[HEALTH – SOCIAL PROTECTION – PENSIONS]

The employer can now escape its liability in the case of moral harassment.

(Cass. Soc. June 1, 2016, 14-19702)

Until the decision of June 1, 2016 case law constantly ruled that where an employee is victim of moral harassment, the employer is systematically held liable as a consequence of its general obligation to guarantee the physical and mental safety of its employees. The sole fact that an employee suffers a physical or mental damage is a violation of this obligation (so-called "obligation de sécurité de résultat"). This liability remains even absent any fault by the employer, and even if the employer proves having reacted in due time, i.e. taken measures to stop the harassment, for example by sanctioning the employee who has been harassing his colleague.

In the case that was judged in the decision of June 1, 2016, an employee had claimed been harassed by his manager, who continuously criticized his work, used contemptuous terms when talking to him, moved his office in a smaller and uncomfortable one, etc… After having received the internal claim from the employee, the HR director had organized an internal enquiry, summoned the manager to an interview, and conducted an enquiry in presence of the labour inspector, the occupational physician and representatives of the Hygiene and Safety Committee, and then put in place a mediation procedure. Although no further problem arose, the employee initiated a constructive dismissal process by asking the labour court to judge that the employer had failed his duty of guaranteeing employees' safety at work.

Although the Supreme Court's decision ruled that the employer was liable in the case at stake, the Supreme Court clearly sets new rules that reduces the liability of the employer. Namely it states that the employer would not have been liable if two conditions were met : if the employer had taken i) measures to prevent any moral harassment and ii) measures to stop it after having been informed of a harassment situation. In the case judged, the employer had fulfilled the second condition but not the first one, the internal process allowing the victims of harassment to put an alert is not, pursuant to Court's decision, a sufficient measure to prevent any harassment.

The general obligation of the employer to guarantee physical and mental safety of its employee had already been interpreted in the same way in a recent decision of the Supreme Court concerning an Air France pilot (Cass. Soc. November 25, 2015, 14-24444).

This pilot was in New York on September 11, 2011. Several years later he suffered from an anxio-depressive disorder. He then reproached Air France with not having proposed him individual psychological support after the attacks and sued this company in payment of damages for violation of its obligation to guarantee its employees' safety. The Supreme Court approved the court of appeal which had dismissed his claim and considered that the employer had taken measures to guarantee the (mental) safety of its crew members. Hence the Court recognized that there was no violation of the obligation to guarantee's employees' safety if the employer could prove having taken the necessary measures.

Now both with respect to the general obligation of guaranteeing employee's physical and mental safety, and with respect to harassment issues, the employer is no longer systematically liable if an employee suffers a damage. In order to escape its liability, the employer has to prove having taken the necessary measures to prevent a damage or a harassment, and in harassment cases he has to prove having taken the appropriate measures to stop the harassment. Regarding the preventive measures it must be noted that in the case of the harassment an alert procedure is not sufficient, pursuant to the Supreme Court decision of June 1, 2016. The Court suggests that the employer should organize information and trainings in order to prevent acts of harassment.

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