|  |  |  |
| --- | --- | --- |
| **Cabinet Brahin**  *Société d'avocats au Barreau de Nice*  1 rue Louis Gassin - 06300Nice  Tel : +33 (0)4 93 83 08 76 – Fax : +33 (0)4 93 18 14 37  [**www.brahin-avocats.com**](http://www.brahin-avocats.com)  nicolas.brahin@brahin-avocats.com  **Nicolas Brahin**  DESS Droit Bancaire et Financier  Université Paris I (Panthéon-Sorbonne)  **Céline Zekri**  DEA Droit Immobilier Public et Privé, ICH Paris  Université de Nice  *Avocats au Barreau de Nice*  \_\_\_\_\_\_\_  Correspondant organique de :  **Legipass**  8, rue Auber - 75009 PARIS  www.legipass.comm  **Finn Larsen Advokatfirma**  Algade 43, 1 - 4000 Roskilde -Danemark  [www.advokat-firma.dk](http://www.advokat-firma.dk)  **Horizons China Corporate advisory**  1801 Lippo Plaza, 222, Huaihai Middle Road  Huangpu, SHANGAI PR China 200021  [www.horizons-advisory.com](http://www.horizons-advisory.com) | **Cabinet Brahin**  Advokatfirma i Frankrig / Lawyers Office in France | |
|  | By email :  Number of pages: 3  Nice, 9th of June 2016 |

**The contractual termination might be the final straw of the amicable termination of the employment agreement**

It results from the combination of articles L1231-1[[1]](#footnote-1) and L1237-11[[2]](#footnote-2) of the French Employment Code *(“Code du Travail français”)* that the contractual termination of the employment agreement can only intervene as required by the legal rules which regulate this way of termination.

Those rules are intended to guarantee the freedom of consent of the parties.

This is what the French Highest Court or *“Cour de Cassation”* sums up in its ruling of 15th October 2014[[3]](#footnote-3).

Does this ruling mark the end of the amicable termination of the agreement?

From a legal point of view, do the parties still have recourse to terminate the relationship by mutual agreement based on article 1134 al.2[[4]](#footnote-4) of the French Civil Code (*“Code civil français”)* and the previous jurisprudence?

This issue is not new and both legal doctrine and magistrate are concerned about it.

Since the entry into force of the contractual termination’s measure[[5]](#footnote-5), the doctrine soon understood that both employer and employee can no longer have recourse to the amicable termination.

The French jurisdictions and the French High Court keep up with the pace[[6]](#footnote-6).

**The contractual termination “ordinary law” of the negotiated termination of the employment agreement**

The Cour de Cassation made it clear in a legal ground principle which will be explained in the following words.

An employment agreement can be terminate by mutual agreement or on the initiative of the employer or employee.

If the contract is terminated by mutual agreement, an agreement between the parties concerning this kind of termination will be required.

Thus, the contractual termination’s validity can be checked.

That means that the consent of the two parties can be considered.

This is the result of the combination of articles L1231-1[[7]](#footnote-7) and L1237-11[[8]](#footnote-8) of the French Employment Code *(“Code du Travail français”)*.

If the contractual termination is accepted as a negotiated way to terminate the agreement, the provisions of article L1231-4[[9]](#footnote-9) of French Employment Code (“should not be ignored.

This article provides that the parties cannot foresee to renounce in advance to invoke the rules about termination of permanent employment agreement contained in the French Employment Code.

Those rules are made for both employee and employer in order to protect them.

Those arguments mean that any termination, amicable or negotiated, which doesn’t come within the scope of specific provisions of contractual termination and legal exceptions, constitutes de facto a redundancy without actual and serious basis.

Nicolas BRAHIN, Avocat

*Master’s Degree in Banking and Financial Law*

*Université Panthéon-Sorbonne*

Email : [nicolas.brahin@brahin-avocats.com](mailto:nicolas.brahin@brahin-avocats.com)

1. Art. L1231 – 1 Code du Travail *« Le contrat de travail à durée indéterminée peut être rompu à l'initiative de l'employeur ou du salarié, ou d'un commun accord, dans les conditions prévues par les dispositions du présent titre. Ces dispositions ne sont pas applicables pendant la période d'essai »*. [↑](#footnote-ref-1)
2. Art. L1237-11 Code du Travail *« L'employeur et le salarié peuvent convenir en commun des conditions de la rupture du contrat de travail qui les lie. La rupture conventionnelle, exclusive du licenciement ou de la démission, ne peut être imposée par l'une ou l'autre des parties. Elle résulte d'une convention signée par les parties au contrat. Elle est soumise aux dispositions de la présente section destinées à garantir la liberté du consentement des parties. »* [↑](#footnote-ref-2)
3. Cass. Soc. 15-10-2014 n°11-22.251 : FRS 22/14 p.7 ou FR 46/14 p.15 [↑](#footnote-ref-3)
4. Art. 1134 al.1 C. Civ. *« Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites.»* [↑](#footnote-ref-4)
5. Note G. Couturier, SSL 2008 n°1356 [↑](#footnote-ref-5)
6. CA Riom 12-6-2012 n°11-992 : RJS 11/12 n°866 ; CA Dijon 5-5-2011 n°10-160 ; CA Toulouse 24-1-2013 n°11/3522) [↑](#footnote-ref-6)
7. Note 1 [↑](#footnote-ref-7)
8. Note 2 [↑](#footnote-ref-8)
9. Art. L1231-4 Code du Travail *« L'employeur et le salarié ne peuvent renoncer par avance au droit de se prévaloir des règles prévues par le présent titre. »* [↑](#footnote-ref-9)