.

The interruption of the prescription stops the expiration of the period but also erases the time already run. This means that if the cause of the interruption disappears, a new limitation period will begin of the same duration.

The suspension, meanwhile, temporarily stops the prescription period without erasing the time already run. The delay resumes at the end of the suspension cause where it left off.

The prescription does not run against the person who is unable to act for causes resulting from the law, convention or force majeure (example: material impossibility to act, incapacity).

B - Time limits for appeal

1. For an action relating to the employment contract

If an action relates to the execution or termination of an employment contract, the applicant has 2 years to submit the CPH (law of 14 June 2013). This deadline applies in particular in case of dispute:

• A dismissal for personal or economic reasons

• A disciplinary sanction (warning, blame ...)

• A transfer

• A clause of the employment contract (non-competition clause, mobility clause ...)

2. For an action relating to the payment of wages

A plaintiff is 3 years old to seize the CPH as part of an action to obtain the payment of sums owed to him by his employer (law of 14 June 2013).

These amounts can be:

• Unpaid wages

• Unpaid overtime

• Unpaid premiums

Arrears prior to June 16, 2013 may be appealed until June 16, 2016, provided that the time between the date of the backlog and the date of referral to the HIC does not exceed 5 years. For example, compensation due on December 1, 2010, which has not been paid, may be appealed to the labor tribunal until December 1, 2015.

If an employee has signed a receipt for the balance of any account after the termination of his employment contract, he has 6 months, from the date of signature of the document, to challenge it before the industrial tribunal. If he does not sign it, he will have 3 years to challenge it.

3. For action relating to a situation of harassment and / or discrimination

An applicant has a period of 5 years to appeal to the industrial tribunal if he brings an action to have one of the following situations recognized:

• Moral harassment

• Sexual harassment

• Discrimination

4. For an action relating to bodily injury

If an employee suffers bodily injury in the course of his professional activity, which may have led to an industrial accident, he has a period of 10 years to refer to the labor court as of the date of consolidation. damage.

5. For other actions

The time limit to bring an action before the industrial tribunal is fixed at 12 months if it is contested:

• The termination of a contract following the accession to a professional security contract (CSP)

• A conventional rupture approved

• The regularity or validity of an economic redundancy

SECTION 2: The course of a case

A - The convocation

After the parties have referred the matter to the labor tribunal, the Conciliation and Orientation Office (BCO) summons the parties to a conciliation hearing to try to put an end to the dispute without going through a judgment.

The passage in front of the conciliation office is obligatory, except if the dispute concerns an act of taking action, the requalification of a CDD on permanent contract or the requalification of an internship agreement in contract of employment. The case is then directly examined before the judgment office, in the month following the referral.

At the time of his summons, the employee shall bring all the documents in his possession, which may enable him to justify his situation:

• Employment contract

• Letter of employment

• Salary bulletins

• Correspondence with his employer

• Work certificate

B - The conciliation hearing

During the conciliation hearing, the BCO encourages the parties to the dispute (the plaintiff and the defendant) to reach an agreement to terminate the dispute.

Each party provides explanations, and can be heard by the BCO separately and in confidence.

Each party must appear in person (unless there is a legitimate reason for being unable to attend).

Each party present at the BCO hearing may, if it wishes, be assisted. The Labor Code lists the people who can attend. They include: a lawyer, a union representative, a co-worker ...

Each party absent at the BCO hearing may be represented, in the event of a legitimate reason for impediment, by a mandated person.

When a party to the hearing is absent without a legitimate reason and is not represented, the BCO decides on the case as a judgment office (without going through the conciliation stage). It rules on the basis of the elements communicated to it.

C - Referral to the Judging Office

In the event of complete agreement between the parties to the BCO, the dispute ends with the drafting of a conciliation report.

In the event of partial agreement, the dispute ends with the settled matter or elements of the dispute, while the unresolved elements are transmitted to the judgment office.

In the absence of agreement between the parties, the case is sent back to the trial office. The BCO is in charge of putting the case in a state of being judged by the judging office.

The BCO refers the parties to the judging office, in different configurations depending on the case:

• If the dispute concerns a dismissal or a request for judicial termination, the BCO may refer the parties, with their agreement, to the Restricted Appraisal Office (a labor counselor and a labor advocate). This restricted training must decide on the dispute within 3 months.

• If the dispute concerns another reason, the BCO orients the parties to the judging office, in its usual composition (2 employer prud'hommes advisers and 2 salaried labor councilors). At the request of the parties or if the nature of the dispute so warrants, the judgment office is presided over by a professional judge. There is no maximum time limit for ruling on the dispute.

SECTION 3: The hearing before the judging office

The two parties to the dispute are summoned by the registry before the judging office:

• Orally, with signature, at the end of the session in front of the conciliation board

• By registered letter with acknowledgment of receipt

The submissions of the parties, the various arguments and the documents added to the files are communicated before the trial hearing.

At the trial hearing, each party must appear in person (except for legitimate reasons of impediment), in order to put forward their arguments during the proceedings.

Each party present at the hearing may, if it wishes, be assisted. It can be by a lawyer, a union representative, a co-worker ... The presence at the hearing of a lawyer is not obligatory but the system of the legal aid applies in matter prud'homale.

Each party absent at the hearing may be represented, in the event of a legitimate reason for impediment, by an authorized person. The parties may find a conciliation agreement during the trial hearing, even partially.

The judging office may, depending on the situation:

• To reach an amicable agreement

• Appoint a rapporteur advisor to gather the information that he or she

• Judge right away

• Indicate the date on which the judgment will be rendered

Decisions are taken by an absolute majority of votes.

In the event of a tie, the matter is referred to a subsequent hearing, called the tiebreaker hearing. It is chaired by a professional judge called the presiding judge. This hearing is held in the month of dismissal, and allows to judge the case definitively (unless challenged judgment).

If the decision is not immediately made after the hearing, the parties are informed of the date of the judgment.

The decision of the industrial tribunal is notified to the parties by registered letter with acknowledgment of receipt (LRAR).

The judgment may be appealed to the court of appeal within one month after notification of the judgment, provided that the total value of the claims is greater than € 4,000. Litigation amounting to less than € 4,000 is not subject to appeal: only an appeal to the Court of Cassation is possible.

ESSENTIAL

The period of common law to bring an action before the industrial tribunal is 5 years. This period may vary depending on the nature of the action.

The industrial tribunal can be seized by the employee, but also by the employer.

After referral to the labor tribunal, the Conciliation and Orientation Office (BCO) summons the parties to a conciliation hearing to try to put an end to the dispute without going through a judgment.

In the event of agreement between the parties to the BCO, the dispute ends with the drafting of a conciliation report.

In the absence of agreement between the parties, the case is sent back to the trial office.

For the hearing before the judging office, both parties are summoned by the registry before the trial office. Each party present at the hearing may, if it wishes, be assisted (by a lawyer, a union representative, a co-worker ...). But it is not necessary to have a lawyer.

Decisions are taken by an absolute majority of votes.

CHAP. III: THE REFERENCE IN PRUD'HOMALE

It is not only in civil or criminal matters that the litigant can apply for urgent treatment of his case. This is also the case with regard to labor law, with the interim procedure.

Section 1: The summary
Section 2: The cases of use of the referred
Section 3: The summary proceedings
Section 4: The link between summary proceedings and ordinary procedure

SECTION 1: Referee

Interim relief is an emergency procedure which makes it possible to obtain an immediately enforceable court decision within a short time. In other words, it is the fast way to see his case judged by a court.

With this procedure, the dispute can be decided between 2 and 6 months, compared to 12 to 24 months for the ordinary procedure.

Each industrial tribunal has its preliminary training.

It is composed of a salaried employee advisor and a labor counselor (section R.1455-1 Labor Code).

SECTION 2: Cases of use of the referred

The summary procedure can be used in two cases:

• In all cases of urgency, the preliminary ruling may, within the limits of the jurisdiction of the industrial tribunals, order all the measures which do not face any serious dispute or which justify the existence of a dispute (R. 1455-5 Labor Code).

Example: an employee who has not been paid at the end of a month of work can thus demand the payment of his remuneration through the interim procedure.

• The preliminary ruling can always, even in the presence of a serious dispute, prescribe the necessary conservatory or reinstatement measures to prevent imminent damage or to put an end to a clearly unlawful disorder (Article R.1455). 6 Labor Code).

Example: a referral can be used to prevent the dismissal of a woman during her maternity leave.

SECTION 3: The summary proceedings

Unlike the ordinary procedure, the interlocutory procedure does not involve a conciliation phase.

Once the CPH is seized by submission to the registry, by sending a registered letter or by bailiff, the plaintiff is directly summoned to the hearing. The plaintiff in the legal action must indicate clearly that he wishes to be summoned before the summary hearing.

At the hearing, the debates take place orally.

Councilors then deliberate and make an order.

The measures ordered in summary proceedings are immediately enforceable.

They may be appealed to the social chamber of the Court of Appeal within 15 days of their delivery, but must nevertheless be executed in the meantime (section R.1455-11 Labor Code) .

SECTION 4: The link between summary proceedings and ordinary procedure

The litigant has the possibility to seize at the same time the formation of the summaries for certain aspects of his case, and to pass by the ordinary procedure for others.

Example: An employee dismissed for serious misconduct and who has not received a work certificate following his departure from the company may apply to the summary hearing to obtain the on-call issuance of his certificate and may apply to the conciliation board for start a procedure to contest the reason for the dismissal.

ESSENTIAL

It is possible to act in summary before the industrial tribunal.

This procedure allows quick action, it can be exercised for :

• Order all measures that do not face any serious dispute or that justify the existence of a dispute
• To impose conservatory or reinstatement measures necessary to prevent imminent harm or to stop a manifestly unlawful disorder

NOTES

APPENDIX 1: METHOD OF CALCULATING THE WORKFORCE

Les différentes catégories de salariés	Leur prise en compte pour le calcul de l'effectif
- Salariés en CDI et travailleurs à domicile à temps plein - Salariés absents pour maladie ou autre congé	Prise en compte intégrale
Salariés : - En CDD - Titulaires d'un contrat de travail ou intermittent - Travailleurs temporaires	Sont pris en compte au prorata de leur temps de présence dans l'entreprise au cours des 12 mois précédents de travail. Sauf s'ils remplacent un salarié absent, ou dont le contrat de travail est suspendu notamment du fait d'un congé maternité, d'adoption ou d'un congé parental d'éducation
Salariés mis à disposition par une entreprise extérieure	Sont pris en compte dans les mêmes conditions dès lors qu'ils sont présents dans les locaux de l'entreprise utilisatrice et y travaillent depuis au moins 1 an
Les salariés à temps partiel	Sont pris en compte au prorata de leur temps de travail. L'effectif est calculé en divisant la somme totale des horaires inscrits dans leurs contrats de travail par la durée légale ou conventionnelle si elle est inférieure

APPENDIX 2: REMUNERATION UNDER THE LEARNING CONTRACT

Année d'exécution du contrat	Apprenti de moins de 18 ans	Apprenti de 18 ans à moins de 21 ans	Apprenti de 21 ans et plus
1ère année	25% du SMIC	41% du SMIC	53% du SMIC
2ème année	37% du SMIC	49% du SMIC	61% du SMIC
3ème année	53% du SMIC	65% du SMIC	78% du SMIC

APPENDIX 3: REMUNERATION UNDER THE PROFESSIONALIZATION CONTRACT

Niveau de formation ou de qualification avant le contrat de professionnalisation		
Age	**Inférieur au baccalauréat**	**Égal ou supérieur au baccalauréat**
Moins de 21 ans	Au moins 55% du SMIC	Au moins 65% du SMIC
21 ans à 25 ans révolus	Au moins 70% du SMIC	Au moins 80% du SMIC
26 ans et plus	Au moins le SMIC ou 85 % de la rémunération minimale conventionnelle ordinaire	Au mois le SMIC ou 85 % de la rémunération minimale conventionnelle ordinaire

APPENDIX 4: EMPLOYEE CLASSIFICATION GRID (CLAUSE 9.3 CCNS)

		Repères de Compétences		
Groupes	**Définition**	**Autonomie**	**Responsabilité**	**Technicité**
1 Employé	Exécution des taches prescrites pouvant nécessiter une durée d'adaptation à l'emploi n'excédant pas 2 jours.	Les tâches sont effectuées sous le contrôle direct d'un responsable		Tâches simples et détaillées fixant la nature du travail et les modes du travail à appliquer.
2 Employé	Exécution des taches prescrites exigeant une formation préalable et une adaptation à l'emploi	Sous le contrôle d'un responsable, le salarié est capable d'exécuter des taches sans que lui soit indiqué nécessairement le mode opératoire. Le contrôle des taches s'effectue en continue.	Ne peut pas comporter la responsabilité d'autres salariés. Sa responsabilité pécuniaire ne peut dépasser la gestion d'une règle d'avance.	Ne peut comporter la programmation de taches d'autres salariés.
3 Technicien	Exécution d'un ensemble de tache ou d'une fonction comportant une responsabilité technique ou un savoir faire technique spécialisé.	Sous le contrôle d'un responsable, le salarié effectue des taches complexes avec l'initiative des conditions d'exécution. Le contrôle du travail s'opère par un responsable au terme d'un détail prescrit.	Le salarié n'exerce pas d'encadrement hiérarchique. LE salarié peut exercer un rôle de conseil et/ou de coordination d'autres salariés mais ne peut en aucun cas en assurer le contrôle.	Le salarié peut être chargé d'exécuter un programme défini et/ou un budget prescrit dans le cadre d'une opération
4 Technicien	Prise en charge d'une mission, d'un ensemble de taches ou d'une fonction par délégation requérant une conception des moyens.	Il doit rendre compte périodiquement de l'exécution de ses missions.	Le salarié peut planifier l'activité d'une équipe de travail (salarié ou non) et contrôler l'exécution d'un programme d'activité. Il à une responsabilité limitée à l'exécution d'un budget prescrit et d'un programme défini.	Sa maitrise technique lui permet de concevoir les moyens et les modalités de leur mise en œuvre.
5 Technicien			L'emploi peut impliquer la responsabilité d'un service ou d'une mission ou la gestion d'un équipement. Il peut avoir en responsabilité la gestion du budget global d'un service ou d'un équipement. Il peut bénéficier d'une délégation limitée de responsabilité pour l'embauche du personnel.	Sa maitrise technique lui permet de concevoir des projets et d'évaluer les résultats de sa mission à partie d'outils existants.
6 Cadre (Ce groupe concerne soit les cadres salariés de structures dont l'effectif est de moins de 5 salariés équivalent temps plein, soit les cadres ayant moins de deux ans d'ancienneté dans l'entreprise qui les emploie.)	Personnels disposant d'une délégation permanente de responsabilité émanant d'un cadre d'un niveau supérieur ou des instances statutaires. Ils participent à la définition des objectifs, à l'établissement du programme de travail et à sa conduite ainsi qu'a son évaluation y compris dans ses aspects financiers.	Le contrôle s'appuie sur une évaluation des écarts entre les objectifs et les résultats.	Les personnels de ce groupe assument leurs responsabilités dans les prévisions budgétaires qu'ils élaborent dans l'exercice de leur mission. Ils peuvent avoir une délégation partielle dans le cadre de la politique du personnel et de représentation auprès de partenaires extérieurs.	
7 Cadre			Les personnels de ce groupe assument leurs responsabilités dans les prévisions budgétaires qu'ils élaborent dans l'exercice de leur mission. Ils ont une délégation étendue dans le cadre de la politique du personnel et de représentation auprès de partenaires extérieurs.	

ANNEX 5: REMUNERATION (ARTICLE 9.2 CCNS)

9. 2. 1. Conventional minimum wages (SCM)

Individual remuneration is freely determined by the employer with regard to the requirements of the position considered (degree of autonomy, responsibility and technical skills required) and the skills of the employee (professional training, experience gained ...).

The time taken into account for the determination of the minimums is the time corresponding to the legal duration, not taking into account overtime.

For groups 1 to 6, the gross monthly salary can not be less than the wages defined by the following table:

The SMC is fixed at € 1,391.20

Groupe	Majoration
Groupe 1	SMC majoré de 5,21%
Groupe 2	SMC majoré de 8,21%
Groupe 3	SMC majoré de 17,57%
Groupe 4	SMC majoré de 24,75%
Groupe 5	SMC majoré de 39,72%
Groupe 6	SMC majoré de 74,31%

For groups of 7 to 8, the gross annual salary can not be lower than the wages defined in the following table

Groupe	Majoration
Groupe 7	24,88 SMC
Groupe 8	28,88 SMC

9.2.2. Case of part-time employees working less than 24 hours per week

For part-time employees whose contractual duration of work is set at less than 24 hours per week, the guaranteed conventional minimum wage is calculated as follows:

Temps de travail hebdomadaire contractuel	Majoration
Jusqu'à 10h hebdomadaires	Salaire horaire minimum du groupe majoré de 5%
De plus de 10h à moins de 24h hebdomadaires	Salaire horaire minimum du groupe majoré de 2%

APPENDIX 6: REMUNERATION OF COACHES SUBMITTED TO CCNS (CLAUSE 12.6.2.2)

Classe	Définition	Autonomie	Responsabilité	Technicité	Emploi type relevé	Salaire mensuel
Classe A Technicien	Prise en charge d'une équipe de jeunes ou d'un ensemble de taches ou d'une fonction rattachée à une équipe de jeunes par délégation requérant une conception des moyens.	Il doit rendre compte périodiquement de l'exécution de ses missions.	Le salarié peut planifier l'activité d'un encadrement sportif bénévole d'une équipe de jeunes donnée, dont au moins un des sportifs est rémunéré, et contrôler l'exécution par les sportifs et l'encadrement d'un programme d'activité.	Sa maitrise technique lui permet de concevoir les moyens et les modalités de leur mise en œuvre.	Entraineur d'équipes de jeunes (en général ayant moins de 18 ans). Entraineur adjoint d'équipes de jeunes (en général ayant moins de 18 ans).	SMC Majoré de 18,23%
Classe B Technicien	Prise en charge d'une équipe de jeunes ou d'un ensemble de taches ou 'une fonction rattachée à une équipe de jeunes par délégation requérant une conception des moyens.	Il doit rendre compte périodiquement de l'exécution de ses missions.	L'emploi implique la responsabilité d'un encadrement sportif regroupant au moins un autre entraineur rémunéré et le cas échant d'autres entraineurs bénévoles. Il peut bénéficier d'une délégation limitée de responsabilité dans la politique de gestion du personnel (les sportifs).	Sa maitrise technique lui permet de concevoir des projets et d'évaluer les résultats de sa mission à partir d'outils existants.	Entraineur principal ou co-entraineur d'équipes de jeunes (en général ayant moins de 18 ans) Entraineur de centre de formation agrée.	SMC Majoré de 33,01%
Classe C Agent de Maitrise	Prise en charge d'une équipe ou d'un ensemble de taches ou d'une fonction rattachée à une équipe par délégation requérant une conception des moyens. Ils participent à la définition des objectifs, à l'établissement du programme de travail et à sa conduite.	Le contrôle s'appuie sur une évaluation des écarts entre les objectifs et les résultats prenant en compte la nature incertaine des résultats liés à l'alea sportif.	Les personnels de ce groupe assument leurs responsabilités sous la contrainte médiatique, financière et marketing liées à l'activité de leur employeur. Ils peuvent avoir une délégation partielle dans le cadre de la politique de gestion du personnel (sur les sportifs) et de représentation auprès de partenaires extérieurs.	Sa maitrise technique lui permet de concevoir des projets et d'évaluer les résultats de sa mission à partir d'outils existants.	Entraineur Adjoint de l'équipe fanion d'une structure sportive sous forme de société sportive (SASP, SAOS ...) ou d'une association membre d'une ligue professionnelle. Entraineur de centre de formation agrée Entraineur principal de l'équipe fanion ou réserve d'une structure sportive.	SMC Majoré de 37,94%
Classe D Cadre	Personnels disposant d'une délégation permanant e de responsabilités émanant d'un cadre d'un niveau supérieur ou des instances statutaires. Ils participent à la définition des objectifs, à l'établissement du programme de travail et à sa conduite ainsi qu'a son évaluation.	Le contrôle d'appuie sur une évaluation des écarts entre les objectifs et les résultats en prenant en compte la nature incertaine des résultats liés à l'alea sportif.	Les personnels de ce groupe assument leurs responsabilités sous la contrainte médiatique et marketing liée à l'activité de leur employeur. Ils peuvent avoir une délégation partielle dans le cadre de la politique de gestion du personnel (sur les sportifs et l'encadrement) et de représentation auprès des partenaires extérieurs.	Sa maitrise technique lui permet de concevoir des projets et d'évaluer les résultats de sa mission.	Entraineur principal ou co-entraineur de l'équipe fanion d'une structure sportive sous forme de société sportive (SASP, SAOS,...) ou d'une association membre d'une ligue professionnelle. Directeur sportif d'une centre de formation agrée.	26,61 SMC

ANNEX 7 : TYPES OF PACKAGES AND TERMS

Type de forfait	Salariés concernés	Objectif
En heures sur la semaine ou le mois	Tous les salariés	Permet de fixer une durée de travail supérieure à la durée légale incluant les heures supplémentaires, sous réserve que le nombre d'heures supplémentaires ne dépasse pas le contingent annuel.
En heures sur l'année	1° Les cadres dont la nature des fonctions ne les conduit pas à suivre l'horaire collectif applicable au sein de l'atelier, du service ou de l'équipe auquel ils sont intégrés 2° Les salariés qui disposent d'une réelle autonomie dans l'organisation de leur emploi du temps	Permet de rémunérer une durée annuelle du travail intégrant un nombre prédéterminé d'heures supplémentaires dans l'année.
En jours sur l'année Le nombre de jours travaillés dans l'année dans l'accord collectif ne peut dépasser 218 jours. Si l'accord ne précise rien, la limite est de 235 jours.	1° Les cadres qui disposent d'une autonomie dans l'organisation de leur emploi du temps et dont la nature des fonctions ne les conduit pas à suivre l'horaire collectif applicable au sein de l'atelier, du service ou de l'équipe auquel ils sont intégrés 2° Les salariés dont la durée du temps de travail ne peut être prédéterminée et qui disposent d'une réelle autonomie dans l'organisation de leur emploi du temps pour l'exercice des responsabilités qui leur sont confiées.	Permet de rémunérer un salarié sur la base d'un nombre de jours travaillés annuellement, sans référence horaire.

FOCUS: THE SPECIFIC CONTRACT LAW OF NOVEMBER 27, 2015

OLD PRACTICE
PRACTICAL USE

Previously, work contracts for professional sportsmen and women were concluded in the form of a fixed-term contract. The fixed-term contract is governed by Article L.1242-2 of the Labor Code which provides that:
"[...] a fixed-term contract of employment may be concluded only for the performance of a specific and temporary task, and only in the following cases:
[...]
3 ° Seasonal jobs, whose tasks are expected to be repeated each year at a roughly fixed frequency, according to the rhythm of the seasons or the collective lifestyle or jobs for which, in certain sectors of activity defined by decree or by agreement or collective agreement extended work, it is customary not to use the employment contract of indefinite duration because of the nature of the activity and the nature of temporary nature of these jobs; [...] »

Thus, Article D1242-1 provides that:
"In application of paragraph 3 of Article L.1242-2, sectors of activity in which fixed-term contracts may be concluded for jobs for which it is usual practice not to use the fixed-term contract indeterminate because of the nature of the activity and the temporary nature of these jobs are:
[...]
5 ° Professional sports; "

DETERMINING JURISPRUDENCE

In a judgment of 17 December 2014, the social chamber of the Court of Cassation questioned this practice. A conflict opposed the Bastia club and his coach. After several fixed-term contracts, the contractual relationship ceased and the coach requested the requalification of his last fixed-term contract.
The judges then affirmed that it is not enough to note that there is a sporting hazard linked to the results of the team in order to justify the use of the fixed-term contract.
The judgment requires checking that recourse to the use of successive contracts is justified by objective reasons which include the existence of concrete evidence establishing the temporary nature of the employment.
In other words, the Social Chamber considers that the Court of Appeal of Bastia could not reject the requests of the coach by retaining only that "the contracts of coaches of Mr. Padovani, in that they were concluded for a sports season, are necessarily dependent, in view of their renewal, of the results obtained by the team ", and" that the contract of coach implies, by its nature, a result or at least a sporting objective for the "team", "the coaching function being intrinsically associated with the sports results and the needs of the competition".

Sport hazard is therefore no longer sufficient to justify the use of fixed-term contracts.

NEED FOR A NEW PLAN

Jurisprudence has challenged the practice of fixed-term contracts in sports circles. By this judgment of 2014, all
CDD concluded by the professional sportsmen were in a precarious situation.

The CDI is not adapted to the professional sports market and the rules of the labor law are not suitable for the functioning of this medium.
So the secretary of state for sports asked for the drafting of a bill on this subject.
And so was born the law of November 27, 2015 which introduces a new specific regime for professional athletes.

NEW REGIME

The law of 27 November 2015 amends certain articles of the Sport Code and creates others. It specifies mainly
which articles of the Labor Code may or may not apply to the athlete's CDD.
Thus, the CDD becomes the common contract in the field of professional sport thanks to the article L222-2-3 created by law n ° 2015-1541 of November 27, 2015 which states that:
"In order to ensure the protection of professional sportsmen and coaches and to ensure the fairness of competitions, any contract by which a sports association or a company mentioned in Articles L.122-2 and L. 122-12 ensures, by remuneration, the assistance of one of these employees is a fixed-term employment contract. "

The regime of this specific contract is then specified:

• Article L.222-2-4 (Created by the law of November 27, 2015)
"The duration of a work contract mentioned in Article L.222-2-3 may not be less than the duration of a sports season set at twelve months.
However, a contract concluded during the sports season may have a duration of less than twelve months, under the conditions defined by a national collective agreement or collective agreement or, failing that, by the rules of the sports federation or, as the case may be, by the professional league:
1 ° When he runs at least until the end of the sports season;
2 ° if it is concluded to ensure the replacement of an athlete or a professional trainer in the event of absence of the sportsman or coach or suspension of his employment contract;
3 ° If it is concluded to ensure the replacement of an athlete or trainer who is the subject of the operation mentioned in the first paragraph of Article L. 222-3.
The start and end dates of the sports season are laid down in the rules of the sports federation or, if applicable, the professional league.
The duration of the employment contract referred to in Article L. 222-2-3 may not exceed five years, subject to Article L. 211-5.
In order to ensure the protection of professional sportsmen and coaches and to ensure the fairness of competitions, the maximum duration mentioned in the penultimate paragraph of this article does not exclude the renewal of the contract or the conclusion of a new contract. with the same employer. "

• Article L.222-2-5 (Created by the law of November 27, 2015)
"I.-The fixed-term employment contract shall be drawn up in writing in at least three copies and shall contain the reference to Articles L. 222-2 to L. 222-2-8.
It comprises :
1 ° The identity and address of the parties;
2 ° the date of hiring and the duration for which it is concluded;
3 ° the designation of the job held and the activities in which the employee participates;
4 ° the amount of the remuneration and its various components, including bonuses and salary supplements, if any;
5 ° The names and addresses of the supplementary pension and provident funds and of the body providing supplementary health cover;

6 ° The title of the applicable collective agreements or agreements.
II.-The fixed-term employment contract is sent by the employer to the athlete or the professional coach no later than two working days after the hiring. "

• Article L222-2-6 (Created by the law of November 27, 2015)
"The rules of the sports federation or, where applicable, of the professional league may provide for a procedure for the homologation of the fixed-term contract of the professional sportsperson and the coach and determine the terms and conditions of the homologation as well as the sports consequences in case of absence of homologation of the contract.
The conditions under which the absence of approval of the contract may hinder its entry into force are determined by a national collective agreement or agreement. "

• Article L222-2-7 (Created by the law of November 27, 2015)
"The clauses of unilateral rupture pure and simple of the fixed-term employment contract of the sportsman and the professional coach employed are null and of no effect. "

Articles L222-1 to L222-22 of the Sport Code are to be consulted carefully in order to fully control the specific professional sports contract regime.

NOTES

APPENDIX RIGHT OF WORK CONTRACTS - THE MOST MADASTIC CLAUSES OF FOOT PLAYERS!

Posted 1 year ago on 18/10/2017 By Antoine

The clauses of a contract in football can be farfetched. Some clubs and some players do not hesitate to insert them in their contracts to protect themselves or to enjoy impressive privileges. Most of these clauses can be so crazy that they can make you laugh.

1. The defeat and victory clauses of Hugo Lloris in Tottenham

In Tottenham, Hugo Lloris had a clause in case of defeat. He was to receive a bonus of 4000 euros in case of defeat of his team. And if his team won, it was more than double that amount, or 8300 euros.

footmercato.net

2. The orange anti-color clause of Rafael van der Vaart at Betis Sevilla

The orange anti-shoe clause of Rafael van der Vaart is one of the most hilarious. His club has forbidden him to wear orange shoes because it is the colors of his rival club, Sevilla FC.

Football.fr

3. Sergio Agüero's clause in Manchester City

Before his transfer to Manchester City, Sergio Aguero's former club, Atletico Madrid, added a far-fetched clause in his contract. Atletico Madrid has imposed on the English club to pay him 250,000 euros for every fifteen goals scored by Aguero.

Skysports.com

4. Larry Kayode's anti-cell clause at Austria Vienna

According to the clause of his contract, the Nigerian striker Larry Kayode was to receive fines in case of delay in his club of Austria Vienna. He also was not allowed to use his cell on the bus and his club withheld 30% of his salary if he got drunk in training.

90mn.com

5. The release clause of Roberto Firmino

Roberto Firmino has a release clause worth 98 million euros, unless the club that wants to get their hands on him is Arsenal. In this case, Firmino will not be transferred because this English club is not allowed to buy it.

metro.co.uk

6. The clause of Thibaut Courtois at Atletico Madrid

In 2013-2014, Belgian goalkeeper Thibaut Courtier was loaned by Chelsea to Atletico Madrid. According to the clause put in place by Chelsea, Atletico Madrid was to pay him 500,000 euros for a pool match and 4 million euros for a final if their two clubs were led to meet in the European Cup. They met in the semi-finals but the sum was not paid, as UEFA canceled the clause, which it found "void and unenforceable".

lexpress.fr

7. The clause of Fabio Capello

During the summer of 2013, Lionel Messi organized three charity matches. He hired Italian coach Fabio Capello to play the coach during these matches in exchange for 70,000 euros, a business class flight and a stay in a five-star hotel.

rtl.fr

8. The good conduct clause of Thiago Silva

Upon arrival at PSG, Thiago Silva received a special clause. The Paris club paid his 2.5 million euros in taxes he had to pay in Italy. PSG also offered him 33,333 euros per season if he stood well, without saying bad of the Paris club or the tactical choices of his coach, being nice and putting himself at the disposal of supporters.

20minutes.fr

9. The good conduct clause of Mario Balotelli

Mario Balotelli is a tempestuous player who has chained provocative attitudes, insults to referees and altercations during training. During his transfer in August 2014, the Liverpool club made him sign a good conduct clause before his integration. He had to touch a million pounds, or 1.2 million euros, if he respected the rules of good conduct that the club imposed on him.

zeenews.india.com

10. The panini clause of Neymar

The Italian brand Panini signed a contract with different big football players such as Neymar. The Brazilian player was to receive 50'000 dollars for the delivery of 600 vignettes of panini that he signed.

gala.fr

11. Marcelo Bielsa's "Contract Reduction" clause at OM

The coach Marcelo Bielsa demanded a special clause before leaving the Olympique Marseille in 2014. It was to allow him to leave the Marseille club after a single season instead of the two seasons that the LFP requires at least coaches .

lemeilleurdupsg.com

12. "Private jet" clause for Samuel Eto'o in Anzhi Makhachkala

In 2011, Samuel Eto'o was transferred from Inter Milan to the Russian club Anzhi Makhachkala for a three-year contract. Its transfer amounted to 27 million euros and was accompanied by a clause private jet or helicopter required by the footballer to ensure its transport from Moscow to Makhachkala.

lecourrierderussie.com

13. The "anti-PSG" clause for Paul Pogba at Juventus

When Paul Pogba was still at Juventus, his club added an anti-PSG clause in his contract. It stipulated that the Paris club had to pay 80 million euros if he wanted to get Pogba. The other clubs could have it for 70 million euros.

metro.co.uk

14. The "nightclub" clause for Ronaldinho in CR Flamengo

In 2011, Ronaldinho joined the Brazilian club CR Flamengo. For the occasion, he asked for a clause allowing him to go to nightclub two nights in the week. Obviously, his club accepted it!

colunadoflamengo.com

15. The clause of Alvaro Morata

When Alvaro Morata joined Juventus, he inherited an activable clause at the end of the 2015/16 or 2016/17 seasons if he managed to win as a striker in the Italian club.

Skysports.com

16. The "Golden Ball" clause for Angel Di Maria

Before arriving at PSG, Angel Di Maria was bought by Manchester United at Real Madrid for 75 million euros. His contract contained a clause stipulating that the MU had to pay five million euros to his former club Real Madrid if Di Maria won the Ballon d'Or. A feat that he unfortunately did not succeed.

independent.co.uk

17. The "match time" clause for Alex Oxlade-Chamberlain in Southampton

Alex Oxlade-Chamberlain left Southampton for Arsenal in 2011. At his departure, Southampton set a confidential clause that Arsenal would pay him 12,500 euros each time Oxlade-Chamberlain played 20 minutes or more during a match.

Skysports.com

18. The clause "return to square one" in case of injury for Radamel Falcao in the MU

Radamel Falcao left AS Monaco to join Manchester United in 2014/15. During the 2013/14 season in Monaco, Falcao was injured in the knee and could not play. To avoid such a situation, MU included a "return to square one" clause in his contract. This clause stipulated that Falcao would immediately return to his former club if his knee relapsed.

SoccerScout.com

19. The "refusal to board" clause for Denis Bergkamp at Arsenal

Arriving at Arsenal, the Dutchman Denis Bergkamp demanded a "refusal to board" clause to avoid having to fly because of his phobia of this mode of transport. His fear of flying earned him the nickname "Dutch non-flying".

101greatgoals.com

20. The "placing on the ground" and "coming from friends" clauses for Neymar at Barça

Arriving at Barça, Neymar added two clauses to his contract. The first stipulated that he should receive 2.5 million euros if he did not dispute the choice of his coach about his placement in the field. In the second, he asked permission to invite his Brazilian friends to Barcelona every two months at the expense of Barça

SoccerScout.com

21. The € 1 billion clause for Cristiano Ronaldo at Real Madrid

To discourage all clubs that want to get their hands on his superstar Cristiano Ronaldo, Real Madrid has set a release clause of one billion euros in his contract.

football365.fr

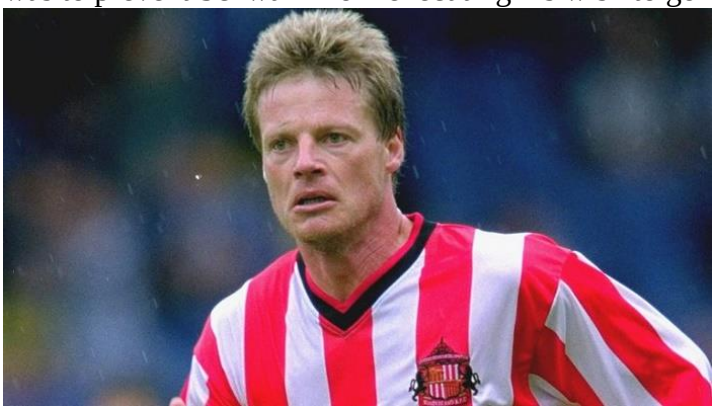
22. The "anti-bite" clause for Luis Suarez at FC Barcelona

During the 2014 World Cup, Luis Suarez bit the Chiellini player. To prevent this from happening again, FC Barcelona, where he was transferred, had him sign an anti-bite clause. Since then, Suarez can not bite a single player without receiving an exemplary penalty.

eurosport.fr

23. Stefan Schwarz's "ban on traveling in space" clause in Sunderland

In 1999, Sweden's Stefan Schwarz joined the Sunderland club for 6 million euros. His new club made him sign a clause forbidding him to travel in space until the end of his contract. It was to prevent Schwarz from executing his wish to go into space in 2002.



Skysports.com

24. Sam Hammam's sheep clause to Donations

Sam Hammam, the president of the English club Donations, has slipped very unusual clauses in the contracts of its players and managers. If his team lost by more than five goals, all staff and players had to eat brain, guts and intimate parts of sheep.

dailymail.co.uk

25. Kennedy Mweene's Cash Cow Bonus

During the 2010 Africa Cup of Nations, Zambian goalkeeper Kennedy Mweene stopped a penalty shot by Ghana. To honor him, King Kanyesha offered him 250 hectares of fallow land and two cows.

soccerladuma.co.za

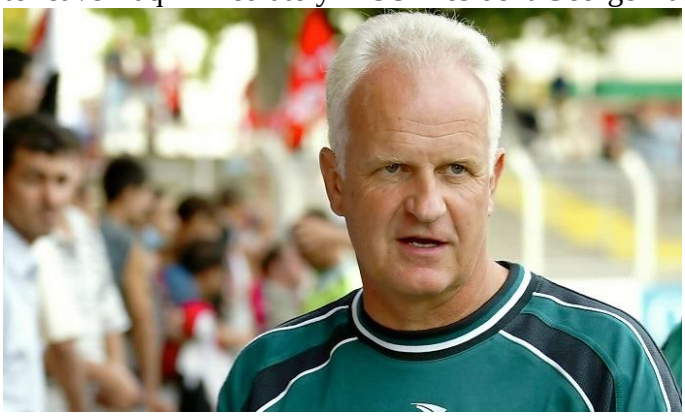
26. The "anti-ski" clause of Stig Inge Bjørnebye in Liverpool

Stig Inge Bjørnebye arrived in Liverpool in 1992. During a press conference, he confessed to having a weakness for ski jumping and wanting to follow in the footsteps of his father who was Norwegian Olympic jumper. Since this sport could hamper his football performance, Liverpool included an anti-ski clause in his contract. This forced him to stay more than 200 meters from a ski resort.

express.co.uk

27. Bernd Stange's "anti-Bush" clause in Iraq

In July 2002, Germany's Bernd Stange became coach of the Iraqi national football team. He added an anti-Bush security clause to his contract. According to the latter, Bernd Stange was to leave Iraq immediately if US President George Bush finally declared war on that country.



tagesspiegel.de

28. The "beer bonus" of Ivica Vastić at the Das Team

During Euro 2008, Das Team striker Ivica Vastić managed to score a goal against Poland. Ottakringer, a leading Austrian beer brand, offered him a free beer supply for life. The Austrian Football Federation has refused its offer.

Meinbezirk.at

29. The "rum bonus" of the Trinidad and Tobago team

During the 2006 World Cup, players from the Trinidad and Tobago team were promised 247 liters of local rum that could be shared between them if they managed to beat England. The team lost 0-2 to the British and the rum stock was thrown into the sea.

lapresse.ca

30. The "anti-weight" clause of Neil Ruddock in Swindon

Neil Ruddock, a former Swindon defender, was eventually dismissed from his club because he failed to comply with his anti-weight clause. Indeed, this rugged and rough player was not allowed to exceed a certain weight under penalty of expulsion. He has grown and has not returned to the 86 shorts that his club owned.

Skysports.com

ANNEX LAW OF WORK CONTRACTS - TRANSFER FROM NEYMAR: WHAT IS A LIBERATIVE CLAUSE?

L'attaquant brésilien Neymar évolue au FC Barcelone depuis l'été 2013.
REUTERS/Albert Gea

By Arnaud Di Stasio, published on the 22/07/2017 at 17:17

Brazilian striker Neymar has been playing at FC Barcelona since summer 2013.
REUTERS / Albert Gea

SOCCER. To recruit Neymar, PSG would be ready to pay the 222 million euros of the release clause of the Brazilian striker Barcelona. Decryption.

Beaten last summer with the transfer of Paul Pogba from Juventus to Manchester United for about 110 million euros, the record of the most expensive transfer in history could again fall in the coming days, with a potential arrival of Neymar at Paris Saint-Germain against 222 million euros. An operation made possible by the financial force of the Paris club, but especially by the release clause of the Brazilian striker FC Barcelona, which is activated automatically with an offer equal to the amount set at the signing of the contract.

A fruit from Bosman

"Before the 1995 Bosman decision, the players had firm contracts that had to be honored until the end, and footballers could only be released with the agreement of their club and the amount of the transfers corresponded to the years of salary remaining, "explained to the Express Master Thierry Granturco, a lawyer specializing in sports law.
But since the Bosman decision, the European Court of Justice has ruled that players can move freely, leading to more transfers. "The clubs have used these release clauses with pre-established amounts to block the players.This is a release clause, but it looks more like a jail term.This system with abominably high amounts violates the rights of players" , says the lawyer.

A one-billion clause for Ronaldo

Already courted by the PSG in the spring of 2016, Neymar had finally decided to extend his contract with FC Barcelona until 2021. By signing this new lease last October, Neymar had benefited from a significant salary increase, while the Catalan club took advantage of the

negotiations to "lock" the star by setting its release clause to 200 million euros. The contract was to increase this clause to 222 million this summer and 250 million next July.
Real Madrid inserts release clauses just as exorbitant. In June, Madrid President Florentino Pérez confirmed that Cristiano Ronaldo's one billion euros. Ditto for Karim Benzema.

Not a reflection of the value of the player

If the PSG seems to consider Neymar "worth" the amount of its release clause, these clauses do not reflect, in the vast majority of cases, the value of the players. "It is rather to exclude some footballers from the market by making them not 'buyable', says Thierry Granturco, which quotes Jérémy Mathieu as an example. While the 33-year-old French defender was still under contract with Barça for a year, the Catalan club let him engage with Sporting Portugal without receiving a transfer fee at the start of the summer. "Sporting has put a $ 50 million release clause in its contract when it is not worth it at all.We are dealing with an off-market and wacky clause.Nobody will pay this amount and the player can not be transferred. This is a roundabout way of getting back to the pre-Bosman situation, "says the lawyer.
Managers work that way to be sure to stay in control of sales. Either they decide to accept an offer lower than the amount of the release clause but that suits them, or they are forced to sell but against the sum they initially estimated as allowing them to navigate. "Previously, a player was only a burden between the cost of the transfer and the salary.For a few years, it is also a product.With the rights to image transferred to clubs, derivatives and resale, some players bring in more money than they cost, like Neymar, Barcelona does not want him to leave because the Brazilian is a source of income, "decrypts Thierry Granturco.

Prohibited clauses in France

But if these release clauses exist in most major European leagues, they are prohibited in Ligue 1. "The Professional Football League (LFP) considers them illegal in relation to French social law, so it does not validate any contract containing such clauses, "reveals the lawyer.
In France, the duration of contracts can not exceed five seasons, but the labor code prohibits the unilateral termination of a fixed-term contract before its term. "On the other hand, the big clubs of Ligue 1 sometimes sign agreements under private seal, not subjected to validation of the LFP, with an agreement on a compensation of departure", still specifies Thierry Granturco. A privilege reserved for the stars of the French championship. Like Neymar in a few days?

APPENDIX LAW OF CONTRACTS OF WORK - THE ACTS UNDER SEING PRIVATE IN FOOT: THE POINT OF VIEW OF ME GRANTURCO

04/02/2019

Thierry Granturco 5 days ago 206 Views

It is a fact that must alert us. While French football is changing, the use of private acts is very common between clubs and professional players. Acts that are often not recorded with the contracts of players submitted to the League of Professional Football (LFP), contrary to what however advocate the rules of the same LFP.

This practice is found in the heart of the dispute between the player Medhy Guezoui to his former club Sport Union Quevilly-Rouen-Metropolis (QRM).

A surprising decision

While playing under the colors of QRM since June 30, 2015, the French striker Medhy Guezoui decides to extend his contract in June 2016, for an additional season.

The player and the club then sign a private agreement protocol, separate from the initial contract and providing for an extension of one additional year (2017/18) provided that the Norman club continues in the National Championship at the end of the season. season 2016/17.

At the end of the season, QRM is better than maintain, since he is promoted in Ligue 2, finishing second in the National Championship. Despite this accession in upper division, Medhy Guezoui decides to leave. He joins another Ligue 2 club, the Valenciennes Football Club.

In response, the Norman club seized the Industrial Court of Rouen and asked for 200 000 € in damages and interest, in compensation for its damage.

In a judgment rendered on February 14, 2019, the Conseil de Prud'hommes de Rouen dismissed the club's claims. In a particularly surprising way.

What does the law ?

The judges consider, indeed, that it emerges from the examination of the article 3 of the protocol of agreement that the extension of the contract of Medhy Guezoui for the season 2017/18 is strictly conditioned to the maintenance of QRM in National league. And that, therefore, this article would not apply in case of accession of the club to the upper division.

Such an interpretation is surprising, because who knows the mechanics of these contracts, knows that such clauses have for sole purpose to protect the players in case of descent of the club in which they evolve. In case of relegation, the club then undertakes to release some of its players to allow them to continue to evolve to a higher level than the one his relegation would impose.

The agreement was intended to allow Medhy Guezoui to free himself from his commitment in general cases of relegation, and not in case of rise. The opposite would be amazing.

Because such reasoning, pushed to the absurd, would imply, in fact, that if QRM had simply maintained National, without access to the League 2, Medhy Guezoui would have had other options than to extend his contract for a season, without being able to sign Valenciennes!

Even more remarkable, the judges believe that the private agreement signed between the club and the player has the force of law. However, the regulations of the French Football Federation (FFF), then applicable to the Quevilly-Rouen Metropole Sports Union and Medhy Guezoui, stipulates that:

Article 7 - Amendment to the Federal Contract

All agreements, counter-letters, special agreements, modifications or termination of the contract must give rise to an amendment submitted to the approval of the Federal Commission for the Status of Players (CFSJ) of the French Football Federation.
(...)

Article 8 - Non-compliance with the procedure and sanctions

Any contract, endorsement or counter-letter, not submitted for approval or refused by the C.F.S.J. is null and void.

Failure to comply with the homologation procedure described above or any signature of an obscure agreement is sanctioned under the conditions set out in Appendix 2.

Co-signed, among others, by the FFF, the LFP, the Union of Professional Football Clubs (UCPF) and the National Union of Professional Footballers (UNFP), the Professional Football Charter, which regulates relations between the FFF and the LFP, on the one hand, employers' organizations and employees in the field of football, on the other hand, provides that:

Article 255: Amendment

All agreements, counter-letters, special agreements, modifications of the contract, must lead to the establishment of an addendum submitted, within fifteen days after signature, the homologation of the legal service or the legal commission of the LFP according to the procedure described in article 254 above except for the termination clauses for which the deadline is imperatively five days. (...)

Article 256: Non-compliance with the procedure

Any contract, or rider of contract, not subject to homologation or having been the object of a refusal of homologation by the legal service or the legal commission of the LFP is null and of no effect. The signatories of such a contract or of such an endorsement, when it is hidden, are liable to disciplinary sanctions.

The debate that arises from the decision of the Labor Court of Rouen is thus the following: the rules of the FFF and the LFP are they provisions of public order, mandatory provisions or simply suppletive provisions?

You said transparency?

It should be noted at the outset that the regulations of the FFF and the LFP can not be suppletive provisions, rules that exist only to "supplement" the will of the parties to the contract. On the contrary, they set a regulatory framework within which French football players must operate.

Are these rules, however, of public order? The public policy provisions are those intended to protect the public interest. It can not be broken. A convention can not validly contain a clause

contrary to a public policy provision. And this clause can not be implemented in the execution of the contract.

This nullity is absolute. Anyone with an interest in action can then request the nullity of the clause or agreement. Moreover, if a dispute is brought before the judge, the latter has the obligation to declare the nullity of the clause or convention. Which, in this hypothesis, should have been the case of the Conseil de Prud'hommes de Rouen.

The regulations of the FFF and the LFP aim at protecting the general interest. We should perhaps, then, at least consider their regulations as mandatory provisions, that is, provisions to protect the interest of a certain class of persons.

If a convention or one of its clauses contradicts such a provision, the penalty is also the nullity of the agreement or the contrary clause.

The difference between the mandatory provisions and the public policy provisions is that the parties may, when executing the contract and under certain conditions, decide to enforce the clause which is contrary to a mandatory provision or to such a provision.

In other words, the protected person may waive the protection provided by law or regulation.

Three possible conclusions

We can draw from this case three conclusions.

The first is that, in this case, whatever the will of QRM and Medhy Guezoui, the player was not required to respect a convention contrary to the rules of the FFF, since not approved by it.

The second is that private acts in French football are totally insecure legal, since they are signed outside the regulatory framework of the FFF and the LFP, which declare them "null and void" if not submitted for approval.

The third and final conclusion is that when the different players in football, and our rulers, look into the need for transparency in the affairs of football, it is singular that clubs and players still sign acts under private seal. Acts not registered by federations and other leagues, and known only to signatories.

You said transparency?

APPENDIX LAW OF CONTRACTS OF WORK - COURT OF APPEAL OF PARIS CONFIRMS THE STATUS OF EMPLOYEES OF PROFESSIONAL FOOTBALL REFEREES

Friday, 25 January 2019 11:19 | Written by Antoine SEMERIA | | |

In February 2014, the URSSAF sent a formal notice to a professional football referee (at the same time working as an independent accountant) to pay more than € 14,000 for social security contributions and € 774 for late payments.
A constraint was served to him a year later.

The arbitrator filed opposition to this constraint before the Paris Social Security Court, which, by judgment of 22 January 2016, validated the impugned constraint for its entire amount and charged the costs of service.

The arbitrator appealed this judgment.

The Paris Court of Appeal, after noting that the appellant was engaged in two professional activities, that of an accountant under the liberal profession and a professional football referee, recalls that "the arbitrators are fiscally and socially considered. as self-employed persons but with regard to social security law, are assimilated, under the provisions of Article L 311 - 3 29 ° of the Social Security Code, to salaried workers and come under the general scheme of the social security system. social Security".

It adds that these provisions of Article L 311-3 29 ° lay down the principle of a derogatory regime for professional arbitrators who are subject to the general social security scheme even if, from a tax point of view, they are treated as workers. independent.
It concludes that, being subject as a professional arbitrator to the general social security scheme, the arbitrator could not "fall under another scheme, especially since this conflict of subjugation for the same income of a the same professional activity is not provided for by any text and undermines the constitutional principle of equality in the face of taxes and public charges ".

According to her, "it is therefore wrong that the first judges did not take into account the derogatory status of the arbitrators and that they validated the recovery made by the URSSAF on the basis of the general provisions of Articles L 131 - 6, L136 - 3 of the Social Security Code and Article 92§ 2 of the General Tax Code.
Consequently, the income derived from his professional arbitration activity for the 2010 financial year must not be included in the basis of calculation of the contributions owed by the latter as a self-employed person. The recovery operated by URSSAF Limousin is therefore wrong and must be canceled.

CA Paris, 6, 12, 18-01-2019, No. 16/04174

ANNEX LAW OF WORK CONTRACTS - THE EXTENSION OF CONTRACT WAS VOID AND VOID IF HAS BEEN APPROVED

Wednesday, 04 July 2018 09:24 | | |

SA Luzenac Ariège Pyrénées hired on July 1, 2012 a professional football player following fixed-term employment contract for the 2012/2013 season. By endorsement of the same day, it was specified between the parties that in case of maintenance of the Club in National or rise in Ligue 2, the contract of employment of the player would be renewed for an additional season.

On July 25, 2012, the French Football Federation approved the fixed-term employment contract until June 30, 2013. However, the rider of July 1, 2012 has not been approved.

The contract of employment of the player came to an end on June 30, 2013 and was not prolonged for the season 2013/2014 whereas the club stayed in National.

The player appealed to the industrial tribunal of Foix to invoke the early termination of his employment contract.
The court of industrial tribunals of Foix, by judgment of October 26, 2016, condemned SA Luzenac Ariège Pyrenees to pay player the sum of 34 800 euros in compensation for the damage suffered for early termination of the contract of employment fixed term.

SA Luzenac Ariège Pyrenees appealed this judgment arguing that the refusal of approval of the renewal rider of July 1, 2012 rendered the addendum null and void.

On the other hand, the player argued that the lack of homologation of a professional player's contract did not entail its nullity.

According to an injunction of 29 June 2018, the Court of Appeal of Toulouse first recalls that the federal commission of the status of the player met on July 24, 2012 had considered "that the provisions applicable in the event of the 'Accession in Ligue 2 are directly linked to the acquisition by the club of the professional status and can not fall within the competence of the federal commission of the status of the player of the FFF "[...]" says not being able to record this endorsement in the state ".

It then recalls the provisions of Article 12.4 of the National Sports Collective Agreement then applicable:

"When an approval of the contract is imposed, it can have effect on the contract only to the extent that a sectoral agreement so provides, in which case it will be for this sectoral agreement to specify the guarantees relating to the organization. of the approval procedure, in particular the information of the parties on its progress, as well as the legal and financial consequences of a lack of approval ".

Lastly, it states that the status of the federal player provided that any player linked to his club by a fixed-term employment contract on a full-time or part-time basis was subject to a probate procedure (Article 7):

"All agreements, counter-letters, special agreements, modifications or termination of the contract must give rise to an endorsement submitted to the homologation of the Federal Commission for the Status of Players of the FFF." Article 8 adds that any contract,

endorsement or counter-letter, not subject to approval or having been the object of a refusal of approval by the Commission is null and of no effect. "

Therefore, the court considers that the endorsement of July 1, 2012, which was the subject of a refusal of homologation had no effect.

According to her, the player's contract ended on June 30, 2013, at the end of the contract concluded on July 1, 2012, which had been approved.

The judgment rendered by the Conseil de Prud'hommes is therefore reversed.

CA Toulouse, 29-06-2018, n ° 16/05725

French Football Federation FFF Football Labor Law

APPENDIX LAW OF CONTRACTS OF WORK - THE ACTION IN REQUALIFICATION INITIATED BY PAULO CESAR (EX PSG) JUDGED IRRECEIVABLE AS PRESCRIBED

Tuesday, 12 June 2018 09:27 | | |

Mr. Paulo César was hired by Paris Saint-Germain Football on July 1, 2002 as a professional player.
It was expected that, in parallel with the employment contract signed by the player, a sponsorship contract with Nike would also be concluded.
This second contract has never been signed.
The contractual relations between the parties ceased on 22 January 2007 when the player was transferred to the Toulouse Football Club.
An end of contract endorsement has been signed between the Player and Paris Saint Germain.
In spite of this, Paulo César seized, in 2014, the industrial tribunal of Paris of a request to requalification of his contract of employment in contract of indefinite duration, solicited reminders of salary. and asked for damages for dismissal without real and serious cause.
The Labor Court allowed the player's demands and ordered the Club to pay the following amounts:
- EUR 30 364.00 as re-qualification allowance,
- € 182,184.00 as compensation in lieu of notice,
- EUR 86,945.00 as termination indemnity, with interest at the legal rate as from the date of receipt by the defendant of the summons before the conciliation board,
- EUR 182,184.00 as severance pay for no real and serious cause, with interest at the legal rate as from the date of delivery of the judgment,
- 700.00 euros under Article 700 of the Code of Civil Procedure.

The Paris club has appealed this judgment.
Well, take it from him.
By judgment of May 29, 2018, the social chamber of the Court of Appeal of Paris invalidates in all its provisions the aforementioned judgment after having noted that the action initiated by the player before the Council of Prud'hommes was inadmissible because prescribed:
"That under the law of June 17, 2008, the period of common law, the action for payment of wages or indemnity actions runs" from the day when the owner of a right knew or should have known the facts enabling him to exercise it "(Article 2224 of the Civil Code and, by reference, Article L, former 3245-1 of the Labor Code);
That these provisions were included in Articles L. 1471-1 and L. 3245-I of the Labor Code, by the law of 14 June 2013;
That, therefore, the request for payment of the sums referred to in the letter of June 20, 2002, the requests for a reminder of salary, the claims for severance benefits of the employment contract, the claim for the lump sum compensation concealed work are all prescribed, the starting point the starting point of the limitation period the action of Mr. Paulo César YY being fixed at January 22, 2007, date of the rupture of his contract of employment;
That to the extent that the limitation period of the action would run on the day of the entry into force of the law of June 17, 2008, the action is prescribed since June 19, 2013;
That the employee did not seize the Council of industrial tribunals of Paris that the February 4, 2014, it is inadmissible to solicit the payment of the various sums solicited being specified that Mr Paulo César YY can not avail itself of the judgment of the Court of Paris on January 25, 2013 to which he was not a party ".
The Court further notes that the player had entered into a memorandum of understanding after the breach of the contract under which he had declared himself completely full of his rights.
In doing so, the Court considers that the player is wrong to claim the least wage claim from his former employer.
The player is therefore ordered to reimburse the PSG all he has received for the sentences pronounced in his favor under the judgment rendered at first instance.

Let's bet for Paulo Cesar that these sums have been provisioned!

CA Paris, 6, 4, 29-05-2018, No. 15/12093

Football Labor Law

APPENDIX LAW OF CONTRACTS OF WORK - SEIZURE IN THE COURSE OF JUDICIAL PROCEEDINGS OF THE LEGAL COMMISSION OF THE LFP

Monday, 19 March 2018 10:26 | | |

In June 2014, the SASP Valenciennes Anzin Football Club notified one of its players the end of their contractual relationship on June 30, 2014 in application of article 761 of the professional football charter because of the absence of Player's agreement on the 50% decrease of his remuneration proposed by the club.

The player contested this decision of early termination of his fixed-term employment contract which was to end on June 30, 2016.

By judgment of November 21, 2017, the industrial tribunal of Valenciennes has by judgment before right stay the decision on the demands of the player pending the conciliation attempt of the legal commission of the Professional Football League.
Contesting this stay of judgment, the player had the Club assigned before the first president of the Court of Appeal Douai, visas Article 380 of the Code of Civil Procedure, to be allowed to appeal the judgment of the November 21, 2017 of the industrial tribunal of Valenciennes and set the date on which the case will be litigated before the court.
According to him, the employer had to comply with the provisions of Article 265 of the aforementioned Charter and seize the Legal Commission of the Professional Football League prior to the pronouncement of the break, this referral constituting a substantive guarantee for the employee. He added that this lack of referral and conciliation could not be regularized during the proceedings since the employment contract had been broken.

By order of March 15, 2018, the Court of Appeal of Douai rejects the claims of the player recalling that the provisions of Article 380 of the Code of Civil Procedure require, in order to grant a request to appeal a judgment ordering a stay of proceedings, that there be justified a serious and legitimate reason.
In this case, the Court considers that this "serious and legitimate ground" is not justified by the appellant.
"This is not a serious and legitimate ground for challenging the legal validity of this decision, even though it does not cause the player a significant delay in the resolution of the dispute with the SASP, the present court noting that after a cancellation of the proceedings pending before the industrial tribunal of Valenciennes at the hearing of 13 October 2015, Mr Z had waited seven months to request the reinstatement of this case ".

CA Douai, 15-03-2018, No. 18/00002

Football Labor Law Employment Contract

APPENDIX LAW OF CONTRACTS OF WORK - THE OFFICER OF MANDATED LIAISON BY THE FFF WAS NOT A SALARY BUT A SIMPLE BENEVOLE

Monday, 05 March 2018 11:10 | | |

As part of the organization of several international meetings that took place between 2010 and 2012, the French Football Federation (FFF) used the services of volunteers, called "liaison officers", to help it lead to well the course of the meetings.
Not satisfied to no longer be called / retained by the FFF to perform this activity, the liaison officer seized the labor court to see qualify in contract work his relationship with the FFF and condemn it to a reminder wages and various benefits due to the abusive breach of this contract.

By judgment of 1 December 2015, the Conseil de Prud'hommes accepted the requests of the liaison officer and ordered the FFF to pay various indemnities for the abusive breach of his employment contract.

The FFF appealed this judgment.

Well, he took some.
By judgment of 1 March 2018, the Paris Court of Appeal reversed the judgment referred to above by considering that two essential criteria of an employment relationship were lacking in this case, namely, remuneration and the relationship of subordination.
On the remuneration, the Court retains that the latter consisted mainly of a payment and a derisory fixed daily allowance of 23 euros, besides the delivery of gifts, essentially symbolic value and non-market.
For the Court, these counterparties had the character of "simple gratifications, unrelated to the time spent or the sentence taken by the latter, to the accomplishment of their mission"
On the relationship of subordination, the Court considers that "the intention that animates the parties is not that of a contract of employment by which the employee offers and engages his strength and time, with respect to the employer that the commitments of Mr. Y, as liaison officer, were, moreover, only punctual, of the order of three times a year for a few days, and created no link for the future between the FFF and Mr. Y who remained free each time to refuse the new proposal made by the FFF, that this freedom available to Mr. Y is incompatible with the concept of employment contract "
For the Court, the liaison officer was a simple FFF volunteer and not an employee.

CA Paris, 6, 8, 01-03-2018, No. 16/03659

Fédération Bénévolat Labor Law French Football Federation FFF

ANNEX LAW OF WORK CONTRACTS - IT IS FOR THE EMPLOYER TO DEMONSTRATE THAT THE PLAYER WAS INTENDING TO TROMPER HER AGE

Monday, 05 February 2018 14:27 | Written by Antoine SEMERIA | | |

The ASCQ-LILLE MÉTROPOLE BASKET VILLENEUVE SPORTS AGREEMENT hired a professional basketball player on May 13, 2013 for two seasons.
A few weeks later, FIBA informed the employer that the employee could not be registered to participate in the European Championships due to discrepancies in her date of birth.
By mail of May 15, 2014, ASCQ-LILLE MÉTROPOLE BASQET SPORTS AGENCY AGREEMENT has notified the player of the temporary opposition of FIBA to its commitment in European competitions.
On June 25, 2014, the association decided to break the contract of the player for serious misconduct on the main ground of a "deception on your age".
The player challenged this measure before the Labor Court of Lannoy, which, by judgment of November 5, 2014, considered the break as abusive and sentenced the association to pay the player 90 000 € besides 1500 € under Article 700 of the Code of Procedure.
The association appealed this judgment.
By judgment of January 26, 2018, the Court of Appeal of Douai confirms the judgment undertaken and condemns the association to the payment of an additional indemnity of € 5,000 for the non-pecuniary damage suffered by the player as a result of the break.
The court considers, on the one hand, that the player had not intended to hide her age and secondly that the blocking situation decided by FIBA did not originate in an intentional fraud of the respondent.
The association is also ordered to pay 3000 € more to the player under Article 700 of the Code of Civil Procedure.

CA Douai, 26-01-2018, No. 15/04690

FIBA Basketball Labor Law

APPENDIX RIGHT OF CONTRACTS OF WORK - REJECTION OF THE FFF'S APPOINTMENT: HIS SPORTING TECHNICAL ADVISOR WAS HIS SALARIE WELL

Friday, January 26, 2018 18:25 | | |

An official exercising the functions of senior technical and educational adviser at the Ministry of Youth and Sports was assigned in 2006 to the French Football Federation (FFF) as a sports technical advisor without a written contract.
On 21 November 2013, the FFF requested that its mission be terminated, which the Ministry of Youth and Sports accepted as of 1 July 2014.
The technical advisor appealed to the tribunal prud'homale to recognize the existence of a contract of employment and to obtain the condemnation of the FFF to the payment of various amounts in connection with the termination of the contractual relationship.
By judgment of 30 June 2016, the Paris Court of Appeal upheld the councilor's contradiction of competence and considered that the parties were bound by a private-law employment contract.

The FFF appealed on points of law, finding that no element (performance of a benefit on behalf of the employer for remuneration and performance of work under the authority of the employer) made it possible to assert that the defendant on appeal was an employee.

The appeal of the FFF is rejected by the Social Chamber of the Court of Cassation, which, by judgment of 17 January 2018, states:
"But waited, first, that the official made available to a body under private law to perform a work is bound to this body by a contract of employment;

Next, it follows from Articles L. 131-12 in its wording applicable to the dispute and R. 131-16 of the Sport Code that the technicians recruited and paid by the Minister in charge of sports and made available to the sports federations are responsible, under the responsibility and direction of the latter, in particular to promote sport at all levels, and to carry out observation and analysis tasks, advice and expertise, sports supervision , training of managers, organization and development of the sports activity of the federation concerned;

And whereas the Court of Appeal, which found that the sports technical adviser had been made available to the FFF and that his mission was to contribute to the definition and implementation of actions to combat the violence and the prevention of incivilities in the setting up of an observatory of violence in favor of the organization receiving the grant, exactly decided that the parties were bound by a contract of employment "

Cass. soc., 17-01-2018, n ° 16-23.442
French Football Federation FFF Labor Law Labor Contract

APPENDIX LAW OF CONTRACTS OF WORK - NEW REQUALIFICATION OF CDD ON CDI FOR FACTS PRIOR TO THE LAW OF NOVEMBER 27, 2015

Friday, 15 December 2017 10:56 | Written by Antoine SEMERIA | | |

SASP Béziers Rugby has hired a rugby player from 1 July 2006.
The player's employment contract was regularly renewed until June 30, 2013, the date on which the employer, relying on the term of the last fixed-term employment contract, gave the employee his end-of-contract documents.
On 16 July 2013, seeking the requalification of his contractual relationship under a contract of indefinite duration and the payment of various sums, the employee appealed to the labor court of Béziers, which, by judgment of 25 April 2014, dismissed the appeal. employee of all his requests,

The player appealed against this judgment, claiming that his contractual relationship had to be reclassified as an open-ended contract, since some of the fixed-term contracts did not mention a ground of appeal and that the post held for a period of eight years without interruption had a permanent character.
The player's requalification request was granted by the Montpellier Court of Appeal, which, by judgment of 13 December 2017, found that SASP Béziers Rugby had recourse continuously for eight years from 1 July 2006 to 30 June 2013 to fixed-term employment contracts and endorsements, "without, however, justifying the existence of concrete and precise evidence establishing the nature of the temporary employment of the player".

A requalification allowance of 4156 euros is allocated to the player in addition to the sum of 35000 euros as damages for dismissal without cause real and serious.

Since the dismissal was effected without any notice period being served or compensation paid in that respect, the Court also ordered the club to pay the player the sum of € 8312 as compensation. notice, 831.20 euros as paid leave on notice and 7273 euros as a conventional severance pay.

CA Montpellier, 13-12-2017, n ° 17/00791

APPENDIX LAW OF WORK CONTRACTS - CONSEQUENCES OF THE RESIGNATION OF A TRAINER AND REPAIR OF INJURIES SUFFERED BY THE CLUB

Tuesday, 28 November 2017 17:53 | Written by Antoine SEMERIA | | |

In 2013, the Professional Club of Tours Football Club hired a head coach of the first team for a duration of two sports seasons.
On October 21, 2014, the coach submitted a letter of resignation to the club.

The Club appealed to the Conseil des Prud'hommes de Tours in October 2014 to obtain compensation for the damage suffered by the behavior of this coach.
The two parties successively seized the professional league committee, which in November 2014 notified its decision to release the coach from his employment contract.
The National Joint Appeals Commission confirmed this decision.

Subsequently, the coach seized in his turn the Industrial Court of Tours to obtain reparation of its prejudices.

By judgment of 27 April 2016, the Conseil des Prud'hommes de Tours reclassified the employment relationship as an indefinite contract and ordered the club to pay the coach a requalification allowance corresponding to one month's salary.

The club appealed this judgment by maintaining that his employee had resigned from his coaching duties in violation of the rules applicable to the termination of fixed-term employment contracts and that no agreement had been reached between the parties.
According to the Club, his employee had left in full championship, in a very delicate situation (close to the relegation) and without possibility of immediate replacement.
He also felt that the coach acted with a certain blameworthy lightness by engaging with another club in the early fall of 2014.
For the coach, on the contrary, the early termination of his employment contract was only attributable to the club.
According to him, the parties had agreed on an early break accepted but the termination rider had never been published by the Club.
For lack of regularization of such a contractual amendment, he had been forced to resign.
In the alternative, the employee requested the re-qualification of the contract into an open-ended contract on the basis of the late transmission of his employment contract.
On this requalification, the Orléans Court of Appeal, according to a judgment of 23 November 2017, notes that in this case the fixed-term contract of 23 July 2013 was concluded for a period of two seasons with effective July 1, 2013.
For the Court, "there is no evidence that this coach started to work from 1 July" and "the parties have wanted to raise the salary of it, for the month of July, July 1".
On the merits of resignation, the Court first recalls that, unless the parties agree, the fixed-term employment contract may be terminated before the expiry of the term only in the case of gross negligence, force majeure or incapacity noted by the occupational doctor.
In the present case and "in the absence of a demonstration of serious misconduct, force majeure or incapacity established by the occupational physician", the Court considers that "the resignation can be regarded only as a resignation, without there is any possibility of the requalification of dismissal without real and serious cause, all with all its legal consequences. "
She added that the employee had been appointed coach of another club (which he had left in 2013) two weeks after his resignation.

In consideration of the damage suffered by the club, the coach is ordered to repair it by the payment of a sum of 30,000 euros.
As regards the employee's claims, they are rejected with the exception of those seeking compensation for the damage caused by the Club's abusive resistance to sending him his final contract documents and paying him his last salary.

The Club is condemned, therefore, to pay the player a sum of 10.000 €.

CA Orleans, 23-11-2017, No. 16/01722

ANNEX LAW OF CONTRACTS OF WORK - NEW REQUALIFICATION ON CDI OF A "CONVENTION" SIGNED BETWEEN AN AMATEUR BASKETTOR AND HIS CLUB

Thursday, 19 October 2017 09:13 | | |

By an agreement of May 26, 2007, the association escaudain basket has hired a coach for a period of 10 months in return for the payment of a monthly allowance of 1,300 euros and a match bonus of 50 euros in case of victory .

Following the relegation of the team in national 2 in the course of the year 2009, the agreement which bound the association and the coach was broken in April 2009.

In June 2009, the coach applied to the Labor Court of Valenciennes to have his fixed-term employment contract reclassified as an indefinite contract and to obtain payment of various sums as compensation and reminder of salary. .

By judgment of 18 July 2014, the labor court ordered the re-qualification of the fixed-term contract into an indefinite contract and fixed its claim in the liabilities of the basketball association.

The French Central Bank has appealed this decision.

By judgment of 29 September 2017, the court of appeals of douai confirms the judgment of first instance on the requalification and the invalid on the guarantee of the ags whose challenge is excluded.

On the requalification of the "convention" in cdi, the judgment states that "the contract concluded between the parties is limited to the dates of the beginning and end of the contract and its participation in the basketball championship, so that that contract does not contain the precise reason for recourse to a contract of employment of fixed duration of use. "

On the exclusion of the ags, the court notes that the association escaudain basket was the subject of a liquidation amiable, consecutively to its dissolution by a resolution taken on January 31, 2011 by the general assembly of said association.

"Since the liquidation of the escaudain basket association does not result from a judicial settlement procedure, it is appropriate to say that the guarantee of the ags does not apply and to say that ags cgea de lille harmless."

The court accordingly sets the following amounts on the liabilities of the association:

- € 1,200 as compensation for the requalification of the contract of employment in an indefinite contract;

- 3,000 euros for damages and interest for dismissal without cause real and serious, pursuant to Article l. 1235-5 of the Labor Code;

- 978 euros as compensation for paid leave.

Ca douai, 29-09-2017, n ° 16/00050

ANNEX LAW OF WORK CONTRACTS - THE "CHARTER" SIGNED BETWEEN A RUGBYMAN AND A FEDERAL CLUB 2 VALID WORK CONTRACT

Tuesday, 17 October 2017 12:01 | | |

In May 2012, a rugby player signed a "charter" with the association Soyaux Angoulême XV for a period of two seasons, ie until June 30, 2014.
This charter provided for the payment of an annual indemnity, a signing bonus and a job search assistance clause.
The player left the club on September 13, 2013.
In 2015, he appealed to the Labor Court of Angoulême for recognition of the existence of an employment contract, re-qualification of the "charter" into an indefinite contract and to award him various allowances.
By judgment of 21 January 2016, the Labor Court of Angoulême considered that the player and the Club were bound by a contract of employment. The Club was ordered to pay various compensation for this requalification while the player was forced to repay rents to the Club.
The player appealed this judgment to the Bordeaux Court of Appeal.
On the existence of an employment contract, the Court notes that the "charter" signed by the parties included a certain number of obligations for the player and in particular those to participate in the sports and associative activity of the club with a time of significant presence and imposed schedules exceeding the expected one of an amateur player
In return for its benefits, the Court considers that the player received a remuneration and not simply a payment.
The requalification of the Charter as an employment contract of indefinite duration is thus confirmed.
On the breach of the contract, the Court considers that it must be analyzed as a resignation, the player having expressed his wish to leave the Club for that of Dijon.
However, the Club is ordered to pay the player:
- compensation to the player for hidden work (the Club has not declared the wages paid to the player);
- compensation for the lack of a medical examination at the time of hiring;
- a salary reminder of one month not paid:
- an indemnity due to the failure to remit the documents of end of contract and payslips.

CA Bordeaux, 12-10-2017, No. 16/01434

ANNEX LAW WORK CONTRACTS - 1ST OFF "POST SEPTEMBER 21, 2017": THE COURT OF APPEAL OF NIMES EPINGLE CLUB RUGBY CARCASSONNE

Monday, 16 October 2017 11:20 | | |

Following a fixed-term employment contract concluded from 1 September 2010 to 31 August 2011, within the framework of the "support contract in employment", the company Union sportive carcassonnaise hired a sales assistant.

The employee exercised alongside his job as a commercial assistant the functions of rugby player, amateur status.
In February 2011, the Club offered the player to sign a new employment contract as a rugby player for the 2011/2012 and 2012/2013 seasons.
As this proposal was not honored by the club, the employee appealed to the tribunal prud'homale to obtain payment of various indemnity amounts.
By judgment of May 15, 2012, the industrial tribunal of Carcassonne dismissed all his claims.
Next judgment dated February 26, 2014, the Court of Appeal of Montpellier confirmed this judgment.
Ruling on the appeal brought by the employee, the Court of Cassation has, by the terms of a judgment rendered on November 25, 2015, annulled and annulled in all its provisions the judgment rendered on February 26, 2014 and returned the parties to the court of appeal. Nimes call.
To achieve such censorship, the Social Chamber of the Court of Cassation has held that the promise of hiring formulated by the Club was fixed-term employment contract of two sports seasons.
After taking note of the judgment of the Court of Cassation of 21 September, the Court of Appeal of Nîmes, seized after cassation, recalls, according to a judgment of 10 October 2017, that:
"The evolution of the law of the obligations resulting from the order n ° 2016-131 of February 10th, 2016 leads to appreciate differently, in the labor relations, the scope of the offers and promises of contract of work".
In this case, the Court of Appeal of Nîmes notes that the parties signed, during the month of February 2011, under the typed "good for agreement", an act written on a sheet to the letterhead 'USC - Senior Card' mentioning the duration of the contract and the player's remuneration for the seasons 211/2012 and 2012/2013.
The Court of Appeal deduces that this act included all the details on the essential elements of the employment contract namely employment, remuneration and date of employment.
Thus, "the litigious act characterizing the meeting of the wills of the parties and the perfect formation of a contract of employment, the judgment will be reversed in all its provisions."
The club carcassonnais is therefore condemned to pay the player the sum of 47 520 euros in damages, an amount corresponding to the wages that should have been paid if the Club had respected its commitments.
The Club is also ordered to pay the player the sum of 1500 under Article 700 of the Code of Civil Procedure.

CA Nîmes, 10-10-2017, No. 16/00184

Extract from the website of the Court of Cassation:

"The social chamber consistently held that the" promise "of hiring specifying the proposed job and the date of entry was worth work contract (Soc., December 15, 2010, No. 08-42,951, Bull. , No. 296, Soc., June 12, 2014, Appeal No. 13-14,258, Bull 2014, V, No. 138).

This solution, which focused only on the content of the promise to hire, was certainly protective of the employee, but presented some difficulties in that it did not take into account the manifestation of the employee's consent to focus exclusively the content of the act emanating from the employer.

Thus, a unilateral act carried the effects of a synallagmatic contract.

The social chamber had, however, made some adjustments to this jurisprudence, to ensure the application of other provisions for which the expression of will of the employee seemed decisive.
For the purposes of Article L.1251-2 of the Labor Code, it found that an employee who had accepted the hiring proposal that had been accepted nine days after the end of the temporary work assignment. made before the end of the contract, had not immediately benefited from a contract of employment at the end of its mission and could therefore claim payment of the precariousness allowance (Soc., October 5, 2016, appeal 15-28.672, published in the Bulletin).

Likewise, the social chamber has made a distinction between the promise of employment, which is equivalent to a work contract, and the form of the contract, so that the promise of employment does not have to meet the formality provided for by Article L. 1242-12 of the Labor Code. A written document meeting the requirements for a fixed-term contract can therefore be regularly formalized after the promise to hire (Soc., July 6, 2016, No. 15-11.138, published in the Bulletin).

Moreover, since the promise of employment mentioning the date of taking up employment and the proposed job was worthy of an employment contract, the employer was prevented from withdrawing it, even if the employee had not yet accepted it. . The Social Chamber departed here from the case law of the Third Civil Division, which considers that the withdrawal of the offer to contract before its acceptance precludes the conclusion of the contract (Civ 3, 10 May 1968, No. 66). 13,187, Bull III, No. 209, Civ 3, May 7, 2008, No. 07-11,690, Bull III, No. 79).
Following a method adopted by the Mixed Chamber (Ch. Mixte, 24 February 2017, no. 15-20.411, published in the Bulletin), the Social Chamber chose to review its case-law with regard to the evolution of the law resulting from the order ° 2016-131 of February 10th, 2016, reforming the law of the contracts, the general system and the proof of the obligations, and, consequently, to appreciate differently the scope of the offers and promises of contract of work, even if this order was not applicable to the facts of the case.

In this case, a rugby club had made proposals for entry to two professional players, proposals that it had finally withdrawn before they showed their acceptance. Both players claimed that the "promises" of hiring, which specified the date of taking office and the proposed job, as well as the applicable remuneration, were worthy of employment contract and claimed from

the employer compensation for wrongful termination of employment. a fixed-term employment contract.

The rigorous application of the jurisprudence of the social chamber could have the effect of drying out the possibility of pre-contractual negotiations, because an employer who advances too much, is likely to be opposed the conclusion of a contract of employment, then even though it is the details of the dates of entry into service, the proposed employment or the remuneration which allow the parties to determine themselves and the employee to conclude or to prefer another employer whose offers would appear to him more advantageous. In the case of parallel negotiations, the employee may be the recipient of several proposals meeting the definition laid down in the judgment of 15 December 2010. In addition, there is a risk of a deadweight effect that is non-negligible, the employee being able to claim severance pay on the sole basis of the promise to hire, even though he did not intend to commit himself or preferred another proposal.

The social chamber took note of the choices made for the future by the legislator with the order of 10 February 2016 as well as the case law of the other civil chambers of the Court of Cassation to modify its jurisprudence by specifying the respective definitions of the offer and unilateral promise of employment contract:
The act by which an employer proposes an undertaking specifying

The social chamber took note of the choices made for the future by the legislator with the order of 10 February 2016 as well as the case law of the other civil chambers of the Court of Cassation to modify its jurisprudence by specifying the respective definitions of the offer and unilateral promise of employment contract:
The act by which an employer proposes an undertaking specifying the employment, the remuneration and the date of taking office and expresses the will of the author to be bound in case of acceptance, constitutes an offer of employment contract, which can be freely retracted until it has reached the addressee.

The withdrawal of the offer before the expiry of the deadline set by its author or, failing that, the outcome of a reasonable period of time, precludes the conclusion of the employment contract and incurs the extra-contractual liability of its author.
On the other hand, the unilateral promise of a contract of employment is the contract by which one party, the promising one, grants to the other, the beneficiary, the right to opt for the conclusion of a contract of employment, including employment, the remuneration and the starting date are determined and for the formation of which only the beneficiary's consent is missing.

The revocation of the promise during the time left for the beneficiary to opt does not prevent the formation of the promised employment contract. "

ANNEX LAW OF CONTRACTS OF WORK - LATEST SIGNATURE OF CDD + RECOURSE UNJUSTIFIED TO CDD = REQUALIFICATION OF CDD IN CDI

Monday, 25 September 2017 11:52 | | |

In 2003, the Olympic Sports Association of Marseille hired a coach by fixed-term contract.
This employment contract was renewed three times from 2004 to 2010.
Believing that he had not been filled with his rights, the coach appealed on 27 March 2013 to the Labor Court of Marseille, which, by a tie-break decision of 25 June 2015, reclassified the fixed-term contract as a fixed-term contract. indefinitely condemned, therefore, the Olympique de Marseille association to pay him various allowances (about 90 000 €).
The Labor Court of Marseille held, on the one hand, that the first employment contract of the employee had been signed late and on the other hand that the recourse to the successive fixed-term contracts was not justified.
The Marseilles association appealed this judgment to the Court of Appeal of Aix-en-Provence, arguing mainly that the fixed-term contracts the coach had benefited from were the usual contracts provided for in Article L. 1242-2 3 ° of the labor code.
This argument is not accepted by the Court of Appeal, which, according to a judgment of 22 September 20017 states:
- on the one hand, that none of the contested employment contracts referred to the precise reason for the use of such a fixed-term employment contract, namely the fixed-term contract of use.
- on the other hand, that the first fixed-term contract was transmitted to the employee late, "which is equivalent to an absence of writing".
The judgment rendered at first instance is therefore confirmed and the Olympique de Marseille association is ordered to pay the following amounts to its former employee:
- € 4407 under the requalification allowance,
- € 70,000 in damages for dismissal without real and serious cause,
- € 8,790.62 for paid leave,
- € 8,600 as compensation in lieu of notice,
- € 860 incidence of paid leave
- € 3,000 under Article 700 of the Code of Civil Procedure.
The Olympique de Marseille association has the right to appeal in cassation within 2 months from the notification of this judgment.

CA Aix-en-Provence, 22-09-2017, No. 15/13617

APPENDIX LAW OF WORK CONTRACTS - BREAK OF HIRING PROMISE: COURT OF CASSATION OPERATES A DISTINCTION BETWEEN OFFER AND PROMISE

Thursday, 21 September 2017 18:00 | | |

In 2012, Messrs. Douglas FLETCHER and Adriu DELAI, professional rugby players, were approached by SASP Union Sportive Carcassonnaise.
In 2012, they received SASP Union Sportive Carcassonnaise, a contract offer for the 2012/2013 and 2013/2014 seasons.

These agreements, referred to as the "employment contract of a professional rugby player", provided:
- a commitment for two sports seasons: 2012/2013 and 2013/2014,
- gross monthly remuneration for the 2012/2013 and 2013/2014 seasons,
- the provision of housing and a vehicle for the duration of the contract,
- a start of activity fixed on July 1st, 2012.

However, they received from the president of SASP Union Sportive Carcassonnaise, a letter dated July 4, 2012, warning him of "the impossibility of following up this contact" and "the absence of a document signed by him certifying his commitment.
They then seized the industrial tribunal of Carcassonne to see that a promise of employment had been concluded with the SASP Union Sportive Carcassonne and to obtain the condemnation of the club to the payment of damages for the rupture of their employment contract.

In a judgment dated September 17, 2013, the labor court held that the document entitled "employment contract" was indeed a promise of employment which had however been broken by the rugby club for legitimate reason so that it was necessary to dismiss the players of all their demands.
Both players then appealed this decision arguing that the offer they had received from the club were firm offers of employment contract, specifying the proposed job, the compensation as well as the date of taking office.
By judgments of 1 June 2016, the Montpellier Court of Appeal allowed the appeals formed by the players and considered that the rupture of the promises of hiring had intervened at the initiative of the company, not important that the contracts of employment n have not started to run.

The Club appealed on points of law in both cases.

By judgments of 21 September 2017, the Social Chamber of the Court of Cassation breaks and annuls the judgments on the following grounds:
"Whereas to condemn the employer to the payment of a sum as an abusive breach of the employment contract the judgment holds that it results from an email sent, on May 25, 2012, by the secretariat of the club that a promise of employment was forwarded to the agent and representative of the rugby player, that the agreement provides for the proposed employment, the remuneration and the date of taking office, so that this writing is indeed a promise of hiring a contract of employment, that to the extent that the player accepted the promise of employment it resulted that a contract of employment had been formed between the parties and it does not matter that the rugby club has finally given up hiring the player, even before the signing of the contract by the player, that the promise to hire binds the employer even if the employee has not shown his agreement.

That ruling in this way, without finding that the act of May 25, 2012 offered the player the right to opt for the conclusion of the employment contract whose essential elements were determined and whose formation lacked only his consent, the court appeal violated the abovementioned texts ".

The Social Chamber makes a distinction, under the prism of the ordinance n ° 2016-131 of February 10th, 2016 on the reform of the law of the obligations, between offer of contract of work and unilateral promise of contract of employment.
If the offer of employment contract can no longer be retracted once it has reached the addressee, the opposite is true of the unilateral promise of an employment contract which requires, in order to be valid, the consent of the beneficiary of the employment contract. offer.
It considers that in not making such a distinction, the Court of Appeal of Montpellier violated the provisions of the aforementioned ordinance.

These cases will be examined again by the Social Chamber of the Court of Appeal of Toulouse.

APPENDIX LAW OF WORK CONTRACTS - SOCIAL CHAMBER OF THE CASSATION COURT OF 21 SEPTEMBER 2017 (APPEALS 16-20103 AND 16-20104): MICHEL ESTEVAN WINS THE JUDICIARY IRON ARM OPPOSING TO HIS OLD CLUB OF BOULOGNE SUR MER

Thursday, 14 September 2017 12:53 | | |

Referral after Cassation, the Court of Appeal of Amiens has definitively settled the dispute between Mr. ESTEVAN his former employer, the football club Boulogne Sur Mer (USBCO).

Remember (ICI), Mr. ESTEVAN's employment contract was broken by the USBCO on the grounds that this coach did not meet the requirements that were expected of him (develop appropriate exercises, define the tactics according to adversaries, exploit the qualities of the players composing the team of the USBCO, etc ...).
The trainer was also criticized for performing another job alongside the coach, which was not compatible with the degree of expectation expected of him.

This complaint was held as constituting serious misconduct by the Douai Court of Appeal on October 31, 2014.

Such was not the opinion of the Court of Cassation, which had broken and annulled the aforementioned judgment on the grounds that no grievance against the coach characterized serious mistakes.
The case was therefore again raised before the Court of Appeal of Amiens, which, by judgment of September 12, 2017 confirms the position of the Court of Cassation considering that:
"In the absence of any serious misconduct, the anticipated termination of the employment contract by SASP USBCO will lead to the right, under the terms of Article L. 1243-4 of the Labor Code, to the request of damages and interest for an amount equivalent to the payment of wages from the date of his dismissal, on December 20, 2011, to the term initially fixed at the end of the employment relationship, ie June 30, 2012 (€ 89,419.35) ".

Club Boulonnais is also condemned to pay Mr. ESTEVAN the sum of € 10,838 corresponding to the layoff period of October 2011 plus an additional 3,000 on the basis of Article 700 of the Code of Civil Procedure.

CA Amiens, 12-09-2017, No. 16/01221

APPENDIX RIGHT OF CONTRACTS OF WORK - THE PROMISE OF HIRING WAS NOT VALID CDD IN THE ABSENCE OF TO HAVE BEEN RETURNED IN TIME BY THE PLAYER

Monday, 11 September 2017 17:17 | | |

In 2012, Deon FOURIE, professional rugby player, was approached by the professional sports company Rugby Club Toulonnais to sign a fixed-term employment contract.
The CTN sent a promise of employment to the player that the latter returned signed to the club on August 20, 2012.

By e-mail of 30/08/2012, the president of the club indicated to the agent of the player that he did not intend to give a favorable response to his proposal.
The player challenged this decision before the Labor Court of Toulon.
According to him, the promise of hiring signed and returned to the Club was worth a contract of employment to the extent that this promise specified the proposed employment and the date of taking office.

By judgment of 09/12/2014, the Labor Court of Toulon dismissed the player of all his claims.

The latter appealed against this judgment to the Social Chamber of the Court of Appeal of Aix en Provence and asked the club to pay the wages that should have been paid to him if his employment contract had come to an end, either € 127,600.
In defense, the CTN sought confirmation of the judgment undertaken, recalling that the period of validity of its proposal had a deadline of 24 August 2012.
According to the Club, the player did not report proof of having returned the proposal within the set deadlines.
She also pointed out that the player's agent made a counter-proposal on August 3 and 17, 2012, rendering the initial offer null and void.
In the alternative, the CTN stated that the proposal made to the player did not constitute a promise to hire in the absence of a clearly identified addressee.
After recalling that "the promise of hiring, since it is sufficiently precise and is addressed to a specific person with mention of the nature of the job and the date of taking office, is analyzed in a real unilateral commitment to provide employment that requires the employer to the recipient of the promise ", the Court of Appeal of Aix-en-Provence, according to a judgment of September 8, 2017 finds that in the the RCT had indeed sent a promise of employment to Deon Fourie insofar as the proposal (addressed to the agent of the player) included mention of the function performed, the duration of the contract, the remuneration but also the benefits in kind provided in return for the work provided.

The Court notes, however, that in order to be valid, this proposal must fulfill the following cumulative conditions:
- promise returned to the club signed by the player no later than August 24, 2012 inclusive,
- medical examination establishing a complete absence of cons-indication to the practice of rugby before the contract takes effect,
- player free of any commitment of the same nature for the proposed duration.
On the first of the conditions laid down by the Club, the Court notes that the player "does not provide evidence of the actual sending of this promise to hire before August 24, 2012 to the professional sports company Rugby Club Toulonnais".
As a result, the condition precedent of acceptance was not fulfilled within the contractual deadline, the promise of employment of the professional sports company Rugby Club Toulonnais ceased, according to the Court of Appeal, to produce its effects.

The judgment rendered by the Conseil de Prud'hommes is accordingly confirmed and the player sentenced to pay the Rugby Club Toulonnais the sum of € 2,500 under Article 700 of the Code of Civil Procedure.

CA Aix-en-Provence, 08-09-2017, No. 15/00871

ANNEX LAW OF CONTRACTS OF WORK - CONFIRMATION IN APPEAL: THE BREACH OF THE CONTRACT FOR SERIOUS MISCONDUCT OF MR. BENZERGA WAS JUSTIFIED

Tuesday, 04 July 2017 16:51 | | |

By fixed-term contract dated June 14, 2010, Mr. Omar Benzerga was hired by SASP FC Nantes for four sports seasons as a professional player.
On April 9, 2012 the player participated in a sixte tournament in which he hit one of the referees of the event.
Following this incident, the company FC Nantes summoned the player to a preliminary interview and laid off him as a precautionary measure, and then appealed to the Legal Committee of the Professional Football League for conciliation.

On May 22, 2012, the company FC Nantes broke the contract of employment for serious misconduct.

On June 15, 2012, the Departmental Disciplinary Committee of the Atlantic Football League suspended Mr. Benzerga from all official competitions for three years, one of which was suspended, sanctioned by the person concerned and confirmed.

On July 11, 2013 Mr. Benzerga appealed to the industrial tribunal of Nantes to see the abusive nature of the breach of his contract and obtain various sums.
By judgment dated April 30, 2015, the Labor Court said that the termination of his contract for misconduct of Mr. Benzerga was well-founded and he dismissed all of his claims.

In order to rule in this way, counsel found that the presence of Mr. Omar Benzerga at a tournament was established by the match sheet and that he had not requested the prior authorization of his employer, and that the detailed report drawn up by the referee also testified that the person concerned had hit him.

Mr. Benzerga appealed this judgment.

In support of this appeal, the player initially considered that the Legal Commission of the League had been seized in time by the company FC Nantes.
He went on to argue that he was not present as a player in the sixth tournament but simply as the sponsor of the event.
He added that the blow to the face brought to one of the referees had intervened because of the racist remarks made against him.
He therefore considered that the termination of his employment contract had been abusive and claimed the payment of a total sum of approximately € 412,000 for the damages suffered.

In defense, FC Nantes first recalled having satisfied its procedural obligations by seizing the legal commission of the LFP the same day of the convocation of Mr. Benzerga to the preliminary interview, ie April 17, 2012.
On the termination of the employment contract for serious misconduct, the Club considered that Mr Benzerga's participation in a sixte tournament constituted a contractual breach of his professional status which prohibited him from participating in a sports event without prior written authorization and secondly that the blows on a referee were contrary to the image of the club.

On the alleged failure to comply with the procedure provided for in Article 265 of the Football Charter, the Rennes Court of Appeal recalls, according to a judgment of 30 June

2017, that this text gives no indication as to the stadium the procedure to which the referral to the Legal Commission of the LFP must intervene.
It can be concluded for the Court that "the referral can be made during the disciplinary procedure provided that it is prior to the decision of the employer, in order to allow the commission to play its role, namely to try to reconcile the parties in the event of litigation likely to prevent the continuation of the contract of work. This role necessarily implies for the employer, who is considering a dismissal, to seize it before any decision on the merits. "

The first ground raised by the player is therefore rejected.

On the breach of the contract for serious misconduct, the Court considers first of all that the player, in accordance with Article 612 of the Professional Football Charter, should, prior to his participation in a sixth tournament, obtain the authorization written by his employer, "an agreement that he does not justify having solicited nor obtained. Participation in this tournament even outside working hours was not such as to excuse the person concerned from respecting the provisions recalled above because of the general nature of the obligation laid down by the Charter and the object itself. of the employment contract. The first infringement alleged against Mr Omar Benzerga is therefore established. "

It then considers that "the physical aggression of an umpire committed by a professional player during his participation in a match, in addition unauthorized by the employer, is a serious act making it impossible to maintain the employee in the company and therefore justifies the termination of the employment contract ".
It concludes that the early termination of Mr Benzerga's employment contract for serious misconduct was therefore justified.

The player is therefore dismissed of all his indemnity claims against the Club.

CA Rennes, 30-06-2017, No. 15/04308

APPENDIX RIGHT OF WORK CONTRACTS - REJECTION OF THE APPEAL IN CASSATION OF AN OLD PLAYER OF CA BRIVE DECLARE INAPTE TO THE PRACTICE OF RUGBY

Tuesday, 27 June 2017 17:23 | | |

A former rugby player from Brive has appealed to the Conseil de Prud'hommes following the termination of his employment contract for unfitness.

The player considered on the one hand that the club had committed a fault by not imposing on him a medical visit after his work stoppage and on the other hand that he had not fulfilled his obligation of reclassification.

Discharged in first instance and on appeal, the player appealed on points of law.

His appeal is dismissed for the following reasons:
On the first and second means (failure to comply with the medical check-up and breach of the obligation of security of result):
"Whereas it is not necessary to rule by a specially reasoned decision on these attached means which are obviously not such as to lead to a cassation;

The Court considers, in the same way as the judges of the merits, that no irregularity in the management of the accident at work and the procedure was committed by the club.
On the third ground:
Whereas, under the cover of unfounded complaints of violation of the law and lack of legal basis, the plea only tends to call into question the sovereign assessment by the Court of Appeal of the facts and evidence of which she concluded that the search for reclassification, which could not be extended to a group whose employer was no longer part of it, had been loyally carried out "

The Court endorses the reasoning adopted by the judges of the merits and recalls that the job search was controlled through the staff register and that there was no hiring within the Sasp Club Athletic Brive Corrèze Limousin, except medical or accounting staff.

As these hirings do not fall within the competencies or qualifications of the player, the Court considers that the obligation to reclassify has been respected.

Cass. company, 21-06-2017, n ° 15-19.592

APPENDIX LAW OF WORK CONTRACTS - CONTENTS OF THE LETTER OF DISMISSAL FOR ECONOMIC REASONS: EMPLOYERS, ATTENTION DANGER!

Tuesday, 20 June 2017 10:35 | | |

FC 56, now Sasp FC Lorient Bretagne Sud, hired a recruiter without a written contract and then by a part-time contract starting on November 15, 2008.
This contract has been transferred to the company FC Lorient football development promotion.
In 2012, the employee was summoned to an interview prior to his economic dismissal.
Having refused the proposed reclassification, the employee was dismissed for economic reasons by letter of July 20, 2012.
The latter has challenged this measure but was dismissed his claims in the first instance as in appeal.

He lodged an appeal on points of law.

By judgment of 14 June 2017, the Social Chamber of the Court of Cassation allowed the employee's appeal on the following grounds:

"Whereas, however, that the letter by which the employer gives notice of a dismissal for economic reasons, fixing the limits of the dispute, precludes him from invoking grounds not indicated in this letter;
That ruling as it did, after having noted that the letter of dismissal indicated that the suppression of the post was necessary to safeguard the competitiveness of the company, the court of appeal violated the aforementioned texts ".
By this judgment, the Court recalls that when a dismissal letter invokes the abolition of a post following a reorganization of the undertaking, it is incumbent on the trial judges to determine whether this reorganization was necessary to safeguard its competitiveness.
By confining itself to ascertaining the existence of economic difficulties without verifying that the reorganization of the enterprise was necessary to ensure the safeguard of its competitiveness, when the letter of dismissal invoked exclusively this last reason to justify the dismissal of the employee, the court of Rennes appeal deprived its decision of legal basis in breach of Articles L. 1232-6 and L. 1233-3 of the Labor Code.
The file will be examined again by the Court of Appeal of Angers.

Cass. soc., 14-06-2017, n ° 16-10.039, F-D

APPENDIX LAW OF CONTRACTS OF WORK - THE PROMISE OF HIRING THAT DESCRIBES THE PROPOSED EMPLOYMENT AND THE DATE OF ENTRY WANTS CONTRACT OF WORK

Monday, 12 June 2017 09:15 | | |

By letter of June 1, 2011, the company Stade Phocéen has proposed to a rugby player from New Zealand to engage from September 1, 2011 "to prepare for the recruitment of the first team in anticipation of next season", with a net monthly salary of € 2000, in addition to various benefits.

By judgment of 19 October 2011, the Commercial Court of Marseille has placed the company Stade Phocéen liquidation.
The player appealed to the tribunal prud'homale on April 12, 2012 for the purpose of fixing the liability of the company of the sum of € 71,719 as damages by invoking the existence of a promise of employment worth employment contract.

The industrial tribunal of Marseille dismissed the player of all his claims by judgment of May 22, 2013, confirmed by judgment of April 11, 2014 of the Court of Appeal of Aix-en-Provence.

On appeal by the player, the Cour de Cassation, by a judgment of 25 November 2015, annulled and annulled, in all its provisions, the judgment of the Aix-en-Provence Court of Appeal and dismissed the parties before said otherwise composed court.

The player has again appealed to the Court of Appeal of Aix en Provence and argues that "as recalled by the High Court, the promise of employment that specifies the proposed job and the date of entry is worth contract of work, that he was therefore bound to SASP STADE PHOCEEN by an employment contract providing for his hiring as a rugby player for a period of two sports seasons, that he arrived in France on 17 September 2011 and then immediately began training with the other players on the team, that the contract has therefore received a commencement of performance, that under these conditions, no condition suspensive can no longer be opposed to him, in addition that the conditions precedent have well fulfilled, that the promise of employment was firm and final. "
The position of the player is adopted by the Court which, by judgment of June 8, 2017, considers on the one hand that the promise of employment was worth contract of employment and on the other hand that the company Stade Phocéen has seriously breached its contractual obligations "By not submitting to the employee the signing of an employment contract, as provided for in the letter of employment, by not taking any steps to register the employment contract with the federal authorities and by not paying the employee his salary of the month of September 2011 »
As a result, the act by the player is an abusive early termination of the employment contract, attributable to the employer, which entitles the employee to damages of an amount equal to at least compensation he would have received until the end of the contract.
The player's claim is set by the Court at € 25,785.48 as compensation for improper termination of the fixed-term employment contract,
This sum will be paid by the wage guarantee scheme.

CA Aix-en-Provence, 08-06-2017, No. 15/21600

APPENDIX LAW OF WORK CONTRACTS - THE TOULOUSE COURT OF APPEAL SAYS "NO" TO THE REQUALIFICATION OF THE TERM OF A FORMER FOOTBALLER OF THE TFC

Friday, 26 May 2017 12:16 | | |

Mr Paolo César ARRUDA PARENTE was recruited as a football player by SASP TOULOUSE FOOTBALL CLUB (TFC) from 22 January 2007 according to a fixed-term employment contract concluded for a period of four years, ie until 30 June 2010.
By an amendment of termination made August 26, 2009 and approved by the Professional Football League on August 28, 2009, the contract of employment between Mr. ARRUDA PARENTE and the TFC was terminated by mutual agreement from July 31, 2009.

In 2014, the player submitted to the Toulouse Labor Court requests for salary reminder, payment of compensation for the reclassification of the contract as a permanent contract, compensation for non-compliance with the procedure, severance pay and damages for dismissal without real and serious cause.

By judgment delivered on October 28, 2015, the industrial tribunal of Toulouse requalified the contract of employment of Mr. ARRUDA PARENTE in contract of employment of indefinite duration and sentenced the club Toulouse to pay the player more than 800 000 € of allowances.

The TFC appealed this judgment.

After having confirmed his competence to rule on the requests relating to the employment contract concluded between the TFC and Mr ARRUDA PARENTE and in particular on the content of the termination rider concluded on August 26, 2009, the Toulouse Court of Appeal, terms of a judgment of May 19, 2017, invalidates the judgment rendered in first instance on the requalification of the contract after finding that the contract in dispute provided the ground for recourse to the CDD, the articles of the Labor Code in connection with the CDD of use, the applicable collective agreement or the amount of the remuneration.
As regards the validity of the breach of the employment contract by mutual agreement, the Court considers that this breach was inscribed within the framework of the provisions of Article L. 1243-1 of the Labor Code and the provisions of the Charter. professional football which allow early termination of the fixed-term employment contract.
The Court noted, however, that the player had participated in some matches of the TFC in August 2009 and was still in the squad until August 26, 2009.

As a result, the Court is entitled to a salary reminder equal to 72,300.81 euros in addition to 7,230 euros for paid leave related thereto.

CA Toulouse, 19-05-2017, n ° 15/05472

ANNEX LAW OF WORK CONTRACTS - COURT OF CASSATION CONFIRMS THE BASIS OF BREAKING FOR SERIOUS BREACH OF J.RODRIGUEZ CONTRACT

Wednesday, 17 May 2017 18:10 | | |

Julien Rodriguez was hired by a fixed-term contract of 9 January 2007 as a professional football player by Olympique de Marseille.
His contract has been extended until June 30, 2012.

On December 5, 2011, Olympe de Marseille decided to notify him of the breach of his contract for gross misconduct, accusing him of repeated absences from medical visits.

The player challenged this measure before the Labor Court of Marseille, which, by judgment of February 27, 2013 said that the dismissal of Mr. RODRIGUEZ was justified for serious misconduct.

Mr. RODRIGUEZ appealed this decision.

After having examined all the administrative and medical elements submitted to it by the parties, the Court of Appeal of Aix en Provence, by judgment of 29 January 2016, confirmed the judgment of the CPH considering that "the deliberate refusal and reiterated from Mr. RODRIGUEZ, without legitimate reason, to present himself to the medical visits organized by the employer, and this in violation of the provisions of his contract of employment and the collective agreement, constituted a serious fault rendering impossible its maintenance in the during the notice period. "
The player appealed on the grounds that the provisions of article 614 of the 2011/2012 professional football charter had been ignored by the club insofar as the termination of his employment contract occurred before any warning or warning was given. disciplinary walk.

The result, always the same, alas, for the player.

By judgment of 11 May 2017, the Second Social Chamber of the Court of Cassation dismissed the appeal on the following grounds:
"But since the player who had argued before the Court of Appeal that the professional football charter did not provide for a gradation of the penalties applicable in the event of absence from a medical examination, it is not admissible to invoke, before the Court of Justice, cassation, a means inconsistent with this position, drawn from the lack of knowledge of the nature and scale of sanctions that the club could take against him;
And whereas having noted that the player had repeatedly refused, without legitimate reason, to submit to the examination of the occupational doctor and pointed out that this behavior made it impossible to maintain the interested party in the club until the end of the contract, the Court of Appeal was able to deduce, without incurring the grievances of the last three branches of the plea, the existence of serious misconduct "
The third attempt of Julien Rodriguez to recognize the breach of his contract as abusive will therefore not be good!

File permanently closed.

Cass. soc., 11-05-2017, n ° 16-14.570, F-D

APPENDIX LAW OF WORK CONTRACTS - RESPONSIBILITY OF THE COMMITTENT DUE TO HIS ORDER: THE RCT CONDEMNS BY THE FACT OF HIS DOCTOR!

Thursday, 04 May 2017 10:16 | | |

Mr. Eifion Lewis Roberts, hired as a professional player by SASP Rugby Club Toulonnais (RCT) under contract of May 17, 2011, for two sports seasons, was the subject of June 9, 2012, by the French Agency for Combating Doping (AFLD), a test that revealed the presence of cathine and morphine.

After having noted the prescription to the player, on June 6, 2012 of Dafalgan codeine and on June 9, 2012 of Rhinadvil, the AFLD decided, on March 28, 2013, to relax the Welsh pillar.
Believing that the doctor of the club had committed a fault, the player summoned the RCT before the Tribunal de Grande Instance of Toulon to be compensated for the moral and financial damages suffered.

By judgment of 8 June 2015, the Court of First Instance sentenced SASP Rugby Club Toulonnais to compensate the non-material damage of the player for € 4,000 but dismissed his claim for financial loss.

The pillar appealed this judgment.

According to a judgment rendered on May 2, 2017, the Aix-Provence Court of Appeal first recalls that in accordance with Article L1111-2 of the Public Health Code "everyone has the right to be informed in advance of the proposed investigations, treatments or prevention actions on the risks inherent in them and that their consent must be obtained by the practitioner ".
It goes on to say that "the club doctor must either refrain from prescribing medicines that may contain illicit substances or inform the player of the risks involved in taking them".
It finds that in this case "the club doctor made a mistake in ordering the player drugs containing substances likely to generate a positive doping control, while he knew he was selected to play the final of the Top 14 2012 ".
According to the Court, "the decision of the competent authority to acquit him is not such as to nullify the existence of these professional errors which engage the responsibility of the employer".
On the non-pecuniary damage suffered, the Court considers that the publications mentioning the player's positive control "have damaged his image, both vis-à-vis other professionals and the public".

The Court fixes the amount of its non-pecuniary damage at € 6,000.

His claim for compensation for financial damage is, however, dismissed for lack of evidence produced in French language attesting the damage.
SASP Rugby Club Toulonnais is finally ordered to pay Mr. Roberts the sum of € 2,500 pursuant to Article 700 of the Code of Civil Procedure.

CA Aix-en-Provence, 02-05-2017, No. 15/16259

APPENDIX LAW OF CONTRACTS OF WORK - NEW REQUALIFICATION OF CDD IN CDI FOR THE FORMER COACH OF THE CF SOCHAUX

Tuesday, 02 May 2017 11:25 | Written by Antoine SEMERIA |

S.A.S.P. FC Sochaux-Montbéliard hired Mr. Jean-Claude HAGENBACH under a fixed-term employment contract from November 17, 2005 to June 30, 2007 as a pre-training manager for 13-year-olds. Several amendments were made, the last, dated July 24, 2010, confident from July 1, 2010 to June 30, 2012 Mr. HAGENBACH the duties of assistant coach of professional team in charge of the goalkeepers.

The parties entered into a second fixed-term employment contract on 1 July 2012 to entrust Mr HAGENBACH with the duties of guardian coach until 30 June 2014, the date on which the employment relationship ended.

On March 30, 2015, the employee appealed to the Labor Court of Montbéliard to have his employment contracts reclassified into an employment contract of indefinite duration and the conviction of S.A.S.P. FC Sochaux-Montbéliard to pay various benefits.

By judgment delivered on December 11, 2015, the labor court declared the claims related to the execution of the first employment contract to be time-barred and dismissed Mr HAGENBACH's claims relating to the performance of the second contract.

The employee appealed this judgment.
He took it to the extent that, by judgment of 28 April 2017, the Court of Appeal Besançon first considered that the action of the coach was not prescribed because initiated within two years following the expiry of the last contract.
She then found that the employee had held a permanent job as a coach from 2005 to 2014, so that the entire employment relationship must be considered to be of indefinite duration.
S.A.S.P. FC Sochaux-Montbéliard is therefore ordered to pay Mr. HAGENBACH the sums of € 8,800 for the requalification allowance, € 17,600 for the notice indemnity, and € 1,760 gross for the paid leave. 26 400 € in damages and interest for breach of contract and 2,500 under Article 700.

CA Besançon, 28-04-2017, No. 16/00195

Updated (Tuesday, 02 May 2017 11:26)

APPENDIX RIGHT OF WORK CONTRACTS - TFC CONDEMNED TO PAY NEARLY 1.5 MILLION EUROS IN Y.PELE FOR ABUSIVE BREAK OF CONTRACT

Monday, 24 April 2017 12:21 | | |

Mr Yohann PELE was recruited as a professional goalkeeper by SASP TOULOUSE FOOTBALL CLUB (TFC) on June 30, 2009, according to a fixed-term employment contract for a period of four seasons, ie until June 30, 2013.

In May 2010, Mr. PELE declared an illness.

In March 2012, he was declared unfit to practice professional football.
On April 13, 2012, the TFC made a proposal for a re-appointment to Mr. PELE on a "Goaltending Recruiter for the TFC Training Center" position.

Without Mr PELE's answer to this proposal, the TFC, on 9 May 2012, notified Mr PELE of the termination of his fixed-term contract for incapacity and the impossibility of reclassifying him.

On July 13, 2012, Mr. PELE challenged the termination of the contract by writing to his employer.
He seized for this purpose the industrial tribunal of Toulouse.

By a judgment dated May 14, 2014, the said board dismissed Mr. PELE for all of his claims.

The goalkeeper appealed this judgment.

In support of this appeal, MrPELE stated, firstly, that the TFC failed to comply with the procedure of termination of its employment contract by not seizing the legal commission of the professional football league and other On the other hand, the obligation to reclassify the TFC had not been respected, particularly with regard to the (derisory) salary proposed for the goalkeeper recruiter position.
For the compensation of his financial loss, he sought the payment of his wages remaining due for the period from May 12, 2012 to June 30, 2013 in addition to the payment of additional and separate damages and interest due to the damage suffered by this rupture and echoes who followed in the press leading to reluctance from other clubs on his ability.
The Club considered, for its part, that Article 265 of the charter defining the perimeter of the professional football league's legal committee did not include incapacity and that it had fully complied with its obligation of reclassification.
As to the lawfulness of the termination of the contract of employment for incapacity, the Toulouse Court of Appeal, according to a judgment of 21 April 2017, recalls first of all that in accordance with Article 267 of the Charter, " the physical incapacity of the player can only be ascertained by the occupational doctor according to the procedure described in the same code ".
The Court adds that according to Article 265 of the same Charter, the employer who considers the termination of the employment contract of the professional player must bring the dispute before the Legal Commission of the Professional Football League.
The intervention of this commission is a substantive guarantee for the employee and "the break decided without the commission having previously ruled can not be justified, making it abusive".
The Court notes that this text makes no distinction according to the cause of the break and does not require the employer to refer to the Legal Commission before summoning the

employee to a prior interview, "his only obligation being to seize the aforementioned his decision to break the contract of employment of his employee ".
Thus, "the absence of implementation of this substantive guarantee for the employee renders the breach of the contract of Mr. PELE abusive and irrelevant the examination of the means on the reality of the incapacity and the alleged breach of the club his obligation of reclassification ".
On the consequences of the irregular termination of the employment contract, the Court ordered SASP Toulouse Football Club to pay Mr PELE the sum of one million four hundred twenty five thousand seven hundred and thirty-four euros (€ 1,425,734) to damages in addition to € 6,000 under Article 700 of the Code of Civil Procedure.

Player and club now have a period of 2 months to file an appeal on points of law.

CA Toulouse, 21-04-2017, No. 14/03507

ANNEX LAW OF WORK CONTRACTS - THE DISMISSAL OF THE BAYONNAIS AVIRON TRAINER WAS NOT CAUSED BY AN ECONOMIC REASON

Tuesday, 18 April 2017 11:11 | | |

Following the indefinite contract of 1 July 2011, Mr. Frédéric TAUZIN has been hired by SASP AVIRON BAYONNAIS RUGBY PRO as assistant coach.
On August 16, 2013, Mr. TAUZIN was summoned to a preliminary interview of dismissal before being dismissed for economic reasons.

On January 13, 2014, Mr. TAUZIN appealed to the BAYONNE industrial tribunal to contest his dismissal for economic reasons, to obtain various reminders of salaries and allowances as well as the delivery of corrected documents, in addition to a procedural indemnity and the application of the legal interest rate from the referral.

By judgment delivered on April 16, 2015, the industrial tribunal of BAYONNE, section various activities condemned SASP AVIRON BAYONNAIS RUGBY PRO to pay Mr. TAUZIN 36.000 € as severance pay without cause real and serious and 12.042 € for failure to respect the re-employment priority

SASP AVIRON BAYONNAIS RUGBY PRO appealed this judgment considering that the dismissal of Mr. TAUZIN was part of a restructuring of the Club, "restructuring necessary for its retention in the elite of French rugby."
Mr. TAUZIN disputed the existence of economic difficulties and felt that he did not have to bear the consequences of the policy and management of his employer, which "decided to recruit two coaches for an annual salary of 600,000 € in all while his was 70.000 € »
He added that he was hired while the company was already in a difficult financial situation.

The Court of Appeal of Pau, according to a judgment of April 13, 2017, notes that the reason for the economic dismissal retained by the employer is the necessary reorganization of the company to safeguard its competitiveness.
The Court notes, however, that the employer does not produce any document to prove the reality and the precise modalities of the reorganization intervened nor any threats to its competitiveness.
For the Court, "the only production of the profit and loss accounts for the 2012/2013 financial year or even the personnel register is insufficient to justify it, the other documents produced by the employer not being directly related to these two points. . To this end, it should be pointed out that, in the absence of production of subsequent income statements, it is not possible to observe a reduction in the cost of wages or social security contributions when the employer claims to have reduced its workforce. ".
She concludes:
"The employer does not demonstrate the nature or reality of the reorganization invoked nor the existence of a threat to its competitiveness, it should confirm the judgment undertaken in that he found the dismissal without cause real and seriously, without any need to decide on the obligation of reclassification. "
The judgment rendered by the Conseil de Prud'hommes de Bayonne is confirmed on this point as it is on the question of the non-respect of the priority of rehiring.
The Court further orders SASP AVIRON BAYONNAIS RUGBY PRO to hand over to Mr. TAUZIN a Pôle Emploi certificate and a payslip in accordance with the present and to reimburse the EMPLOYMENT PÔLE the unemployment benefits paid to Mr. TAUZIN from the day of his dismissal.

CA Pau, 13-04-2017, No. 15/01649

ANNEX LAW OF WORK CONTRACTS - NON-COMPLIANCE BY THE BASKETTOR OF ITS OBLIGATIONS OF CARE JUSTIFIED THE BREACH OF HIS CONTRACT

Tuesday, 04 April 2017 09:42 | | |

In 2013, JDA Dijon Basket hired a professional basketball player under a three-season fixed-term contract.
In 2015, the player was placed off work several times for abdominal pain.
The doctor of the Club of Dijon prescribed to the player several physiotherapy sessions, to which the player did not go.
On May 28, 2015, the employer asked her employee for explanations about her absence from these sessions before summoning him to a prior interview and then notifying him of the termination of his employment contract for serious misconduct.

Contesting this measure, the player appealed to the Labor Court of Dijon, which, by judgment of 21 April 2016, dismissed all of his claims.

The employee appealed this decision to the Dijon Court of Appeal.

The Court, according to a judgment of March 30, 2017, first recalls that in accordance with Article L. 1226-7 of the Labor Code, a contract of employment is suspended during the duration of a work stoppage and adds that under Article L.1226-9 of the same code the employer has the possibility to break this contract if it justifies either a serious fault of the interested person, or of its impossibility to maintain this contract for a reason unrelated to the accident or illness.
The Court then refers to the collective agreement of the basketball branch, dated June 12, 2005 and its article 10-1 to remind that a player undertakes to treat his physical condition while:
- strictly following the instructions of any member of the technical directorate of the duly authorized club;
- committing to adopt the healthy lifestyle that is essential to his sporting profession.
For the Court "this specificity of the profession of professional sportsman, confirmed by the fact that the employer has maintained the entirety of the remuneration during the periods of stop, obliges the employee at the same time to be obliged to a physical preparation adapted and, in the event of injury, to provide the necessary care for the restoration of his physical potential; that the latter obligation subsists even during the period of work stoppage following an industrial accident ".
It notes that in this case, the player has breached this obligation by failing to honor the appointment to organize the physiotherapy sessions prescribed by the attending physician and by not remaining at the disposal of the physiotherapist to follow this care protocol.
The fact that the sports season was coming to an end has no impact on the Court as the player was not at the end of the contract.
Thus, according to the Court, the player's failures made it impossible to continue the employment contract.
The judgment is accordingly confirmed on this point as it is on the regularity of the dismissal procedure followed by the employer.
It is, however, reversed on a deduction of illegal salary of the employer, which had made a compensation between the advanced rents and the salary of the player.
The company JDA Dijon Basket is condemned on this last point to refund the sum of 1000 € to the player as a reminder salary.

CA Dijon, 30-03-2017, No. 16/00445

APPENDIX LAW OF WORK CONTRACTS - THE CA DE BOURGES VALIDATES THE ECONOMIC DISMISSAL OF THE FORMER DIRECTOR OF SPORTS IN BERRICHONNE

Tuesday, 28 March 2017 15:16 | | |

In 2009, LA BERRICHONNE hired a recruitment manager.
The employee was then appointed, from 2011, sports director of the club.
He will be dismissed for economic reasons on June 19, 2014.

Contesting the real and serious nature of this ground of dismissal, he seized the industrial tribunal of Châteauroux for the purpose of obtaining the payment of various sums (damages for dismissal without cause real and serious and remainder of conventional indemnity dismissal).

The industrial tribunal of Châteauroux rejected its requests.

The employee appealed this judgment

On the economic grounds of the dismissal, the Bourges Court of Appeal, according to a judgment of March 24, 2017, notes that at the end of the 2013/2014 season, the Châteauroux club made the object of a sports relegation in lower division (in National).
This demotion has led to significant financial losses, "requiring a reorganization of society, essential to safeguard its competitiveness."
The Court notes that this demotion meant that contracts were not renewed (assistant coach and goalkeeper coach) and that only one employee was hired as goalkeeper coach on June 30, 2014.
For the Court, "it is inferred from all these elements that it is in fact sufficiently justified that the measures announced in the letter of dismissal were implemented concomitantly with the suppression of the post of Mr. X, whose missions were spread out, while there was a real stake of safeguard of the competitiveness for the company LA BERRICHONNE imposing to balance the accounts, allowing in particular not to exclude a possibility of repêchage in spite of a result deficit for the season 2013 / 2014 ".
Therefore, the court considers that the economic reason for the dismissal is real and serious.
On the obligation of reclassification, the Court considers that "the sending of a circular letter mentioning the position sought by inviting the recipients to make known any available position was a sufficiently loyal and serious research"
For the Court, the company LA BERRICHONNE did not fail in its obligation of reclassification.

The judgment is also confirmed on this point as it is on the calculation of the conventional severance pay

CA Bourges, 24-03-2017, No. 15/01745

APPENDIX LAW OF WORK CONTRACTS - THE BREAKING OF THE TALKS BY THE PSG ABOUT THE RENEWAL OF EDEL'S CDD WAS NOT FAUCTIVE

Monday, 27 March 2017 16:45 | | |

Mr. Edel APOULA (known as Edel) was hired by PARIS SAINT GERMAIN FOOTBALL by a fixed-term contract of 16 August 2007 for a period of two consecutive seasons. This contract has been extended for two additional consecutive seasons until June 30, 2011.

In 2011, the parties exchanged for a possible renewal of Mr. APOULA's employment contract.
Finally the Paris club decided not to extend the contract of work of his goalkeeper.

Believing that PARIS SAINT GERMAIN FOOTBALL had improperly broken a promise to hire, Mr. APOULA has appealed to the industrial tribunal of Paris and filed compensation claims (about 4 million euros).

By judgment of 18 July 2013, the industrial tribunal of Paris dismissed Mr APOULA's claims and ordered him to pay the costs.

Mr. APOULA appealed this judgment considering that a contract of employment had been formed for the seasons 2011/2012 and 2012/201, so that early termination of the contract entitled him to damages.
In defense, the company PARIS SAINT GERMAIN FOOTBALL considered, for its part, that the break of talks could not result in the payment of damages and interests and that the conditions of a promise of employment were not fulfilled in this case.
The Court of Appeal of Paris, according to a judgment of March 23, 2017, notes first of all that an offer of employment had indeed been addressed to the agent of the goalkeeper by Alain ROCHE, then sports director of PARIS SAINT GERMAIN for the 2011/2012 and 2012/2013 seasons.
It adds that this offer was valid with certainty from March 23, 2011 to April 19, 2011.
However, it considers that this offer has never been accepted by the player.
According to her, the mere mention of the player's agent "to finalize if everything is ok" did not constitute an acceptance of the offer of employment contract.
On the breakdown of the talks, the Court, after having recalled that the break of talks is in principle free, finds that in this case PARIS SAINT-GERMAIN had the possibility to put an end to it.

In so far as the player does not report the vexatious nature of such a break, the Court considers that his claims for the wrongful termination of the talks must also be rejected.

CA Paris, 6, 5, 23-03-2017, No. 13/09785

APPENDIX RIGHT OF WORK CONTRACTS - DSC OF USE AND CONTRACTUAL CONDITION SUSPENSIVE OF VALIDITY: THE COURT OF CASSATION SAYS YES!

Wednesday, 22 March 2017 18:22 | | |

In 2008, the sports association Basket Lattes Montpellier agglomération hired a professional basketball player under a fixed-term employment contract for the period from June 1, 2008 to May 31, 2010

This contract has been renewed for a complementary season as of June 1st, 2010.

The employee was the victim of an industrial accident on May 4, 2010;

After noting the termination of her employment contract on October 10, 2010, the player appealed to the tribunal prud'homale of claims for the termination and performance of her employment contract.

The case was again raised before the Montpellier Court of Appeal.

By judgment of 1 July 2015, the said court of appeal dismissed the claimant's contention considering in particular that:
- the second fixed-term employment contract concluded on 1 April 2010 had never received a start of implementation
- the new contract entered into between the parties on 1 April 2010 had never taken effect for want of fulfillment of the suspensive contract conditions according to which, on the one hand, the contract had to be approved by the French Basketball Federation and on the other hand the employee has passed a medical examination at the latest within three days of taking office

The player appealed on points of law.

This appeal is dismissed by the Court of Cassation:
"But whereas the public order provisions of Article L. 1243-1 of the Labor Code, from which it follows that the fixed-term employment contract can not be broken before the expiry of the term in the only cases covered by this text, do not prohibit the stipulation of conditions precedent;
And having found that a previous contract had been regularly concluded and found that a second fixed-term contract, for the period from 1 June 2010 to 31 May 2011, stipulated that it would not be final until Once the conditions for registration by the French basketball federation and the player's passing through a medical examination, the terms of which were defined by the regulations of that federation and of the league, have been fulfilled at the latest three days after the arrival of the player for taking office, the Court of Appeal, which noted the absence of such an arrival, has exactly deduced that this second contract had not taken effect; that it has, for these reasons alone, legally justified its decision "

Cass. Company, 15-03-2017, No. 15-24.028, FS-P + B

APPENDIX LAW OF CONTRACTS OF WORK - REQUALIFICATION IN CDI AND WORK DISSIMINED: THE RUGBY CLUB OF STRASBOURG CONDEMNED BY CA COLMAR

Friday, 10 March 2017 15:24 | | |

A Czech international rugby player has been hired as from 15 September 2008 for a period of 10 months by the Association Racing Club de Strasbourg.
As of 1 September 2009, contractual relations continued for an indefinite period.
As of 1 November 2012 the Rugby Club of Strasbourg has reduced the remuneration paid to the player by 30% before notifying him in June 2013 of his decision to unilaterally terminate the employment contract.

By letter dated June 26, 2013, the player took note of the break before appealing to the Labor Court of Strasbourg.

By judgment of 21 May 2015 the industrial tribunal of Strasbourg dismissed the employee's request for requalification of contractual relations by retaining the existence of a seasonal employment contract of use and also dismissed the employee of his claims for hidden work.
The claims of the player have only resulted in the consequences of taking action and the effects of dismissal without cause real and serious.

The player appealed this judgment to the Court of Appeal of Colmar.
The player first solicited a salary reminder in connection with the unaccepted decrease of his expenses.
The Court accepts this request by considering that the amounts paid to the player as costs did have a contractual character, "consideration for work provided" by the employee.
It adds that the passive attitude of the player before seeking this pay recall can not demonstrate in a way an agreement on his part, which "has obviously suffered a situation".
On the requalification of contractual relations, the player's request is also granted, after the Court found that in the present case the fixed-term employment contract initially signed by the parties "did not provide any mention of the grounds for his appeal" .
On the termination of the contractual relations, the player invoked on account of the serious breaches of the employer on the one hand the reduction of 30% during several months of the remuneration envisaged by the contract of defrayment, second part the refusal of the employer to regularize its remuneration, and thirdly the unilateral decision taken by the Rugby Club of Strasbourg to unilaterally terminate the contract of payment.

The Court of Appeal of Colmar considers these three grievances as established.
Consequently the judgment rendered by the Labor Court of Strasbourg is confirmed in that it held that the taking of the act had the effects of dismissal without any real and serious cause.
The association Rugby Club of Strasbourg is therefore condemned to pay the player 13 000 € damages for dismissal without cause real and serious.
With regard to concealed work, the Court also grants the player's claims by holding that the payouts in question were paid to the employee not in the form of " protest fees " but in execution of a defraying agreement, without no connection with expenses incurred by the employee. "
The Rugby Club association of Strasbourg is condemned in this respect to pay the player the sum of € 12,895.20 as a lump sum.
The Rugby Club of Strasbourg is finally ordered to pay the appellant the sum of € 1,500 under Article 700 of the Code of Civil Procedure.

CA Colmar, 07-03-2017, No. 15/03454

APPENDIX LAW OF WORK CONTRACTS - REQUALIFICATION BY THE COURT OF CASSATION OF THE CDD OF THE FORMER RECRUITER OF FC LORIENT ON CDI!

Tuesday, 07 March 2017 19:07 | | |

FC Lorient Bretagne Sud has hired a recruiter by successive part-time fixed-term contracts as of August 24, 2006.

By letter of May 31, 2012, the club informed the employee that he did not intend to continue the contractual relations.

The employee has made an application to the tribunal prud'homale for the requalification of fixed-term contracts with an indefinite contract and for the payment of various sums;

The Rennes Court of Appeal dismissed his claims by considering that "the fixed-term contracts provided for a hiring for the sports season and that they fulfilled the required formal requirements".

The employee appealed to the Court of Cassation.

Well it has taken, since, by judgment of March 2, 2017, the Court retains:
"That ruling thus, without finding that the contracts in dispute mentioned the specific reason for resorting to such a fixed-term employment contract of use, the Court of Appeal violated the text referred to above".
The decision of the Rennes Court of Appeal of 4 November 2015 is therefore broken and annulled in that it dismissed the employee's requests to requalification of fixed-term employment contracts in open-ended contracts and in payment allowance for requalification, advance notice, paid leave, dismissal, unlawful dismissal and dismissal without real and serious cause.
The case is remitted to the differently constituted Rennes Court of Appeal.

Cass. company, 02-03-2017, n ° 16-10.038

APPENDIX RIGHT OF WORK CONTRACTS - NEW REQUALIFICATION OF A CDI ON A CDI FOR A HOCKEY TRAINER OF A PRO TEAM!

Monday, 13 February 2017 17:12 | | |

On June 1, 2012, SASP Lyon Hockey Club hired a coach for a fixed term of three sports seasons.
This employee was the victim on July 4, 2012 of a very serious non-occupational stroke and was placed in work stoppages, which were regularly extended until November 4, 2014.

A medical recovery visit was organized on 2 December 2014, after which the occupational doctor concluded:
"The activity on ice skates is not compatible in the context of professional functions. Tasks such as activity observations are compatible. Administrative and technical activities related to coaching and coaching tasks must be organized to allow for appropriate time management. Training and organization of the structure, facilitating co-operation, are probably foreseeable to allow an optimal adaptation in relation to his state of health. "

On December 17, 2014, the occupational physician definitively noted the employee's incapacity to work.

By letter of 30 December 2014, the company LHC LES LIONS proposed to the coach a reclassification position of "help to the head of the club", with a monthly work duration of 50 hours, imparting a five-day period to share his answer.

The employee did not respond to this offer.

However, the occupational doctor declared the position of assistant to the material manager, which had been proposed to the coach, incompatible with his state of health.

The employee was finally summoned on January 21, 2015 to a preliminary interview scheduled for January 29, 2015, then dismissed by registered letter with acknowledgment of receipt dated February 3, 2015 for incapacity due to non-occupational illness.

He challenged the validity of the termination of his employment contract by seizing the tribunal prud'homale of requests tending to the requalification of his contract of employment of fixed term employment contract of indefinite duration, to make judging that his dismissal was devoid of real and serious cause, and to condemn LHC LES LIONS to pay him various indemnities.

By judgment delivered on October 16, 2015, the industrial tribunal of Lyon considered that the dismissal of the coach was not based on a real and serious cause and condemned the Club to the payment of many indemnities, including a contract requalification allowance under an open-ended contract.

The Club has regularly appealed this judgment.

On the requalification of the contract of the coach on a permanent contract, the Lyon Court of Appeal, according to a judgment of February 10, 2017, recalls that the use of fixed-term employment contracts does not exempt employer to establish a written contract with a precise definition of the reason.
It finds in the present case that the coach's employment contract did not mention any specific reason for recourse to a specific employment contract.

It also considers (and in a dubious manner) that "the post of coach of a 1st division team or participant in the French championship for the 2014/2015 season is not temporary in nature but permanent, so as not to depend on of the sporting hazard or the result of the competitions ".

On the irregularity of the dismissal procedure, the Court finds that the employer failed to inform the employee of the possibility for him to be assisted by a person of his choice who is part of the company or by an adviser registered on the pre-established departmental list during the preliminary interview.

On the dismissal, the Court notes that the proposal for reclassification to the post of assistant to the person in charge of ice hockey equipment sent to the employee did not mention the qualification of the position held, his remuneration and the distribution of his working hours.

It considers that "the vagueness of the description of the post, added to the extreme brevity of the time limit, necessarily led Mr. X to refrain from any response, even though he did not know if the proposed post was compatible or not. with the restrictions issued by the occupational doctor ".

(...)

Expected in these conditions that the company has not presented to the employee any proposal for reclassification compatible with his state of health and the recommendations of the occupational physician "

On the quantum of the harm caused by this dismissal without real and serious cause, the Court considers that "the unjustified loss of his employment after his absence of two years and the criticism of the company which offered him only a job incompatible with his state of health, have caused injury to the employee who must be repaired by the allocation of the sum of 20,000 € as damages ".

CA Lyon, 10-02-2017, No. 15/08695

APPENDIX LAW OF WORK CONTRACTS - CONSEQUENTIAL CONSEQUENCES OF THE INJURY OF A HANDBALL PLAYER DURING ITS TRIAL PERIOD

Thursday, 02 February 2017 10:12 | | |

The Association entente sportif de Bruges, handball club operating in Nationale 1, has hired a professional handball player following a 24-month fixed-term employment contract, with a term of June 30, 2015.

The employment contract came into effect on July 1, 2013 and the trial period was set at one month.
On August 14, 2013, the player suffered a rupture of Achilles tendon and placed on work stoppage until January 1, 2014.
On January 7, 2014, he was declared fit for recovery by the occupational physician.
On January 10, 2014, his employer informed him of the termination of his employment contract on January 14, 2014, as part of the probationary period.

In view of this abusive breach, the player appealed to the Conseil de Prud'hommes of Bordeaux to see the illegal termination of his employment contract and to order his employer to pay him various amounts in compensation and damages and interests.

By judgment dated June 12, 2015, the Conseil de Prud'hommes de Bordeaux considered that the breach of the player's employment contract had been notified as part of the probationary period and dismissed the player from all his requests.

The latter appealed this decision, arguing that its probationary period had ended since 1 August 2013.
The Court of Appeal of Bordeaux, following a judgment dated January 8, 2017, points out that the trial period is "a time that allows the employer to assess skills of the employee in his work especially in view of his experience, and the employee to assess whether the positions occupied agree that it results that the period must be actually worked.
The Court then notes that in the present case the fixed-term contract of 10 June 2013 stated that "the effective date will be 1 July 2013 and the holidays with pay will be taken each year in July with a period of a trial period of one month, any suspension occurring during the probationary period extending the duration of this period corresponding to actual work. "
For the Court, it follows that "the trial period of the employee began August 1, 2013 and that having been a victim of an accident on August 14, 2013, the trial period was suspended during the whole time of the unavailability of the employee until January 1, 2014 ".
The Court concludes that "there is no evidence that the termination of the probationary period constitutes an abuse of rights, whereas the fact of participating in a match after the termination of his employment contract is not not of a nature to call into question the legitimacy of the break of the test and that this rupture is not likely to lead to the application of the provisions relating to the anticipated break of the fixed-term employment contract ".

The judgment rendered at first instance is therefore confirmed on this point.

The judgment rendered by the Conseil de Prud'hommes of Bordeaux is also confirmed in that it dismissed the employee's claims claims for alleged hidden work as well as the loss of a chance to have been obtain daily allowances from CPAM in respect of his work accident.
The player is condemned to pay his former employer a procedural indemnity of 1200 € on the basis of the provisions of Article 700 of the Code of Civil Procedure.

CA Bordeaux, 18-01-2017, No. 15/03981

ANNEX LAW OF WORK CONTRACTS - REQUALIFICATION OF THE WORK CONTRACT OF THE FORMER HOPE TRAINER OF THE OLYMPIC OLYMPIC CASTRES

Monday, 30 January 2017 13:01 | | |

In 2004, the Castres Olympique association hired a socio-sports educator on a full-time fixed-term contract.

Starting in the 2006/2007 season, the educator was hired on two different legal structures in order to occupy two distinct functions:
- a fixed-term employment contract was signed on 1 August 2006 with CASTRES OLYMPIQUE to work part-time (50 hours per month) as a coach of a Cadet-level amateur team B - less than 16 years old;
- a fixed-term employment contract was signed on 1 July 2006 with SASP CASTRES OLYMPIQUE on a full-time basis to occupy the positions of sports manager of the training center.

This accumulation of two fixed-term contracts to occupy these two specific functions was renewed for the 2007/2008, 2008/2009 and 2009/2010 sports seasons.

For the 2010/2011 sporting season, the coach continued to accumulate two fixed-term contracts and took charge of Club Espoir's team until 2013.
As part of the reorganization of the club, it was decided to put an end to the situations of accumulation of employment for all employees hired on the two structures.
The coach was offered the conclusion of a full-time indefinite contract, with the termination of the working relationship with CASTRES OLYMPIQUE to devote himself exclusively to his position as sports manager of the training center.

The contractual relationship, however, did not continue and ended at the end of the 2012/2013 season.

The coach then appealed to the Conseil des Prud'hommes de Castres.

He was denied all his claims, which led him to bring the dispute before the Court of Appeal of Montpellier.
According to him, the formalism imposed on the formation of a fixed-term employment contract had not been respected because several of the fixed-term contracts had not been signed by the parties.
He added that the duration of the contractual employment relationships could not justify the use of the fixed-term contract.
Lastly, he finally noted that SASP's proposal to convert the fixed-term contract into a permanent contract confirmed that the nature of its functions did not require the use of fixed-term contracts.

Having found that the Appellant had been engaged in a professional activity with the association and SASP CASTRES OLYMPIQUE from 16 August 2004 to 30 June 2013, under fixed-term employment contracts, the Montpellier Court of Appeal, terms of a judgment of 27 January 2017, considers that "the training of young players whether it is the Cadets or the hopes, which the court observes is not related to the season or the ranking of the team, It is not temporary in nature, since the sporting hazard and the outcome of the competitions are, in fact, inoperative reasons for characterizing the temporary nature of the jobs ".

The judgment rendered by the Conseil de Prud'hommes was consequently overturned and the Castres Olympique association sentenced to pay its former employee approximately 90,000 € as a reminder of salaries, 2340 € as compensation for requalification, 4677 € to as an indemnity of notice, € 4,850 as severance pay and € 14,200 (fourteen thousand two hundred euros) as compensation for the damage suffered
The SASP is sentenced to pay the coach € 1947.82 for the requalification allowance, € 1,644 as a reminder of the seniority bonus, € 3,895 as compensation for notice , € 2,921 as severance pay and € 11,685 as compensation for damages.

CA Toulouse, 27-01-2017, No. 14/02315, No. 14/02316

APPENDIX RIGHT OF CONTRACTS OF WORK - BREACH OF REMY DI GREGORIO'S CONTRACT FOR DOPING SUSPICION: COFIDIS'S DISMISSAL REJECTED!

Monday, 30 January 2017 16:45 | | |

Rémy Di Grégorio was hired on 1 January 2012 by fixed-term contract by Cofidis competition as a professional cyclist.

Questioned in a case related to a possible traffic doping products, the cyclist was arrested in Bourg-en-Bresse on July 10, 2012 as part of the Tour de France and indicted for "detention by a sportsman or product prohibited without medical justification in the context of a sporting event "and placed under judicial control on July 12, 2012.

After having been summoned a preliminary interview, the employee was notified of the termination of his employment contract for serious misconduct on 10 September 2012.

The employee challenged this measure and won his case before the Conseil de Prud'hommes de Marseille.

The company COFIDIS appealed the judgment prud'homal but his claims have not prospered.

She then lodged an appeal on points of law.

In support of its appeal, the COFIDIS company first of all considered that the Aix-Provence Court of Appeal should not have dismissed the decisions rendered by the investigating chamber in the context of the criminal proceedings. in progress, which would have reinforced the materiality of facts relied on by the employer in the context of the dismissal.

The company COFIDIS then considered that the termination of the contract of Mr. Di Gregorio was explained by the fact that the latter had tried to be delivered injection equipment and he had already undergone treatments by unreported and unjustified injections .

Neither of these two means is accepted by the Court of Cassation.

On the first ground of secrecy of the investigation, the Court of Cassation approves the magistrates of appeal considering that "the company could not produce in a civil proceeding of the judgments of the room of instruction rendered within the framework of a judicial investigation in progress even though it was not bound by the secrecy of the investigation ".

As to the gravity of the fault alleged against the employee, the Court considers that it is not up to him to return to it and that "the plea only tends to call into question the sovereign assessment of the facts and evidence by the judges of the merits. who considered that the facts alleged against the employee were not established ".

Cass. company, 26-01-2017, n ° 15-24.711, F-D

APPENDIX LAW OF WORK CONTRACTS - THE CONDEMNED FFF TO PAY TO ITS FORMER FINANCIAL DIRECTOR NEAR ONE MILLION EUROS

Friday, 20 January 2017 14:18 | | |

In 1977, the French Football Federation (FFF) hired an employee.
The latter will be successively promoted to various positions before becoming Financial Director of the Federation.
Following the election of a new president to head the FFF in June 2011, the services were reorganized.

The employee found that he was no longer on the new organization chart.

Believing that he suffered a professional downgrade and an unjustified dismissal, the employee appealed to the Paris Labor Court, which, by judgment of 19 September 2014, pronounced the termination of the employment contract that bound the parties to the wrongs of the company. the FFF and condemned the FFF to the payment of important indemnities for this dismissal without real and serious cause.

The FFF appealed this judgment to the Paris Court of Appeal.

By a confirmatory judgment of 18 January 2017, the Court held that the FFF amended the abolished post of the employee without the agreement of the latter:
"By relieving Mr. X of his position as Director of Financial Services, which he had held for a number of years, without any other assignment consistent with his level of responsibilities as Head of Service, which amounts to a change of duties to which he he has heard legitimate opposition, and more than a change even a pure and simple suppression, the French Football Federation can be reproached for a unilateral modification of the contract of employment which bound it to the latter, modification made impossible for lack of a prior and unequivocal acceptance by the respondent.
(...)
Such failure by the French Football Federation constitutes a breach of its contractual obligations of a particularly serious nature and, as such, likely to lead to judicial termination for its exclusive wrongs in the employment contract "
Considering the important seniority of the employee in the FFF, the latter is condemned to pay him nearly one million euros all compensation combined.

CA Paris, 6, 9, 18-01-2017, No. 14/10918

APPENDIX LAW OF CONTRACTS OF WORK - REQUALIFICATION OF CDD IN CDI: THE TRAINING OF FOOTBALLERS DOES NOT PRESENT TEMPORARY CHARACTER

Monday, 16 January 2017 10:25 | | |

The "SASP FC Lorient South Brittany" has hired, by fixed-term contract, a coach for the youth categories of the club.
This employee's employment contract has been renewed several times.

On August 8, 2014, the coach appealed to the industrial tribunal of Lorient to re-qualify the fixed-term contractual relationship on a permanent contract since 2001, and to pay various sums of a salary and indemnity nature.

By judgment of March 5, 2015, the council granted the claims of the employee.

SASP FC Lorient Bretagne Sud has appealed this judgment.

The Rennes Court of Appeal, according to its judgment of 11 January 2017, states first of all that the coach, since taking up his duties in 2001, has signed eight contracts or fixed term endorsements.
The Court then states that Articles L. 1242'2 and D.1242'1 of the Labor Code, which allow the use of fixed-term contracts of use in professional sports, do not derogate from the provisions of Article L.1242-12 paragraph 1 of the Labor Code obliging to indicate in the contract "the precise definition of its motive", or to those of articles L.1242-2 and L.1242-1 of the same code, limiting the cases of use of the fixed-term contract, which must not be intended to provide a permanent job for the normal and permanent activity of the enterprise.

In this case, the Court considers that SASP FC Lorient Bretagne Sud violated these mandatory legal provisions, in its relations maintained from 2001 to 2014 for a fixed period with its employee.

The Court observes that "none of the employment contracts or riders mention a ground of recourse to the fixed-term contract."

She adds that "society does not demonstrate, nor does it offer to demonstrate, how the formation of young players, whose court observes that it is not related to the season or ranking of the team, would have a temporary character ".

Surprisingly, the Court states that "the first three contracts were delivered more than two working days after the hiring date of the coach".

Finally, it notes that the last two contracts were concluded for more than eighteen months.

For all of these reasons, the Court confirms the requalification of the contractual relationship with an indefinite contract from 1 July 2001.

On the reparation of the damages resulting from this abusive recourse to the fixed-term contract, the Court first recalls that "none of the grounds allowed for the termination of a contract of indefinite duration being invoked, let alone justified, the dismissal is reputed to have no real and serious cause ".

The judgment referred was therefore confirmed in that he said the unfair dismissal, and consequently sentenced Lorient FC to pay the coach € 6,000 for the compensatory indemnity notice and € 600 for paid leave on notice.

The judgment of the Labor Court of Lorient is also confirmed in that he has allocated to the coach a sum of 39,000 € as damages for unfair dismissal.

The judgment is however reformed in that it has allocated to the coach compensation for non-compliance with the dismissal procedure, this compensation does not cumulate with that granted for abusive breach of the employment contract.

APPENDIX LAW OF WORK CONTRACTS - US MARMANDE RUGBY PLAYER DISCLAIMS APPLICATION FOR REQUEST FOR CDD INTO CDI

Thursday, 05 January 2017 11:50 | | |

The association Union sportive marmandaise recruited July 2, 2011 a rugby player for the 2011/2012 season.

The employment contract signed between the parties provided for gross monthly remuneration of 700 euros, in addition to a premium of 110 euros gross per match and travel expenses up to 400 euros per month.
The same day, the club gave the player a certificate of employment mentioning a monthly net remuneration of 1 400 euros for the 2011/2012 season.
The player's employment contract ended on June 30, 2012 at the end of the season.

The player, considering not having been remunerated for the commitments made by the club, has seized the industrial tribunal of Marmande for the purpose of seeing his employer condemned to pay him a reminder of salary, see requalify his fixed-term contract on an open-ended contract and obtain the payment of damages for dismissal without real and serious cause.

By judgment of November 3, 2015, the industrial tribunal of Marmande has granted all the claims of the player.

The club appealed this judgment to the Agen Court of Appeal.

On the request for a reminder of salary, the Club considered that the certificate of employment providing for remuneration greater than that fixed in the employment contract had been issued to the player to facilitate his search for accommodation, so that he had no legal significance between the parties.
He added that in any event the employment contract had resulted in novation of the obligations fixed between the parties.
As regards the request for requalification, the club maintained that the employment contract signed by the parties stated that it was a fixed-term contract of use and expressly covered the provisions of Article L. 1242 -2-3 of the Labor Code, so that the request for requalification of the player could not succeed, the contract having ended at the scheduled deadline.
On the reminder of salary, the Court, according to a judgment of December 27, 2016, found, on the one hand, that it was not established by the Club that the certificate of employment was signed before the employment contract
For the Court, this certificate committed the club "which can not seriously deny him any legal value arguing that he knowingly provided false information for the sole purpose of facilitating the search for housing Mr. X".
The demand for the player's salary reminder was therefore perfectly well founded.
With regard to the request for reclassification of the contract as a contract of indefinite duration, the Court noted that the employment contract signed by the parties expressly referred to Article L. 1242-2 3 ° of the Labor Code. the position of the first judges by considering that "the provisions of Article L. 1242-12 of the Labor Code have been fully respected by the club" and that consequently the contract of the player "regularly ended at the end of the June 30, 2012 ".

The player is also dismissed from his claim for compensatory leave with pay as well as from his claim for additional damages based on the late payment of wages in May and June 2012.

The club of US Marmande is therefore only sentenced to pay the player the sum of 4 833.29 euros gross as a reminder salary.

CA Agen, 27-12-2016, No. 15/01473

APPENDIX URSSAF - THE ASSOCIATION'S RECOVERY COULD NOT OPERATE AT THE TIME OF INVOLVING THE CYCLISTS CONCERNED

Tuesday, 04 December 2018 12:37 | | |

Following a check, the URSSAF of Auvergne notified to the association "Critérium cycliste professional international La Châtaigneraie" a recovery (47.000 €) concerning the sums paid to the cyclists who participated in 2006, 2007 and 2008 to an event organized by this association.

Contesting the existence of a relationship of subordination between herself and these cyclists, the association appealed to the amicable appeals committee and then to the Social Security Court.

The appeal of the sports association having been rejected, she appealed on points of law.

The association sought, as principal, the cancellation of the judgment rendered by the Court of social security affairs of Cantal on October 19, 2010 for failure to implicate the cyclists participating in the editions of the years 2006, 2007 and 2008 and social security bodies likely to be affected by the dispute.
According to her, each cyclist and all the primary health insurance funds concerned should have been involved.
In the absence of such challenge, the court could not validly decide on the affiliation of the sportsmen concerned to the general social security scheme.

This reasoning is followed by the Social Chamber of the Court of Cassation:
"That in so doing, while it was seized of a dispute over the qualification of the working relationship linking these cyclists to the association, which could not be decided without the challenge of the latter, the court appeal did not put the Court of Cassation in a position to exercise control over the first of the aforementioned texts "

The judgment of the Lyon Court of Appeal of 4 April 2017 is broken and annulled in all its provisions.

The case is referred to the Lyon Court of Appeal, otherwise composed.

Cass. Civ. 2, 29-11-2018, No. 17-19.242, F-D

URSSAF APPENDIX - USAP SHOULD PAY URSSAF € 319,197 IN CASE OF AGREEMENT AGAINST TASS DECISION

Monday, 05 November 2018 14:55 | Written by Antoine SEMERIA | | |

By judgment of 10 April 2018, the Social Security Court of the Eastern Pyrenees condemned the SASP USAP to pay to the URSSAF of Languedoc-Roussillon the sum of 319 197 euros in principal, in addition to surcharges of delay applicable to be counted until full payment and ordered provisional execution.

The SASP USAP appealed this judgment by declaration of April 24, 2018.

By a deed of September 4, 2018, SASP USAP had the URSSAF of Languedoc-Roussillon summoned before the first president of the Court of Appeal of Montpellier to see, in the main, the visa of the obviously excessive consequences engendered by the execution, provisionally, of the judgment under appeal, order the judgment of the provisional execution attached to the judgment rendered on 10 April 2018 by the Social Security Court of the Eastern Pyrenees, in the alternative, in view of the situation of danger in which it is found, to authorize it to assign the URSSAF on a fixed day.
In support of its requests, SASP USAP indicated that it was imperative that it not be weakened in its recovery in top 14, after four years spent in Pro D2, and that it could dedicate the reserves of the club to the recruitment of players and personal.
She added that the amount to be paid to the social organization represented 30% of the reserve fund required by the DNCG.
Finally, it specified that the payment of this sentence could lead to sanctions of the DNCG.

These arguments do not carry the conviction of the first President of the Court of Appeal of Montpellier, which, according to a judgment of October 24, 2018, states that "SASP USAP does not argue that it would be in a state of cessation of payments and that the execution of that sentence would compel her to make a declaration to that effect ".

In the absence of a demonstration of the danger invoked, the request for a stay of the provisional execution is rejected.

CA Montpellier, 24-10-2018, No. 18/00163

URSSAF APPENDIX - TRANSACTIONAL ALLOWANCE PAID BY THE FRIENDLY BREAKDOWN OF CDD IS ASSIMILATED TO SALARY

Tuesday, 11 July 2017 11:43 | | |

Following a control of the company Rugby club Toulon for the period from 1 July 2007 to 31 December 2008, the URSSAF, acting in the context of a concerted national action plan, notified the latter observations for the future and an adjustment relating in particular to amounts paid as transactional indemnities.

The RCT challenged this relief before the TASS and then appealed to the Court of Appeal of Aix en Provence.
The latter, by judgment of 25 March 2016, upheld the heads of reorganization, with the exception of two cases involving transactional compensation paid to Messrs. Gregan and Serafini.

The RCT appealed on points of law.

The union of the professional rugby clubs joined the appeal while the URSSAF lodged a cross-appeal on the annulment of the two adjustments referred to above.

The RCT and the UCPR mainly considered that the sums paid by the employer, to which the anticipated termination of the fixed-term contract is attributable, could not be qualified as wages.
In defense, the Urssaf considered, on the contrary, that these transactional indemnities should be assimilated to wages, and therefore subject to contributions.
In a judgment of 6 July 2017, the Second Civil Division of the Court of Cassation dismissed the appeals of the RCT and the UCPR as follows:
"But the amounts granted, even on a transactional basis, in the event of early termination of a fixed-term contract of employment are not among those exhaustively enumerated by Article 80 duodecies of the General Tax Code referred to Article L. 242-1 of the Social Security Code;
And whereas having noted that the sums object of the transaction concerned players holding contracts of fixed-term work in execution, the Court of Appeal deduced exactly that the sums paid in execution of these transactions were in the assessment base ".
The URSSAF's cross-appeal is, in turn, upheld by the Court:
"Whereas, in order to annul the adjustment for the transactional indemnities paid to Mr Gregan, the judgment holds that, since the employment contract has already expired on the day of the signature of the protocol, the allowance awarded may only be classified as damages and interest, exclusive of contributions;
That ruling thus, for reasons foreign to the characterization of the sums paid under the rule of base, the Court of Appeal violated the text referred to above "
(...)
"Whereas, in order to set aside the adjustment for the transactional indemnities paid to Mr Serafini, the judgment holds that the sums awarded to Mr Serafini, who held a contract of indefinite duration from 1 July 1999, by the transaction which took place on 30 september 2008 is good for damages, not subject to contributions;
That being determined in this way, while it was up to him to seek the qualification to be given to the sums subject of the transaction, the Court of Appeal deprived his decision of legal basis
"

The decision of the Court of Appeal of Aix en Provence is consequently reformed in that it canceled the recovery of the head of the transactional allowances allocated to MM. Gregan and Serafini.

The case is referred to these two remedies at the Court of Appeal of Nîmes.

Cass. Civ. 2, 06-07-2017, No. 16-17,959

THE IMAGE RIGHT - THE NAME RIGHT

INTRODUCTION

CHAPTER I: DEFINITIONS

The rights of the personality are all inseparable rights of the individual, who express his personality and allow the protection of his fundamental interests such as the right to privacy, the right to the protection of the voice, the right to honor, the right to the image, the right to the name.

The right to the image is the right for any person to oppose the reproduction of its image and its diffusion without its express and special authorization. Therefore, before any capture and dissemination of the image of the person, the broadcaster must obtain the consent of the person concerned, its consent, and this regardless of the medium (press, internet, television, painting, drawing, maps to play, board games, video game cartridge, bath towels, store, puppet, statue, coin ...).

The first aspect of the right to the image thus includes a defensive aspect which consists in defending itself against the interference of others in its sphere of intimacy, the right to be left alone and to control its appearance. In the case of images taken in public places, only the authorization of people who are isolated and recognizable is necessary.

The image is the appearance of an individual or a thing, its representation. This image protects and sells. It has a dual nature: extra-patrimonial and patrimonial.

If originally, the right to the image was exclusively to protect the individual in his privacy, his private life, gradually the courts have admitted that a person could also market his image, give it away. The right to the image thus also confers economic prerogatives, a monopoly of exploitation on the image. As a result, the person whose image was commercially exploited without his agreement suffered financial loss, a loss of profit because it could have made his agreement.

In the end, there are two categories of litigation:

• Litigation related to the extra-patrimonial right image: the person acts to defend the respect of his private life and his honor.

"It is not defamatory with regard to a professional photographed on the spot, the article which, devoted to the employment of clandestine workers and to the non-respect of safety rules on a construction site and illustrated by the photograph, does not mention the company of the person concerned nor impute to him any of the facts in dispute. However, the distribution of this photograph, taken without the authorization of the person concerned who is recognizable there and apart from any current events concerning him, is likely, because of the content of the article, to undermine to his person that does not legitimize the freedom of communication of information. (Cass Civ.1re, January 16, 2013)

"The freedom of communication of information authorizes the publication of images of people involved in an event, subject only to respect for the dignity of the human person. This rule ignores the rule of the Court of Appeal, which considers it unlawful to publish the photograph of a person who was the victim of an attack on the sole basis of the person's right to his image, while having retained exactly that freedom of expression and the necessities of the information legitimized the report of the event, she noted that the photograph did not infringe the dignity of the person represented "(Cass Civ 1, February 20, 2001)

Litigation relating to the economic right to the image: the person seeks compensation for the loss of earnings that it suffers because of the commercial use of its image.

The right to the image has (...) a character not only moral strictly personal to its holder, - but also patrimonial since it is patent that many celebrities of the spectacle, sport, arts, business ... , taking advantage of the evolution of customs and economic practices generated by a civilization more and more turned to the image, engage in commercial exploitation of their own image, according to increasing remuneration with their notoriety "(TGI Aix-en-Provence, November 24, 1988). In that decision, the court therefore accepts the heritage character of the image right.

ESSENTIAL

The rights of the personality are the whole of the inseparable rights of the individual, the right to the image is part of it. The image is the appearance of an individual or a thing, its representation. This image protects and sells. It has a dual nature: extra-patrimonial and patrimonial. The right to the image of an extra-patrimonial point of view corresponds to the protection of privacy, from a heritage point of view, it is the economic exploitation of the image.

CHAPTER II: APPLICABLE TEXTS

Section 1: Civil Law
Section 2: Criminal Law

The unauthorized use of the image of a person makes the user run the risk of being sentenced civilly and criminally.

SECTION 1: Civil Law

In terms of image rights, Article 9 of the Civil Code is essential.

Article 9 of the Civil Code

 Everyone has the right to respect for his private life.

Judges may, without prejudice to compensation for the damage sustained, prescribe any measures ... to prevent or put an end to an invasion of the privacy of private life (...) ".

Thus, the right to the image is protected on the ground of the right to the respect of the private life, because there is no specific text protecting the right to the image in the Civil Code.

Sanctions are diverse and varied:

• Entering snapshots

• Suspension and withdrawal of the sale of copies. This sanction is no longer possible according to the Court of Cassation since the magazine was widely distributed.

• Obligation to publish the judgment of conviction in a press release

• To pay damages, ie a sum intended to

to repair the damage suffered and the amount of which is freely determined by the magistrates.

• In practice, this amount varies according to several criteria.

• The more the cliché is exposed (example: magazines with large circulation, report broadcast at an hour of strong audience), the more the damages and interest are high.

Judges also take into consideration the degree of

seriousness of the attack on the person ie the humiliating or degrading nature of the photos or on the contrary their relatively innocuous character.

In addition, the damage is also appreciated in relation to the attitude of the victim. If the person has already been complacent
towards the media by consenting to the publication of its image, the judges will consider that the harm is relatively low. On the contrary, the person who has always systematically fought against the publication of clichés representing it will benefit from a more substantial repair.

Nevertheless, we must be aware that the press "people" publishes weekly photos in violation of the right to the image. The compensation paid does not have any deterrent effect since these amounts are minimal compared to the figure made on the sale of the copies.

In addition, the case law accepts the application of Article 9 in judicial proceedings: "The production in court of a document having violated the private life of an individual, without

any need for the needs of the defense and its proportionality to the aim pursued is punishable by a conviction for infringement of the right to image and privacy under Article 9 of the Civil Code "(Civil Cass.1, October 16, 2008).).

SECTION 2: In criminal law

Unlike civil law, the texts of the Penal Code expressly refer to the notion of image.

Article 226-1 of the Criminal Code: "Is punished by one year of imprisonment and a fine of € 45,000, the fact, by any means whatsoever, voluntarily to infringe the privacy of privacy others
(...) by fixing, recording or transmitting, without the consent of the latter, the image of a person in a private place ".
It is therefore sanctioned to capture or broadcast an image taken in a private place.

Article 226-8 of the Criminal Code: "Is punished by one year of imprisonment and a fine of 15000 euros, the fact of publishing, by any means whatsoever, the editing made with the words or the image of a person without his consent, if it is not obvious that this is a montage ".

Article 35 ter of the law of 29 July 1881 on the freedom of the press (amended by order on 19 September 2000): "When it is carried out without the consent of the person concerned, dissemination, by any means whatsoever and regardless of the medium, the image of an identified or identifiable person implicated in criminal proceedings but not the subject of a conviction and showing whether that person is wearing handcuffs or shackles, or that he or she is placed in pre-trial detention, is punishable by a € 15,000 fine.

Is punished with the same punishment the fact:

• Either make, publish or comment on an opinion poll, or any other consultation, on the guilt of a person implicated in criminal proceedings or on the sentence that may be imposed against him ;

• Either publish indications allowing access to surveys or consultations referred to in the preceding paragraph. "
•

ESSENTIAL

Article 9 of the Civil Code provides that everyone has the right to respect for his private life.

Beyond this civil law provision, the Penal Code expressly protects the right to the image. For example, criminal offenses relating to the protection of privacy, the respect of criminal procedure for example.

TITLE 1: EXTRA-PATRIMONIAL LAW IN IMAGE

CHAPTER I: THE PRINCIPLE: THE NEED FOR CONSENT

Section 1: A general principle

Section 2: The Terms of Consent

A - The issuer of the authorization
B - The nature of the authorization
C - The scope of the authorization
D - Proof of authorization
E - Sanctions of lack of authorization

SECTION 1: A general principle

The extra-patrimonial nature of the right to the image relates to the right to prohibit the publication of one's image.

The image of the person is protected on the basis of the right to respect for private life. In fact, the right to the image is an element of the private life in the same way as the state of health, the religious practice, the fortune, the home, the sentimental life. Therefore, it is necessary to obtain the consent of the person concerned, his agreement, his authorization, as soon as it is a question of the domain of intimacy.

The case-law refers to this need for authorization, in particular in the following judgment: "The interested party, who had been filmed without his authorization without any current events concerning him, had based his action on the article 9 of the Civil Code and concluded that the report in question had prejudiced

• his image and his private life on the one hand, and his reputation on the other hand, without invoking any fact constituting defamation, or assessing separately the damage that would have resulted, the Court of Appeal concluded that this action did not fall under the provisions of the Act of 29 July 1881 and that the dissemination of the image of the person concerned was not legitimized by the principle of freedom of the press. (Cass Civ.1re, February 21, 2006)

The right to the image is an exclusive right. The judges say that

• any person has an exclusive right in his image, and may oppose its fixation, reproduction and use without his prior authorization. "

SECTION 2: The terms of consent

A - The issuer of the authorization

Any person, regardless of his rank, his fortune, his functions has the right to respect for his private life. The rule is the same for everyone: actor, singer, sportsman or anonymous.

The right to the image belongs to all without discrimination, it is an attribute of the personality, a right attached to the person itself.

The case law has stated it many times: "Any person, even if it is a world famous sportsman, can oppose the diffusion without express authorization of its image".

For the publication of the image of a minor child or a major incompetent, it requires an express authorization of his legal representative. In fact, the minor or the incapable person does not have the legal capacity to consent to it so it is the parent (s) with parental authority or the guardian who will be able to authorize it.

The right to the image is a right of the personality thus a right attached

• the person. If the person himself disappears, dies, it makes sense that his right disappears with it.
Consequently, "the right to act for the respect of the private life or the image is extinguished on the death of the person concerned, only holder of this right". (Cass Civ 1, February 15, 2005).

Nevertheless, the relatives of the deceased are not therefore deprived, they can oppose the exploitation of the image if it undermines the memory or respect due to the dead, as illustrated by the case law.

• If the relatives of a person may oppose the reproduction of his image after his death, it is on the condition of experiencing a personal injury, deduced from an injury to the memory or respect due to the dead "(Cass Civ 1, October 22, 2009).

• The relatives of a person may object to the reproduction of his image after his death, as long as they suffer personal injury due to an impairment of memory or respect due to death. Believing that the publication of a photograph, denoting a search for sensationalism, was in no way justified by the necessities of information, a court of appeal rightly concluded that, contrary to human dignity, it constituted such a thing. the privacy of the relatives, thus justifying a restriction on the freedom of expression and information '.

(Cass Civ.1re, July 1, 2010).

So, the people who can authorize the publication of the image are:
to the target person
to Legal representatives
relatives of the deceased experiencing personal injury

B - The nature of the authorization

In order to avoid any difficulties, it is recommended to resort to an express and written authorization which finds the express authorization of the person concerned.

Example of authorization form:

I, the undersigned (last name, first name, address), authorize the municipality to broadcast the photograph (s) taken during the xxx event of the xx / xx / xxxx on which (s) appear (s) my son / daughter (indicate name and first name). This authorization is valid: - for the publication on the website of the organizer.- (Indicate the other possible uses: in the newspaper of the commune etc.); This authorization is valid for a duration of (indicate a duration) and may be revoked at any time. This authorization is not transferable.

Done at ..... on ..... (Signature)

However, this express authorization is not always necessary, a tacit authorization may suffice.

The tacit authorization is the authorization that can be deduced from the behavior of a person.

Example: for a player participating live on the Téléfoot broadcast, it is assumed that the capture of the image was made in plain sight of the person concerned without his opposition. Indeed, having spoken freely and without constraint in front of the camera it must be deduced that he agrees, even if he did not give without express consent.

From now on, to simplify the steps, an application on smartphone makes it possible to sign a discharge to the persons concerned directly on the screen of a mobile. The advantage is that the person concerned is less frightened by this process than by that of signing a writing.

C - The scope of the authorization

The authorization given by the person for the reproduction of his image is assessed strictly, ie the authorization is valid for a specific support.

Specifically, it is forbidden to make the image a use different from that to which the person has consented.

Example: the authorization given by a manikin for the publication of his photos in the catalog of La Redoute is not worth authorization for the publication on other supports.

Authorization is for the first publication of the image, not the following. It is not possible to give up definitively and once and for all the rights to his image. Thus in case of authorization to the publication of the image, it is necessary that the consent is renewed to allow the new publications.

There are therefore two hypotheses of violation of the right to the image:

• Publication of the image without consent

• Publication on a medium other than the initial support or new publication

However, the authorization to exploit his image by the individual, even

• advertising purposes, can not lead to excesses as to the primary purpose of the authorization. Example: A celebrity had allowed the exploitation of his image

• advertising purposes and finally saw revelations about his private life unveiled by the operator that may affect his image, the case law has stated that: "disregards respect for privacy the publication of photographs not respecting the purpose referred to in the authorization given by the person concerned. The prior disclosure by a person of information relating not only to his wealth situation but also to his way of life and personality is not such as to justify its publication without the consent of the person concerned ".

Example: Loana PETRUCCIANI case. The latter has signed a contract to exploit its image for commercial purposes in the reality show Loft Story. However, facts relating to her private life were revealed at the time of her participation in the game, while she was isolated from the

outside world. Indeed, information about his love life and about his child have been revealed. The facts relating to parentage and family ties, as well as motherhood and sentimental life, fall within the scope of privacy protected by law. The judges of the TGI of Nanterre reaffirm, in an interim injunction dated June 12, 2001 "that in application of Article 9 of the Civil Code, any person, regardless of his notoriety, has the right to respect for his private life , and can oppose the disclosure of intimate information concerning it. It is certain that by concealing, including, the organizers of the game, the existence of her child Mindy, the plaintiff has shown her desire to preserve the intimate and secret character that attaches to her maternity.
L'autorisation donnée à une chaîne télévisée d'exploiter son image dans le cadre d'une émission de télé réalité n'entraîne pas le droit de révéler des informations relatives à la vie privée du participant.

D - Proof of authorization

The burden of proof falls on the person who avails himself of the permission to publish. In the event of litigation, it is therefore up to the person who disseminates the image to prove that the authorization was given to him. Just show the form written and signed by the person concerned.

E - Sanctions of lack of authorization

The finding of the infringement of a publication to privacy and the right of everyone to oppose the publication of his image characterizes the urgency and gives right to compensation.

The judge can condemn the violation of the right to the image by any type of sanctions.

• The form of this remedy is left to the discretion of the judge, who has the power to take any measures to prevent or stop the infringement, as well as to make good the damage resulting therefrom. The allocation of a provision is possible, as well as the publication of the judge's decision in the press organ, on the cover page, this measure being in proportion to the infringement found by the judge, within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms »

(Cass Civ 1, December 12, 2000).

ESSENTIAL

The extra-patrimonial nature of the right to the image relates to the right to prohibit the publication of one's image. It is necessary to obtain the authorization of the person concerned, before using his image. Authorization is for the first publication of the image, not the following, and must be limited.

CHAPTER II: EXCEPTIONS

Section 1: A non-identifiable individual
Section 2: The historical exception
Section 3: The humorous exception

The right to the image is protected by the requirement of a prior and express consent to the use of the image. Nevertheless, this right is not absolute. Other rights may be invoked to counter it.

Example: Freedom of expression opposes in some cases the right to privacy.

SECTION 1: An unidentifiable individual

If the person is not easily identifiable or not identifiable at all, the right to the image no longer plays and it is not necessary to obtain the consent of the person concerned.

This unidentifiable character can result from a 3/4 shot, a person melted in the crowd and that is poorly discerned or techniques of "blurring" faces.

SECTION 2: The historical exception

The image of a person is freely diffusable when it is part of the illustration of a historical event.

Example: a photo showing a person demonstrating in Paris after the victory of the French football team.

The historical work has a legitimate purpose: to inform the public.

SECTION 3: The humorous exception

The humorous exception concerns mainly caricature.

Caricature can be defined as visual art making a comic description of a person by accenting certain traits. The image of the politician, the actor or the sportsman can be targeted by the caricature.

Example: the Puppet Puppet of Cantona or Candeloro.

The jurisprudence has pronounced on the caricature:

 "Everyone has the right to oppose the reproduction of his image and this reproduction, in the form of a caricature, is only lawful to ensure the full exercise of freedom of expression" (Cass. January 1998)

 "Everyone has the right to oppose the use of his image and the use of a person's image in a video game, in a deliberately devaluing sense, justifies the taking by the judge of measures to put an end to the violation of human rights. (Cass Civ 1, July 16, 1998)

Thus, for the caricature to be lawful, it must respect certain conditions:

• It must be intended to make the audience laugh without engaging in denigration. If it can be outrageous, it should not be defamatory.

• It should not be intended to promote a business transaction.

SECTION 4: The artistic exception

In its decision of May 9, 2007, the TGI of Paris affirms that: "in the matter of photographic art, the photographer's creativity and the freedom of expression of this artist is thus limited only to respect for the dignity of the artist. represented person ".

Therefore, as soon as the artistic character of the photograph is demonstrated, the artist's freedom of expression outweighs the right to the image.

SECTION 5: The educational illustration

An illustration for educational purposes does not require the authorization of its subject.

Example: The Dominici case. In June 2000, a company published a book called "The Basics of Rugby - A Handbook for Educators and Trainers". The front cover depicts Christophe Dominici in action during a 1999 rugby world cup match. The back cover is a small part of the picture. Having learned of this publication and not having given his permission for any publisher to use his image to illustrate a book on rugby, Christophe Dominici asked the court to condemn the publisher to pay him a certain amount as damages. This legal action was, in theory, likely to be welcomed since the image, attribute of his personality, had been used without his agreement in a book. However, the judges decided otherwise: "Whereas the cliché litigious shows a professional rugby player, in the exercise of his sporting activity and during his participation in a public event, namely the 1999 world cup; that it does not illustrate in this case the actuality that constitutes this sporting event, but that its publication is in direct link with the event, since its purpose is to present an athlete performing one of the essential gestures rugby, namely the pass - as the publisher rightly argues -; that there is no denaturation of the image and the activity of the player, neither in the reproduction of the photograph, nor in the book itself, and that the photograph illustrates this one with pertinence, in a total respect the dignity of the human person and for the educational purpose of informing the educators and coaches of this sport; (...) the publication in question in no way constitutes the exploitation of the notoriety of an athlete for advertising or commercial purposes, but is justified by the freedom of information for educational purposes and in accordance with the legitimate interest of the public ; that in these circumstances, the violation of the right to the image of the applicant is not characterized. »(TGI Paris, January 10, 2005)

SECTION 6: The Information Exception

A - The general principles

Anyone projected in the field of information, either as an actor or as a spectator, victim or witness can not oppose the dissemination of his image. If a person participates

to a current event, in a public place, the collection of his consent is not necessary for the diffusion of his image. This solution is supposed to facilitate the work of journalists who are not then obliged to seek the agreement of all the people appearing in their photos.

It should be noted that a "news event" is a fact concerning political, economic, social, cultural or sport news. Public information is the only reason to disclose an image without the consent of the interested person. Indeed, under the right to information, the press can, for a particular event, disseminate images provided that they are useful

• information. The freedom of communication of information authorizes the publication of images of people involved in an event, subject only to respect for the dignity of the human person.

The right to the image disappears behind the necessary information of the public which is a particular manifestation of the right to freedom of expression enshrined in Article 11 of the Declaration of the Rights of Man and the Citizen and by the Article 10 of the ECHR. The right to information limits the right to respect for private life. That is, public information overrides the right to privacy when the image illustrates a current event, a "news event". The person whose image is reproduced without his consent can not therefore engage the responsibility of the person who broadcasts the image.

In addition, a criterion of public interest debate has been adopted by the European Court of Human Rights. Concretely, if the published image contributes to the debate of general interest, the right to the image disappears in favor of the freedom of information. There is therefore no need to obtain the consent of the person. The principle of freedom of the press implies the free choice of illustrations of a general debate of the phenomenon of society, subject only to respect for the dignity of the human person.

The case law therefore specifies that the right to the image takes over and overrides the right to information in 2 hypotheses:

When the published image while illustrating a fact of news affects the dignity of the person.

When the notion of "news event", "news event" is disputed.

In both cases, the consent of the person concerned must be obtained again.

As a public figure, the athlete must accept that his image is reproduced without his prior consent.

Thus, the athlete is a public person whose image can be freely broadcast if he participates in a sporting event. And by participating voluntarily in this event, the athlete agrees in some way in advance and tacitly so that his image is broadcast.

Just like a politician participating in a meeting, an examining magistrate participating in a reenactment, a celebrity going up the steps of the Cannes festival, ...

B - Case law illustrations

Example: The publication of a person's photograph, even taken in circumstances foreign to their professional activities, is lawful when it was intended to illustrate an article about a current event in which that person was involved . (Cass Civ II, June 30, 2004)

Example: The Barthez affair. Paris Match magazine published an article entitled "Linda Evangelista's blues in the arms of her blue". This article was dedicated to the liaison between the goalkeeper of the French football team, Fabien Barthez, and the model Linda Evangelista, and illustrated with photographs of the couple hugging each other while attending the tennis tournament in Monte-Carlo. Barthez has assigned the company Hachette Filipacchi in compensation for the injury to his private life and his image. And the Court of Cassation was right: "Whereas the photographs taken at the tennis tournament Monte Carlo, without the knowledge of interested parties with a framing insulating the surrounding public, were published and disclosed without their permission, without that the company Hachette Filipacchi associates can avail itself of the public character of the place where the photos were taken to invoke any waiver of Fabien Barthez's rights ". (Cass Civ II, March 10, 2004)

The contribution of this case law is in the factual situation: a public person, in a public place. Prior authorization should not therefore be necessary. However, it is requested to obtain the prior consent, because the framing "isolates" the couple from the rest of the crowd. Therefore, it is no longer an image representing a current event (the Monte-Carlo tournament) but a photograph undermining the privacy of privacy because focused on the people involved. It is no longer a group image allowed without consent but the image of a person who is individualized. The framing of the photograph is therefore decisive. Therefore, it is not possible to rely on the public character of the place to try to escape the commitment of responsibility. It would have been different if the cliché had not been centered on the couple but on the grandstand as a whole.

Example: A weekly newspaper published an article on traffic accidents illustrated with the photograph of an inanimate young man lying half-naked on a stretcher, the bloody face around which rescuers were working was condemned by the Court of Appeal to pay damages to the family members of the deceased. She recalls that the article did not relate to a current event but was devoted

• a phenomenon of society and that the photograph published without precaution of anonymity undermined the dignity of the victim and necessarily the intimacy of the private life of his family. The Court of Cassation again breaks the judgment and criticizes the Court of Appeal for not having investigated whether the information of the readers justified the publication of the photograph in question, nor of having characterized the infringement by the latter. ci to the dignity of the victim.

(Court of Cassation 2nd Civil Chamber 4 November 2004)

Example: The accident to a famous actor is a news event that the press can legitimately report.

The Court of Appeal had ruled that the actor's right to his image was violated by the publication of photographs showing him lying on a stretcher at the time of his evacuation by medical helicopter. However, the Court of Cassation decides otherwise and states that the Court of Appeal failed to retain that the photographs, in direct relation with the article they illustrate, and taken in a public place, characterized no violation of dignity of the person of the person concerned. (Cass Civ 1, May 16, 2006)

Example: A weekly published an article, announced on the cover under the title "PACS: Christine Boutin's France", entitled "Christine Boutin, the pasionaria of the anti-PACS Notre Dame of intolerance", illustrated by a photograph of a group of people taking part in a protest against PACS and with the following caption "The anti-PACS demonstration of 7 November. We saw a lot in the street this weekend this France who fought the pill and the abortion and which today demonises the civil pact of solidarity ". The judgment that sentenced the weekly to pay damages for infringement of the right to the image was broken by the Court of Cassation. The Court of Appeal had held that the photograph had been diverted. While for the Court of Cassation, the photograph in question, taken during a public demonstration against the civil pact of solidarity, was in direct relation with the article published and that the legend which accompanied it expressed a comment also in relation directly with this event. Cass. Civ. 2nd, December 11, 2003.

The Court thus reaffirms the right of public information. The principle of freedom of the press implies the free choice of illustrations of a general debate of the phenomenon of society, subject only to respect for the dignity of the human person.

Example: By devoting an article to the police officers concerned by the violence and the dramatic consequences resulting for their loved one, a weekly only satisfies the readers' right to a legitimate news information. The publication of photographs, taken at the burial of a police officer in the presence of official authorities and which illustrate the article in an appropriate manner, does not affect the dignity of the widow appearing on the clichés. (Cass Civ 1, March 7, 2006)

Example: The IMT ruled that there was no infringement of the right to image in the publication of photographs illustrating an article relating to a judicial procedure and exposing a young woman engaged in prostitution since the age 16 years old with football stars. (TGI Paris, April 20, 2010, Zahia C / VSD)

Example: The Real Madrid case. The Real de Madrid club and some of its best known players have seized the TGI asking it to ban several online betting companies any reproduction of their image and their name on their website. The TGI rejected the applications. The use of the images served only as a presentation of the match on which the bet was organized. Similarly, the use of the name of the athletes was only intended to remind bettors names of players called to play the football match. Finally, for judges, the use of images and the names of athletes is not prohibited because it informs the public about a public event to which they should participate. (TGI Paris, July 8, 2005)

ESSENTIAL

There are exceptions to the need for prior authorization:

• When the individual is unidentifiable

- The historical exception
- The humorous exception
- The artistic exception
- The educational illustration
- The information exception

TITLE 2: THE PATRIMONIAL LAW IN THE IMAGE

The patrimonial concept of the right to the image relates to the right to commercially exploit its image. Several categories of people are involved in marketing their image. The model, the actor, and the athlete in particular will be able to secure additional income by marketing their image. The patrimonialization of the image is the phenomenon of bringing an element into the heritage of the individual; an element that originates only in the personality.

The right to the image is an extra-patrimonial right by nature, nevertheless, it becomes for the public personages a patrimonial right, even if the extra-patrimonial element never disappears.

Example: For the first time, judges consider that the image right "has the essential characteristics of a heritage attribute". It's a heritage element. The Court of Appeal goes on to say that "in these circumstances, the image may be subject to contracts subject to the general regime of obligations". (Court of Appeal of Versailles of September 22, 2005)

Example: The parties have the possibility to confer on the image and the voice the nature of a foreign heritage element in article 9 of the Civil Code. There is therefore a recognition of the heritage of the image. (Paris TGI September 28, 2006)

Unlike the right to the image in its extra-patrimonial aspect, which is untransmissible and extinguishes upon the death of the person, the patrimonial right in the image is transmissible to the heirs by succession.

Example: "The patrimonial right that makes it possible to monetize the commercial exploitation of the image is not purely personal and is transmitted to the heirs". The heirs are therefore entitled to take action to obtain compensation for the property damage related to an infringement of the image of the deceased person. In the absence of an assignment, it is not possible to exploit it commercially, on pain of being ordered to pay damages. (TGI Aix en Provence, November 24, 1988)

ESSENTIAL

The patrimonial concept of the right to the image relates to the right to commercially exploit its image.

The patrimonialization of the image is the phenomenon of bringing an element into the heritage of the individual.

The patrimonial right in the image is transmissible to the heirs by succession.

TITLE 3: THE PATRIMONIAL LAW FOR SPORTS IMAGES

CHAPTER I: CHARACTERISTICS OF SPORTS IMAGE

Section 1: The heritage of the athlete's image
Section 2: Declinations of the athlete's image

• Art starts with a technique; then there is a geometry, an aesthetic and an emotion. A pass of 50 meters of Platini or a dribble of Maradona, it is pure art. It's art I tell you and I claim the artist's name "(Platini, Team, 1987).

SECTION 1: The heritage of the athlete's image

Sportsmen have become artists like the others, they also commercialize their image.

This phenomenon is due to the fact that sport conveys positive values in the eyes of the general public (courage, quest for performance, surpassing oneself ...). These are values that strongly interest the communication of all companies because they last beyond the competition, so the athlete is the support of an image.

In these conditions, an image market is created. There is a sports image industry, an individual sponsorship market, merchandising, derivatives. In these markets, business relationships are formed and commercial transactions are concluded. So there are image contracts that dress these transactions. In this sense, the image is today an object, a thing in commerce. This movement of heritage of the athlete's image is translated into jurisprudence. There are decisions that sanction companies that have used the image of sportsman in the commercial field without asking permission from these athletes. There were penalties because the judges considered that the athlete had an exclusive right to his image and therefore he is the only one who can authorize or not his reproduction. In these decisions, the judge compensates the injury suffered by the athlete by indicating that there is a financial loss. Thus, the image is an element of marketable wealth.

Example: Judgment on Mr. Platini: In this case, the judge relied on the law of property. The dispute is born of a book on Platini, extremely positive that retraces his life through his goals, but without his permission. The judges acknowledge that Platini suffered economic damage because he was unable to monetize his authorization. But in the calculation of the damage, the magistrates also notice that the book has had a positive effect on the image of Platini and that his brand image has increased. So there is a subtraction in the calculation of the repairs.

Moreover, the high level sportsman is not simply a holder
the right to prohibit the publication of one's image in the name of the right to respect for one's private life. He also has a monopoly on the commercial exploitation of his image.

This is not to protect the privacy of the athlete because the privacy of the player is not in question. The image is no longer attached to the private life of the person, it becomes a good likely to circulate and be coined. It is no longer a question of prohibiting the diffusion of the

image but of authorizing its exploitation and of perceiving the benefits by means of a contract of image negotiated for example, with sponsors. The image of the athlete has become a considerable financial windfall. Famous athletes are often called upon to grant rights to the reproduction of their image, as part of advertising or promotional services. The professional athlete enjoys a certain popularity and realizes advertising by minting his right to the image. The notoriety of the sportsman leads the big brands to want to associate with the image and the name of the sportsman.

There are two ways to exploit the athlete's image:

• Promotion of a specific product related to the discipline concerned. Example: Messi winding the merit of football boots

• The promotion of a "generic" product intended for the general public. Example: Tsonga sharing his Kinder Bueno with his neighbor.

The exploitation of the athlete's image is done through image contracts and advertising contracts.

But beware, when the image becomes negative, it makes some sponsors run away.

Example: Following the behavior of the players of the French football team during the 2010 FIFA World Cup, Gillette has not renewed its partnership with Thierry Henry as Puma with Nicolas Anelka.

SECTION 2: Declinations of the athlete's image

There are three types of images of the athlete:

 The individual image: it is the image of the athlete as an individual and not as a professional athlete.

 The individual associated image: it is the image of the sportsman in the colors of his club in the presence of other players of his team.
 The associated collective image: it is the image of the sportsman in the colors of his club with his staff. The associated image is collective when more than 50% of the workforce is concerned according to the National Collective Agreement on Sport. For the Football Charter, the image is collective as soon as it brings together at least 3 players from the club's squad.

The distinction is necessary because the legal regimes are different.

For the strictly individual image, the player is free from his exploitation but he must inform the club and respect his contract of employment if it deals with the issue.

For the individual associated image, the club must obtain the prior authorization of the player to exploit the image.

Finally, for the collective image, the club can exploit it without the authorization of the players. They must be simply informed.

It should be noted that for the two associated images, collective agreements lay down rules in the chapters they entitled

the exploitation of the associated image as part of the execution of the employment contract ". This means that the counterpart to the exploitation of the associated image is salary.

ESSENTIAL

There are three types of images of the athlete:

• The individual image (II)

• The individual associated image (IAI)

• The associated collective image (IAC)

CHAPTER II: THE EXPLOITATION OF THE IMAGE OF SPORTS

The terms of exploitation of the image, in general rules, are the same whether for the athlete, for the model, for the artist or other.

SECTION 1: Farm Management

The athlete's image can be managed by the athlete himself, his agent, the federation or the club to which he belongs, the event organizer, the sponsor, ...

A - By the athlete or his agent

The sportsman himself can exploit his image. For example, by publishing a book about his life or career at his own expense.

• On the other hand, agents have an important role. The heart of the sporting agent activity lies in the placement of sportsmen with the clubs for the collective sports or the organizers of sports events for the individual sports. It is nonetheless common in practice for agents to offer other types of services, including the management of individual image rights. As such, the sports agent will negotiate on behalf of the athlete and in agreement with him the advertising contracts, the sponsorship contracts.

B - By the organizer of a sporting event

The organizer of a sports event can exploit the image of athletes. Article L. 333-1 of the Sports Code confers the right to use the images of the sports event

• its organizer: "The sports federations, as well as the organizers of sports events (...) are the owners of the right to use the sports events or competitions they organize. ".

This exploitation right of the organizer includes: the audiovisual exploitation, the diffusion of photos, as well as the edition of books dedicated to the event and containing photos of the event.

C - By a society

It is also possible that the sportsman concedes, for remuneration, the management of his individual image to a company.

Example: two former players of Olympique Lyonnais, Edmilson and Juninho, had transferred their rights on their image to a company for a lump sum.

Example: The Pogba case. His former agent, when Pogba was playing in Le Havre, held the image rights of the player through a classic stock company. Having changed his representative, Pogba could not agree on the resumption of the image rights that he had previously conceded. So, two solutions were possible:

• Make an assignment or a concession to a company. Granting an assignment for a price or a concession of its right for a fee is not tax-efficient to the extent that these counterparties reinstate the tax base.

• Make a contribution to society.

The dominant practice is to provide, in various ways, the right to a society. This opens the possibility for athletes to participate in the profits made by the latter.

D - By a club or federation

The club can use the image of one of its players to ensure its own promotion and sale of its products in the same way that a federation will use the image of the athletes of the team of France.

But it is not about the individual image of the player, it is about the individual image associated with the image of the club or the federation.

SECTION 2: The sponsorship contract

A - The definition

The sponsorship contract is the convention by which a company (the sponsor) provides financial or material support to a sports event, an athlete or a club (the sponsored).

In return, the sponsored undertakes to promote the image of the brand.

This contract is subject to the general rules on contract law. However, some specific provisions have been planned.

Example: The law prohibits sponsorship of certain products such as alcohol, tobacco and drugs.

B - The object

The object of the exploitation contract of the image must be determined with the greatest precision under penalty of nullity of the contracts. The operating conditions of the image must be defined and the rights granted must be precisely determined.

The contract must also determine the geographical area of the exploitation, as well as the supports (Internet, written press, photographs), the duration, the products or services associated with the images.

These clarifications are explained by the fact that the image also remains an extra-patrimonial element. Whoever acquires the rights knows that the value of the images he acquires will be attacked by the right to information, especially because the image of the athlete can be used by the media in the name of the right to information.

Such a limitation of the assignment of the image is a condition of validity of the contract.

Examples of limitations:

• Support.

Example: is only allowed the diffusion of the image in the press, not in TV.

• Geographic limitation.

Example: the image can only be used in France and Spain.

• Limitation in time.

Example: the French Tennis Federation has put in place a standard contract that must be signed by all players participating in the tournament of Roland Garros and Paris Bercy. The player assigns rights to the image for the benefit of the organizer in return for registration to

the tournament and the opportunity to win a portion of the prize money. This assignment is valid only for the duration of the event.

C - Obligations

The parties to the sponsorship contract have respective and reciprocal obligations.

The sponsor must pay the sponsored. The remuneration may include a bonus linked to the results obtained or to an increase in the reputation of the sponsored party.

It must be clearly defined in the image contract. The parties are nevertheless free to provide for a fixed remuneration or proportional to the number of broadcasts.

Finally, the remuneration may also include a material part.

The sponsored has rather behavioral obligations. The crucial point is the issue of exclusivity. In most cases, a sponsor can not admit to having the name of one of his competitors next to his. This will result in the sponsor being prohibited from entering into similar contracts with other sponsors. In addition to this obligation not to infringe the exclusivity granted to the sponsor, the sponsor has the obligation to highlight the image and the mark of the sponsor. This translates concretely into an obligation to display

D - Clauses

The sponsorship contract is composed of the standard clauses that are found in most contracts: (see the law of contract course)

• The arbitration clause (or arbitration clause): in case of dispute

on the occasion of the execution of the contract, the parties will not go through the traditional judicial way, but will have recourse to an arbitrator, whom they will designate and who will be in charge of settling the dispute. Its main advantage lies in the discretion of this procedure, so that the sponsorship amounts are not disclosed; unlike the judicial process which is public.

• The resolutive clause: in the event of non-performance by one of the parties of its obligations, the termination is possible by a party.

• The penalty clause: the parties agree in advance, the amount of damages and interest that will be due by the party who has not met its contractual obligations.

E - Restrictions

1. No reference to the employer

No reference shall be made to the employer's image, name, emblems and other signs.

Article 12.11.2 of the National Collective Agreement on Sport states that: "The employee may carry out for his own benefit any individual action of commercial or promotional

commercial nature, concerning his image and or his name, but without reference to the image. , in the name of the emblems and other distinctive signs of the employer ".

Example: If Rabiot signs a contract on his image, he can not be represented wearing the PSG jersey.

Thus, if a sponsor can use the player's individual image, he can not use the player's associated image unless he is in the club's partner category.

2. The prior information of the marketing

The athlete must first inform his club of the marketing of his image, before the signing of the contract.

Indeed, the club may have different business partners possibly leading the athlete not to sign an individual image contract with a competitor.

Example: Rabiot who plays in the PSG with a Nike jersey and sign a contract on his individual image with Adidas, in which case the interests of the club and the sportsman would be in contradiction. For this reason, the contract of employment that connects the athlete to his club generally lists the trading partners and the range of products on which the club is committed and the list of products for which advertising and promotional actions are prohibited. .

3. The minor athlete

Holder of a patrimony, the minor can not manage it alone. The intervention of his parents is required for the signing of the contract.
In addition, since parents have the administration and enjoyment of their child's property, it is they who perceive the fruits of the exploitation of their child's image until the child reaches the age of 16 years (article 371-2 of the Civil Code). In the absence of both parents' signatures, the contract is void.

4. The case of athletes in the France team

Article 12-11-1-2-1 of the National Sports Collective Agreement states that "The conditions of this exploitation must be provided for in the employment contract or in an amendment; failing this, the prior agreement of the employee (s) whose image is used is necessary ".

A clause can thus stipulate that: "The French Football Federation has the exclusive rights to exploit the collective image of the players of the France team".

In practice, an amendment to the employment contract is negotiated annually between the club and its player in order to set the conditions for this operation.

SECTION 3: The Right to Collective Image

A - The establishment and removal

The legislator, by the law of December 15, 2004, had decided to create a Right to Image Collective, the DIC.

The right to the collective image results from the idea that there is an image of the team or the club that is different from that of the players composing its workforce. The collective image aims at the representation of several of the players of the team who put their image at the service of their employer.

The legislator has started from the idea that a significant part of club revenues does not depend directly on athletes' sporting performances and revenue from ticketing or public subsidies, but on revenue from the sale of audiovisual broadcasting rights. , marketing, merchandising (sale of derivatives). The strategy of the big clubs has indeed consisted in diversifying the club's resources in order to be less dependent on sports results, which by their nature are random. The revenues derived from the exploitation of the image of the club must also benefit the athletes.

Sports companies and managers of professional teams consider that their legal status is an obstacle to their development and the improvement of their sporting competitiveness. In concrete terms, the clubs would be penalized by the heavy social and tax charges to which they would be subject. The departure of many French players abroad would be an illustration of the unattractiveness of the French legal framework. This new regime was therefore adopted to improve the competitiveness of clubs that could not effectively fight against their European competitors subject to lower taxes and burdens.

On December 9, 2004, the Constitutional Council validated this mechanism: "the legislator was able to take into account the peculiarities of the remuneration of professional sportsmen by foreseeing that the part of their remuneration corresponding to the commercialization of the collective image of the team to which they belong is not regarded as a salary (...). Through this measure, he has heard a goal of general interest, which is to improve the competitiveness of French professional sports; In these circumstances, Article 1 does not disregard the principle of equality between employees.

The DIC was provided for in Article L.222-2 of the French Sports Code: "The remuneration paid to a professional athlete by a company (...) and which corresponds to the marketing by a company is not considered as salary. said company of the collective image to which the sportsman belongs ". Specifically, the sportsmen were paid, a supplement of salary, a special remuneration which, in margin of the salary, corresponded to the commercialization of the collective image of the team to which they belong. This share of the remuneration awarded for the marketing of the collective image was not considered as a salary and was exempt from social, employee and employer contributions.

However, the DIC no longer exists, it was removed in 2010 because it was considered a niche whose sole purpose was the reduction of the payroll.

B - The renewal

The law of 1 March 2017 to strengthen the competitiveness of French professional clubs has put in place a new remuneration system closer to the former DIC.

Article 17 of the Act allows clubs employing an athlete or a professional trainer to remunerate them in the form of a fee in return for the commercial exploitation of their image. This fee will not be subject to social security contributions. An athlete can now benefit financially from the exploitation by the club of his image, without this being considered as salary.

The principle is the same as for the DIC except that it is no longer the collective image that will be exploited but the individual image of the athlete.

The athlete will therefore hold two contracts with his employer:

- A work contract

- An image exploitation contract

Recent device, it is necessary to await its effective implementation to be able to measure its range and its effectiveness.

ESSENTIAL

Many athletes give their image to partners under sponsorship contracts that also provide for multiple obligations: photographic sessions, public relations operations, participation in advertising clips, etc. The athlete's image can also be transferred to his agent or to a specialized company.

The law of March 1, 2017 to strengthen the competitiveness of French professional clubs provides that the revenues from the exploitation of the image of the athlete garnered by the club and donated to the athlete are not considered as salary or remuneration.

droits de la personnalité[1] :
Droit extrapatrimonial [2]
Droit patrimonial[3]
droit à l'image[4] .
dommages et intérêts[5] :
autorisation expresse[6]
l'autorisation tacite[7].
consentement[8]
La caricature[9]
La patrimonialisation de l'image[10]
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la Convention Collective Nationale du sport[12]
lobbying[13]

APPENDIX RIGHT TO NAME AND IMAGE

APPENDIX RIGHT TO NAME AND IMAGE - TOWARDS A NEW MODE OF REMUNERATION OF SPORTS IMAGE

thelawsp Aug 17, 2017 0 Articles, Folders, Legislation

After the adoption of the law of 27 November 2015 on the status of high-level athletes and professionals, a new reform of professional sport is under way.
Indeed, a bill proposed by two senators of the Socialist and Republican Group, Messrs Dominique BAILLY and Didier GUILLAUME, was adopted on first reading by the Senate on October 26, 2016, after having been tabled on September 12, 2016.
This proposal aims, as the name suggests, to "preserve the ethics of sport, strengthen the regulation and transparency of professional sport and improve the competitiveness of clubs".
Like the law of November 27, 2015, which stemmed from the demands of the KARAQUILLO Report on the status of athletes, this bill is a continuation of the report submitted on April 19, 2016 to the Secretary of State for Sport, Mr. Thierry BRAILLARD, by the Great Conference on French Professional Sport.
The explanatory memorandum recalls, in particular, the major social role played by sport, and the need to promote an ethical sport, to reinforce the ethics of the actors and to preserve the values of sport, both in the amateur and professional practice of sport.
In this respect, there is an alarming and somewhat exaggerated observation of the situation of French professional sports, referring both to the appearance of new forms of cheating and to the improvement of competition manipulation techniques. This report of the editors is according to them characterized by a lack of respect on the part of the sports actors of the deontology and the values of the sport putting more and more bad the integrity of the various sports.
On the other hand, the depositories of the text want professional sports to display a greater transparency of financial flows, implying that this is a sector where there are still areas of shadow and drift, such as if an Al Capone could hide in each of the actors of the professional sport. It also mentions the economic model of professional clubs highlighting their dependence on local authorities. Afin de répondre à ces problématiques, la proposition cible quatre thèmes, annoncés comme des objectifs :
Preserving the ethics of sport and strengthening the fight against the manipulation of professional sports competitions
Better control the financial flows of professional sports and the activity of sports agents
Improve the competitiveness of professional clubs and the professionalization of its actors

Promote the development and media coverage of women's sport

It is on the third theme aimed at improving the competitiveness of professional clubs that we will concentrate our study of this proposal of the law, and more particularly on the development of a device which would make it possible to remunerate the exploitation of the image of the 'an athlete, regardless of the remuneration he perceives as a' player 'or' competitor '.

Through this study, we will return to the peculiarities of the sportsman's remuneration related to the exploitation of his image, the solutions adopted in the past and what the text of October 26, 2016 can do.

Current state of the athlete's remuneration related to the use and exploitation of his image

The sportsman as a public person is likely to see his image be the object of conventions intended to govern the exploitation of this one for a commercial purpose (reference to the book DDS on the image - §3 the exploitation commercialization of the sportsperson's personality rights - p325 to 334). For example, such exploitation may be governed by a sponsorship agreement whereby the athlete authorizes a co-contracting firm to use his image to advertise the products he markets.

In return for the right given by the athlete to the company to use his image, the latter will receive remuneration in cash or in kind. In this case, we speak of exploitation of the unassociated individual image of the athlete, characterized by the fact that the athlete's image is not associated with that of his employer club during the operation in question.

Consequently, the parties being bound by a commercial contract, the remuneration paid to the athlete is not in the nature of salary within the meaning of Article L.242-1 of the Social Security Code, and is therefore not subject to social contributions.

What about the sportsman's remuneration linked to the exploitation of his image when he is an employee?

Professional sports clubs often use the image of their sports workers to promote club sponsors, develop merchandising activities, or promote upcoming sporting events. If so, we speak of the associated image of the athlete, fruit of the association of his image and that of his club. There are two types of exploitation of the associated image of an athlete:

The associated collective image corresponds to the exploitation of the image of a minimum number of sportsmen and women on the same support. The minimum threshold of players is defined by the various collective agreements specific to each sport, in that, below the minimum number, the exploitation will be considered as the associated individual image and will require the agreement of the athlete before each exploitation. of his image.

The associated individual image is analyzed as the reproduction or the representation associated by any means whatsoever to the image of the club or its activities. Generally, by signing his employment contract, the athlete grants his club the right to use his image.

The relations between a club and its salaried sportsman being exclusively governed by the contract of employment, it seems certain that a commercial contract concluded between the two parts in order to exploit the image of the athlete would be requalified in contract of employment, in particular because of the existence of a legal subordination relationship between the parties.

Clearly, there is no separation between the remuneration paid to the sportsman in return for his purely sporting activity and that paid in return for the exploitation of his image, the athlete only receiving the remuneration provided for in the employment contract.

However, this classic system of remuneration of the salaried athlete does not always correspond to the economic reality of his activity. Indeed, if the main activity for which an athlete is an employee remains the achievement of a sports performance, it is clear that the exploitation of his image also represents a professional activity developed for the athlete.

It seems legitimate to think that some clubs with significant media exposure and developed commercial activities, take into account in the negotiation of the remuneration of the athlete,

its marketing and commercial potential. Unfortunately for the clubs, all the remunerations paid by a club to its salaried athlete fall within the scope of Article L.242-1 of the Social Security Code, and are therefore subject to social security contributions.

The Right to Collective Image (DIC): an ephemeral mechanism but a source of inspiration

In order to bring out an advantageous solution for the French clubs which suffered from a strong gap of competitiveness and attractiveness (fiscal, economic, sports) with its European neighbors, a first mechanism named "Right to the Collective Image" (DIC) had been imagined by the law of December 15, 2004, and integrated into the sport code in Article L.222.2. This article stated:

"The salary paid to a professional athlete by a company subject to Articles L. 122-2 and L. 122-12 is not considered as salary and corresponds to the marketing by that company of the collective image of the team to which the athlete belongs. ".

Thus, this mechanism operated a separation between the amounts paid to the sportsman for physical and sport performance, and the sums paid for the commercial exploitation of the collective image of the team. This DIC thus made it possible to subtract the salary classification of these sums paid to the sportsman as part of the collective image, and to avoid their submission to social contributions. Nevertheless, the law provided that the collective agreements specific to each discipline should determine the part of the athlete's remuneration that is not considered as salary, while setting a threshold that may not exceed 30% of the total gross remuneration of the athlete. Collective agreements were also to provide for the method of fixing this part of remuneration according to the level of commercial revenue generated by the exploitation of the collective image of the team.

However, certain collective agreements such as the Professional Football Charter have intended to set the maximum threshold of 30% as a threshold in principle to determine the share of the athlete's remuneration linked to the exploitation of his image, without, however, regulating the share. commercial revenues generated by the exploitation of the collective image of the team.

As a result, the share of the player's remuneration corresponding to the exploitation of his image was of a lump-sum nature, and the mechanism remained applicable to all professional players regardless of their reputation and their image potential.

This mechanism has therefore had a great success with professional clubs, allowing them to reduce their payroll, while there was not always a true correlation between this part of remuneration related to the image and the financial revenue related to this. exploitation of the collective image of the team.

However, the DIC has been singled out for some aspects, in particular its cost too high and uncontrollable for the state, coupled with an unflattering attractiveness, all against the backdrop of the economic crisis.

It is in these conditions that the Right to Collective Image was perceived as a social and fiscal niche, and was finally removed by the Social Security Financing Act for the year 2010.

What can change concretely with the proposed law

Although inspired by the DIC, since the main objective is to improve the competitiveness of professional clubs, the mechanism developed in the bill seems to erase certain defects, and to differentiate in many respects. This is instructive reading the nine paragraphs that will be likely to complete the article L.222-2-3 of the sport code in case of passage of the proposal.

At first, the article included in the device the coaches, who were the "big losers" of the time of the DIC. It seems appropriate to integrate them so that they, like the players, benefit partly from their remuneration linked to the exploitation of their image, especially since this image can sometimes be worth more than that of some players. This alignment of the statutes can therefore be an interesting novelty.

In a second step, and this is one of the most important creation points, it is planned the conclusion with the club (association or sports company) of a contract distinct from the

employment contract, which would be relative to the use and the commercial exploitation of the image, the name, or the voice of the sportsman or coach. This tightness between the two contracts would make it possible to avoid any situation favorable to a requalification in salary elements of the sums perceived for the use and the exploitation of the image of interested parties. So there would be two contracts with the club: the employment contract, then a second contract without any legal subordination. Thus, without this link, the fee that will be paid to athletes and coaches can not be equated with a salary or remuneration paid in consideration or during work.

However, this requires two conditions:

The physical presence of the persons concerned must not be required to use and commercially exploit elements of their personality.

The royalty paid should not be a function of wages, but of revenues generated commercially by the above-mentioned use and exploitation.

Concretely, the contract which will materialize this mechanism will, on pain of nullity, establish a strict and unequivocal framework as for the extent of the use and the exploitation of the elements of personality (duration, object, demarcated geographical area, context, media ...). The calculation methods must also be specified.

A decree should come to fix the modalities of application of the new provisions, indicating in particular a ceiling of the fees per discipline, which should not exceed 10% of the revenue generated by the use and the commercial exploitation. This amount would then constitute the envelope available for clubs, allowing them to pay their athletes in the form of a fee.

Lastly, the text specifies that a convention or national collective agreement, concluded by discipline will specify the methods of application of the article. Collective bargaining seems inevitable in order to clarify the system and take into account the economic reality of each discipline. In this sense, we can imagine that each agreement will specify in particular, from the overall remuneration of the athlete (work contract and commercial contract), a ceiling above which it will no longer be possible to remunerate the athlete in the form of a fee. Similarly, it could be a trigger threshold below which it is not possible to pay in the form of a fee, this may target young professional athletes whose fame and image potential is not yet proven. The outcome of collective bargaining will therefore be a key factor in the application of the text.

The present text is currently under discussion in the National Assembly, it is likely to know developments in the coming weeks.

The LAWSP will soon propose a detailed study of the present text, on the genesis of this project and the evolutions that the text has already undergone since its transmission to the Senate on September 12th. This will allow us to return to some questions that the text poses and what it can bring to professional clubs.

Lucas Vigneron, Sandro Borrelli

APPENDIX RIGHT TO NAME AND IMAGE - UNAUTHORIZED DIFFUSION OF IMAGES OF THE FRANCE FOOTBALL TEAM MAY COST

Thursday, 13 September 2018 19:16 | Written by Antoine SEMERIA | | |

In 2015, the company Winamax concluded with the French Football Federation and the Professional Football League a contract of law to the bets, according to which the French Football Federation and the Professional Football League granted him for five years the right to organize and offer bets, on the sports competitions that each organizes, and to promote them, through the perception of a percentage of the bets on the competitions organized by the French Football Federation, on the site winamax.fr.
In November 2015, the company Winamax broadcast on its Twitter page "tweets" containing still and animated images from games played by the French football team.
The French Football Federation has had a judicial officer make a statement on the Twitter account of the company Winamax reporting publications and referral through a hypertext link to its Paris site.

In January 2016, the French Football Federation solicited and obtained from the president of the Commercial Court of Paris the authorization to summon the company Winamax at short notice before its jurisdiction.

On May 17, 2016, the Paris Commercial Court lifted its jurisdiction because of a jurisdiction clause and appointed the Tribunal de Grande Instance of Paris to hear the dispute.

On July 5, 2016, the Tribunal de Grande Instance of Paris declared the company Winamax responsible for contractual breaches due to the broadcast of the three tweets of November 13, 2015 on its Twitter account and:
- declared the company Winamax responsible for a delictual fault due to the broadcast of two tweets on his Twitter account,
- dismissed the French Football Federation's request for judicial resolution of the contract of 25 June 2015,
- sentenced the company Winamax to pay the French Football Federation the sum of 15,000 euros in damages.

The company Winamax appealed this judgment.

The Court of Appeal of Paris, according to a judgment of September 6, 2018, recalls first of all that, "unless authorized by the organizer, the services of communication to the public by electronic means non-transferee of the right of exploitation can only capture the images distinct from those of the actual event or sports competition ".
She then adds that "the rights granted to Winamax by the French Football Federation only related to the competition calendar, the names of the competitions, the results of the matches, the game phases and the Competitions and not the images, animated or not. , from the Competitions as well as the direct or indirect distribution, including via hypertext links, on its Website, of all images, animated or not, of the Competitions ".
The Court notes that in this case the company Winamax used, without authorization, images from the France-Portugal match and a photograph of players from France and England on 17 November 2015.
In doing so, the Winamax company committed several contractual and delictual errors.
On the quantum of reparations, the Court of Appeal decided to increase the amount of damages by holding that:
"The broadcast of the three tweets of November 13, 2015 caused the French Football Federation prejudice aggravated by the exclusive grant to the PMU rights to the image of the

players of the team of France and the claim of it, which will be repaired by the allocation of the sum of 30,000 euros.
On the delictual fault it holds that by the broadcast of two tweets on November 17, 2015 on his Twitter account echoing his sports betting website, allowed the company Winamax to take undue advantage of the reputation of the match whose rights 'exploitation were conceded to the French Football Federation by a reciprocal agreement with the British Football Federation (...); that the damage thus suffered by the French Football Federation justifies the award of damages in the amount of 20,000 euros ".
The Court also decides to prohibit the company Winamax "to publish without authorization, in any form whatsoever, images or shots from competitions organized by the French Football Federation."

The company Winamax is also ordered to pay the French Football Federation the sum of 6,000 euros on the basis of article 700 of the Code of Civil Procedure.

CA Paris, 2, 2, 06-09-2018, No. 16/16378

APPENDIX RIGHT TO NAME AND IMAGE - LFP CONDEMNS SPANISH LAW SOCIETY HAS FRAUDULENTLY EXPLOITED HIS TV RIGHTS

Wednesday, 04 April 2018 14:05 | Written by Antoine SEMERIA | | |

In 2015, the Professional Football League had a Spanish company specialized in the free distribution of sports competitions, after having found that the latter allowed through its website to view, in fraud of its rights, the football matches of the competitions that she organizes.

By judgment rendered on March 19, 2015, the Tribunal de Grande Instance of Paris:
- ordered the Spanish company to proceed with the deletion of all content allowing to watch live or slightly delayed matches organized by the Professional Football League under penalty of 5,000 euros per day and by established link
- ordered the Spanish company to cease for the future to put on line the aforementioned contents under the same strain.
The company under Spanish law did not intend to respect the terms of this judgment, which forced the Professional Football League to seize on several occasions the execution judge in liquidation of the penalty imposed on March 16, 2015.

Thus, by judgment of 26 April 2017, the execution judge sentenced the Spanish company to pay to the Ligue de Football Professionnel the sum of 920 000 euros representing the liquidation of the penalty imposed by the judgment of 16 March 2015 in respect of the 184 hypertext links found on 16 and 21 December 2016 in addition to costs and the sum of 5,000 euros pursuant to Article 700 of the Code of Civil Procedure.

The company under Spanish law appealed the judgment, finding that only 15 of the 184 ties could have infringed the rights of the League.
This argument is rejected by the Paris Court of Appeal, which finds under a judgment of 29 March 2018 that the presence of these hypertext links, at the time of the bailiff's report, "demonstrates on its own that the company does not has not respected the injunction not to put online content related to the broadcast of games organized by the Professional Football League ".

The Court adds that the appellant does not show that he encountered any difficulties in executing the judgment rendered by the Tribunal de Grande Instance of Paris on 16 March 2015.
The appellant is therefore ordered to pay the Ligue de Football Professionnel the sum of 920 000 € in addition to 10000 under Article 700.

CA Paris, 4, 8, 29-03-2018, No. 17/09966

Updated (Wednesday, 04 April 2018 14:15)

Football Rights TV French Football Federation FFF French Football League LFP

APPENDIX RIGHT TO NAME AND IMAGE - CONDEMNATION OF A SPORTY ADVOCATE ATTORNEY FOR THE IMAGE AND NAME OF HIS OLD CUSTOMER

Thursday, 01 February 2018 12:45 | | |

In 2011, a professional football player signed an agreement with a sports representative to represent him and assist him in the study, writing and negotiation of all his contracts as a professional sportsman, in the whole world.
The effects of this agreement ended in 2012.
A dispute arose over the payment of fees claimed by the lawyer at the end of this contract.
Another dispute arose because of the use by the sports representative lawyer, after the expiry of the warrant, of the image and the name of the player on his website for promotional purposes.

In 2013, the player gave notice to his former sports representative lawyer to stop showing up and put an immediate end to "any step taken by fraudulently using this quality".
By bailiff's act of September 6, 2013 he ordered him to immediately and permanently remove from his website any image representing him and any direct or indirect reference to his person.
The player has sued his former sports representative attorney before the court of first instance of Nanterre for damages for his moral and pecuniary damages due to infringements of his right to the image and his name.

By judgment delivered on January 26, 2016, the tribunal de grande instance of Versailles sentenced the lawyer to pay the player the sum of 10,000 euros in compensation for the non-pecuniary damage suffered as a result of the infringement of the image right, the sum EUR 10,000 in compensation for the non-pecuniary damage suffered as a result of the infringement of the right to the name and the sum of EUR 5,000 pursuant to Article 700 of the Code of Civil Procedure,

The Sporting Lawyer appealed this judgment.

By judgment of 26 January 2018, the Court of Appeal of Versailles confirms the judgment on the main ground that the use of the image and the name of the player by the sports representative lawyer for personal purposes "have not been expressly authorized "and that" this exploitation was noted by the player while the mandate given to the lawyer had ended and that a serious dispute opposed them as regards the fees invoiced by the latter ".
The Court adds that the insertion on the website of the sports attorney hyperlinks allowing the reproduction, dissemination and exploitation of the image and the name of the player without his authorization "has infringed both the law which the latter has on his image that his right to the name ".
With regard to the compensation of the moral damages of the player, the Court considers that it was exactly evaluated by the court "with two sums of 10 000 euros".
The lawyer is ordered to pay 5000 € additional irreversible costs to the player under Article 700 of the Code of Civil Procedure.

CA Versailles, 26-01-2018, n ° 16/00669

ADVOCATE ATTORNEY SPORTS

APPENDIX RIGHT TO NAME AND IMAGE - DIFFAMATORY REMARKS AND EXCEPTION OF TRUTH: THE CASSATION COURT GIVES REASON TO CANAL +

Thursday, 06 July 2017 13:13 | | |

Following the broadcast on 19 December 2012 of the program "The specimens" on the television channel Canal + Sport, organized around a debate on the theme "Bastia to whom the fault? ", The Sporting Club of Bastia and its leader filed a complaint and were constituted civil party, for public defamation towards an individual because of the following remarks expressed by a journalist and a leader of the channel Canal + France:

"In Bastia, very good sources, on the side of the Ministry of the Interior, very clearly say that Charles Pieri, the former nationalist leader and businessman, put in prison for serious business too, is approaching the direction of Bastia There are serious things going on in Bastia and Ajaccio, and Manuel Valls, Minister of the Interior, said this very clearly when he moved there, so I think that the decision of the League Commission is completely logical "; "If there is one who knows what it is Thiriez, president of the League, since he has long been in the office of Defferre, I believe, the Minister of the Interior. He knows what's going on in Corsica, he knows what are the ramifications between businessmen ... "; ".... yes, between business, nationalism and true sports fans, there is a mixture that is explosive" and the head of insult, because of the following passages: "I am exasperated by the response of Bastia to the decision of the League Commission. You have to read the communiqué of the Football League, they list the many events that have been going on for 3-4 months .., it's incredible, I mean, we're not in France, it's unbelievable what happens "and" It never stops and next to that we have a guy who goes on a hunger strike, a president who plays the mourners, we will not fall into the anti-corsity but objectively it is unbearable because they deserve this sanction and beyond that, we must also ask ourselves the right questions ".

For these remarks, the journalist and the director of the Channel Canal + France were referred to the Criminal Court and found partially guilty of the facts they were accused.

The latter appealed the judgment rendered by the Criminal Court of Bastia.

By judgment dated July 15, 2015, the Court of Appeal of Paris reversed the aforementioned judgment and relaxed the two defendants on the grounds that the words evoking possible links between business, nationalism and true sports enthusiasts aims the Sporting club of Bastia and retain were merely the reflection of a perfect, complete and correlative reality to the imputations at issue.
The Sporting Club of Bastia and its leader appealed on points of law following the notification of this judgment.

The Criminal Division of the Court of Cassation, by a judgment of 28 June 2017, rejects the appeal on the following ground:
"Whereas in so ruling, without contradiction and within the limits of its referral, the Court of Appeal, which, after having exactly appreciated the meaning and the scope of the defamatory remarks pursued targeting only the Sporting club of Bastia, has, rightly, allowed the truth-of-fact exception, disregarding the ground for facts subsequent to the date of the broadcast of the passages being pursued, and admitted that the permissible limits of freedom of expression had not been exceeded in respect of to the pursued words of the head of insult and thus justified his decision ".
The Bastiais Club and its leader are ordered to pay the journalist and the leader of Canal + France the sum of € 2,000 under article 618-1 of the Code of Criminal Procedure.

APPENDIX RIGHT TO THE NAME AND IMAGE - SOCKS "FRANCE 2016": UEFA DEBOUT OF ITS ACTION IN COUNTERFEITING AND PARASITIC COMPETITION!

Tuesday, 02 May 2017 12:05 | | |

A trader had "FRANCE 2016" socks manufactured.

On March 29, 2016, Gennevilliers Customs informed UEFA of the withholding of 15,067 lots of three pairs of socks bearing the name "France 2016".
UEFA, considering that it was a counterfeit imitation of its brand FRANCE 2016, has sued the merchant in order to stop acts of trademark infringement and parasitic competition and obtain compensation for the damage suffered.
In response to the arguments put forward by UEFA, the trader considered that the signs on the seized products did not infringe UEFA's mark because the sign "FRANCE 2016" was a purely decorative element, not fulfilling the function brand ".
According to him "no reason, letter, or nuance of color has been added on the socks that would be likely to evoke UEFA".

By judgment of 20 April 2017, the Tribunal de grande instance of Paris accepted the merchant's arguments and dismissed UEFA's claims for trademark infringement, unfair and parasitic competition and all its claims for compensation.
According to the Court of First Instance, "from a visual point of view, the sign" FRANCE 2016 "affixed to the socks in question is a sign without a figurative element composed of the same sign of attack" FRANCE "as the mark of the European Union semi- figurative FRANCE 2016 n ° 013163647 and the 2016 figure; the zero is not replaced by a football.
There is a very important similarity of the signs since all the figures and letters are identical except the figurative element which is certainly the dominant element of the mark deposited by UEFA but in a sign whose two other elements are not descriptive for products such as socks.
From a phonetic point of view, the figurative element will not be pronounced by the consumer and it is the number "2016" that will be said. There is therefore a complete identity of the signs with regard to this criterion.
From a conceptual point of view, the consumer will understand the word "FRANCE" as referring to a country and the number as referring to a year; the presence of the football in place of zero will lead the consumer to connect the sign to a football event happening in France that year. The absence of a football in the disputed sign means that the consumer will not necessarily link the football sporting event to the year and the country, whereas in the same year, other sporting events of international renown than the Euro 2016, took place in France: six-nation tournament matches, the DAVIS Cup in Guadeloupe, the European Rugby Cup, the Tour de France, the 2016 World Cup, the 2016 Motocross World Championship, the 2016 Canoe Kayak World Cup.
As a result, there is a conceptually significant difference between the two signs. "
The Court added that "if the football does not appear on the sign in question, the consumer will not understand that this sign indicates the origin of the product but that it refers to events taking place in France in 2016."

Judgment 3rd Chamber, 1st section TGI Paris 20/04/2017, n ° 16/07712

APPENDIX RIGHT TO NAME AND IMAGE - DO NOT BADINE WITH DISTINCTIVE SIGNS RESERVED AT CNOSF!

Thursday, 02 March 2017 13:01 | | |

The French National Olympic Sports Committee (CNOSF) has initiated criminal proceedings against a company operating pubs (bars) and its manager of the crime of counterfeiting for reproducing and operating without authorization the well-known mark of the Olympic rings.

This action was unsuccessful and the defendants were released from the offense of forgery for simply referring to the Olympic rings on the website and on some advertising elements of the company The CNOSF has appealed this judgment in the field civil and sought redress of the civil fault committed by the relaxed persons.

This civil action was granted by the Paris Court of Appeal by judgment of October 14, 2015.

The Court held that "the respondents' use of the Olympic symbol of five intertwined rings, which unequivocally conceptualizes the Olympic Games, was made for commercial purposes in order to attract customers".
These acts constituted, according to the Court, a civil fault on the part of the respondents prejudicial to the CNOSF.
As a result, the company and its manager were ordered jointly and severally to pay the French National Olympic and Sports Committee the sum of 10,000 euros in damages and interest in compensation for the economic and image damage suffered by the CNOSF in addition to 2,500 euros each, pursuant to Article 475-1 of the Code of Criminal Procedure.

The company and its manager appealed on points of law.

In support of their appeal, the applicants alleged in particular that "by using a logo resembling the Olympic rings on the website and coasters, associated with a character taking the features of the Queen of England in sportswear and holding a pitcher of beer in his hand, was part of a manifestly and purely parodic step, therefore insusceptible to create at the consumer any risk of confusion.
After having noted that "the company managing the bars had, without authorization, reproduced the symbol of the Olympic rings on 200 000 beer coats and had diffused it on its Internet site to inform its customers of the on-screen retransmission of Olympic events, in its seven establishments ", the Criminal Chamber of the Court of Cassation confirms the judgment of the Court of Appeal on the following grounds:
"Whereas, in order to overturn the judgment and to retain the civil liability of the defendants from and within the limits of the facts which are the subject of the prosecution, the judgment states that the advertising media bear the logo of the five Olympic rings reserved for the CNOSF, that this brand is known around the world and enjoys exceptional prestige and reputation, and that its use by the defendants was made for commercial purposes to attract customers, while the exploitation of the protected symbol must be authorized for financial compensation; that the judges add that these rings benefit from a broader protection, so that the harmful nature of their reproduction or imitation does not require the demonstration of a risk of confusion in the mind of the consumer, a simple association with the mark or evocation of it being sufficient; that they infer that the behavior of society X and its manager, which have thus infringed the right of ownership of the CNOSF, is at fault and caused economic damage and image to the civil party;
Whereas in the state of these statements, the Court of Appeal, which, enjoying supremely the facts and circumstances of the case, characterized the use of a well-known mark for commercial purposes and not of information, and which has made the exact application of the

article L.713-5 of the code of the intellectual property from which it follows that the use of a sign identical or similar to the well-known registered mark engages the responsibility of its author since it is such as to cause damage to the proprietor of the mark or constitutes an unjustified exploitation thereof, without that protection being subject to the finding of a likelihood of confusion, in the mind of the consumer, between the sign and the protected mark, has justified its decision;
From which it follows that the means, inoperative in its third branch, the parody approach being invoked only to exclude any risk of confusion with the mark, must be rejected. "

The appeal is therefore dismissed and the applicants ordered to pay the CNOSF the sum of 3,000 euros under Article 618-1 of the Code of Criminal Procedure.
Here is a joke that is expensive!

Cass. Crim., 17-01-2017, No. 15-86.363

DEFINITIONS

[1] droits de la personnalité
Droits fondamentaux et inaliénables inhérents à la personne humaine, les droits de la personnalité se définissent comme les droits qui assurent à l'individu la protection des attributs de la personnalité (vie privée, image, voix) et garantit son intégrité morale.
Protégé notamment par l'article 12 de la Déclaration Universelle des Droits de l'Homme de 1948 et par l'article 8-1 de la Convention Européenne des Droits de l'Homme, et les articles 9 et 16 du Code civil, le droit de chacun au respect de sa vie privée nécessite une conciliation permanente avec le droit à la liberté d'expression, la liberté des médias et le droit de l'information.
Les droits de la personnalité sont particulièrement malmenés par les nouvelles technologies (ex. : la vidéo surveillance, la géolocalisation) et la facilité de publication sur Internet.

[2] Droit extrapatrimonial
Les règles du droit reconnaissent aux individus des prérogatives dont ils vont jouir sous la protection de l'État : ce sont les droits subjectifs.
Il existe deux catégories de droits subjectifs : les droits patrimoniaux et les droits extrapatrimoniaux.
Pour distinguer ces droits, on utilise le critère de l'évaluation pécuniaire. Ceux qui sont évaluables en argent sont des droits patrimoniaux (exemple : le droit de propriété sur une voiture ou sur une maison).
En revanche, ceux que l'on ne peut pas évaluer en argent sont dits «extrapatrimoniaux». Par exemple toute personne a un droit à l'image.

[3] Droit patrimonial
Les règles du droit reconnaissent aux individus des prérogatives dont ils vont jouir sous la protection de l'État : ce sont les droits subjectifs.
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En revanche, ceux que l'on ne peut pas évaluer en argent sont dits «extrapatrimoniaux». Par exemple toute personne a un droit à l'image.

[4] droit à l'image
Droit pour toute personne de s'opposer à la reproduction de son image et à sa diffusion sans son autorisation expresse et spéciale. Par conséquent, avant toute captation et diffusion de l'image de la personne, le diffuseur doit obtenir l'autorisation de la personne concernée, son consentement, et ce quel que soit le support (presse, internet, télévision, peinture, dessin, cartes à jouer, jeux de société, cartouche de jeux vidéo, draps de bain, store, marionnette, statue, pièce de monnaie…).

[5] dommages et intérêts
Somme destinée à réparer le préjudice subi et dont le montant est librement fixé par les magistrats. En pratique, ce montant varie en fonction de plusieurs critères.

[6] autorisation expresse
Le consentement peut se définir comme la volonté d'engager sa personne ou ses biens, ou les deux à la fois ;

[7] autorisation tacite
Cette manifestation de volonté est dite "expresse", lorsque la volonté de celui qui s'engage se manifeste d'une manière apparente, par exemple par la signature d'un écrit ou par une déclaration faite en public, ou devant témoin, et elle est dite "tacite" quand l' accord de la personne n'est pas manifestée par un écrit. Dans ce cas, le consentement se déduit d'éléments apparents tels un geste (la frappe des mains ou la poignée de mains, les entailles (voir art. 1333 du Code civil) faits sur un morceau de bois dans une foire rurale) ou d'une attitude à condition qu'elle ne soit pas équivoque, comme l'acceptation de la livraison d'une chose commandée sans la passation d'un écrit.

[8] Consentement
Le consentement peut se définir comme la volonté d'engager sa personne ou ses biens, ou les deux à la fois.

[9] Caricature
Représentation grotesque, en dessin, en peinture, etc., obtenue par l'exagération et la déformation des traits caractéristiques du visage ou des proportions du corps, dans une intention satirique.

[10] patrimonialisation de l'image

Faire entrer Le droit à l'image dans le patrimoine.

[11] contrat de sponsoring
Convention par laquelle une entreprise (le sponsor) apporte un soutien financier ou matériel à une manifestation sportive (ex : Sony pour la League des champions), à un sportif ou à un club. En contrepartie, le sponsoré s'engage à promouvoir l'image de la marque.

[12] Convention Collective Nationale du sport
La convention collective du sport règle, sur l'ensemble du territoire y compris les DOM, les relations entre les employeurs et les salariés des entreprises exerçant leur activité principale dans l'un des domaines suivants :
— organisation, gestion et encadrement d'activités sportives ;
— gestion d'installations et d'équipements sportifs ;
— enseignement, formation aux activités sportives et formation professionnelle aux métiers du sport ;
— promotion et organisation de manifestations sportives, incluant, à titre accessoire, la sécurité de ces manifestations dans le cadre de l'article 11 de la loi n° 83-629 du 12 juillet 1983,
à l'exception toutefois de celles qui relèvent du champ d'application de la convention collective nationale des centres équestres.

[13] Lobbying
Un lobby (ou un groupe d'intérêt, un groupe de pression ou encore groupe d'influence, plus traditionnellement un intriguant ou un réseau d'intrigues) désigne un réseau de personnes créé pour promouvoir et défendre les intérêts privés d'un groupe donné en exerçant des pressions ou influences sur des personnes ou institutions publiques détentrices de pouvoir. Pour ce faire, il exerce une activité, le lobbying, qui consiste « à procéder à des interventions destinées à influencer directement ou indirectement l'élaboration, l'application ou l'interprétation de mesures législatives, normes, règlements et plus généralement, toute intervention ou décision des pouvoirs publics ». Ainsi, le rôle d'un lobby est « d'infléchir une norme, d'en créer une nouvelle ou de supprimer des dispositions existantes ».