

[LITIGATION - PROCEDURE]

Employee sued before the criminal courts: the employer must bear the costs of the legal fees

Cass. Soc. July 5, 2017, 15-13702

This decision states as a principle that the employer must reimburse the legal fees incurred by the employee who is sued before the criminal courts for facts committed in the frame of his functions.

The employee was working for a bank. He was in charge of selling real estate assets belonging to the bank. He had been reproached with selling real estate to acquaintances of the management, below the market price. The bank dismissed him and sued him to the Criminal courts. After more than 10 years proceedings, the employee was released by the Criminal courts.

He then filed a claim to the labour court against his former employer, in order to be reimbursed for the legal fees he had paid for his defense before the criminal courts. The amount of the fees (more than 56.000€) was commensurate with the length of the proceedings and the issue at stake.

The employer refused this reimbursement on the grounds, among other arguments, that the employer was not liable for the legal costs when the acts for which the employee (or ex-employee) is sued are contrary to employer's interest (the Bank argued having lost money on the disputed transactions). The Supreme Court had judged earlier (Cass. Soc. October 18, 2006 n°04-48612) that the employer was liable to reimburse the legal costs, but this was in a case where the employee was sued by a client of the employer and not by the employer itself. The Bank argued that this solution could not apply to this case where the acts were contrary to the Bank's interests.

The Supreme Court ruled that because it may monitor and control the employees, the employer must guarantee them for all the acts and facts accomplished in the frame of their employment contract. In the case of the former employee of the bank it was established that he had acted on request and under the control of the management, that he had not hidden any of the acts, and that he had acted in the frame of his contract without any profit for him. Hence the Supreme Court approved the court of appeal for having ordered the bank to reimburse its former employee for the legal fees he had paid.

Pursuant to this decision of the Supreme Court, employees are always entitled to the reimbursement of their legal costs, even if they freely choose their own counsel, provided the acts for which they are sued was done in the frame of their duties.



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Apart from specific operations like the one of the case commented above, which should remain exceptional, there are numerous occasions for which an employee may be prosecuted in the criminal courts in the frame of his/her duties. Failing to comply with the legal rules in the day to day functioning of a business is frequently sanctioned by criminal sentences, such as for example the violation of the rules on works council issues. The prosecution is in general against the company but also the individuals in charge of the matter. The company will always have to pay the expenses of the defense of its employees, even if they left the company in the meantime.

However this does not apply to the fine when the employee is sentenced by the criminal court to pay a fine: the employee remains personally liable for the payment of the fine and cannot claim for a reimbursement.

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