UNIVERSITÉ DE STRASBOURG

EUROPEAN WORKING GROUP ON LABOUR LAW

Semininar 2012

Termination of a contract at the initiative of the employer based on economic grounds

(individual and collective termination)

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a. What are the main rules on termination of a contract at the initiative of the employer?

➢ **Reminder : definition of dismissal based on economic grounds**

In France, the termination of a labour contract on the initiative of the employer is called **dismissal**. There are two different types of dismissals :

- for **personal reason** related to the employee
- for **economic reason** not related to the employee (external reason)

The framework of dismissal law in France is based on three elements:

- the **grounds** of dismissal
- a **procedure** which has to be followed
- **sanctions** for unlawful dismissal

✔ According to the legal provisions, **the dismissal for personal reasons** related to the employee must satisfy the **following conditions** :

- the contract of employment is a **permanent contract** (a non fixed-term one)
- 2 grounds of dismissal : it must be for **reasons inherent** to the employee such as :
  - ✗ for **disciplinary** reasons (misconduct, absenteeism etc ...)
  - ✗ for other reasons which have **consequences** on the company's work.

The procedure implies :

- a **letter** inviting the employee to attend a **meeting** with the employer
- the meeting prior to the dismissal is important because its aim is to allow the employee to give **explications** in response of what the employer' s reasons for dismissal. In order to insure the defence of the employee, he can be **assisted** during the meeting.
- a **letter** which informs the employee of the dismissal and must contain the **reasons** why he has been dismissed.

➔ the dismissal must be justified by a **real and serious reason**

Sanctions for unlawful dismissal :

If the judges considers that the dismissal was not **enough justified** by **real and serious reasons**, the tribunal will conclude that the dismissal is **unjustified**.

Two remedies are available :

- **reinstatement** (only if the employer does agree with the reinstatement)
- **award of compensation** (at least 6 months of wages if the employee has 2 continuous years of service and there are at least 11 employees in the company, or award calculating according to the loss suffered)

✔ In the case of **economic redundancies**, we shall see that the general framework to follow is the same as for the dismissal for personal reasons

But one must add a **specific procedure including the workers representatives** and **an obligation of reclassification**, as we shall see below.

According to our subject, we shall present only the dismissals on economic grounds.
The first law concerning the dismissal based on economic grounds is the **statute of the 3rd January of 1975**. This law has been modified several times since **1975**, as the topic is quite important for the economic activity.

The dismissal based on **economic grounds** is defined in the article **L1233-3 of the Labour Code.**
A dismissal exists when it is done by the employer for one or several reasons not related to the person of the employee, and when it results from a suppression or transformation of jobs or from a modification refused by the employee to an essential element of his/her contract of employment, when following mainly economic difficulties or technological transformations.

➢ Main rules

A requirement, prior to the dismissal :

– the obligation to reclassify the employee

The article **L1233-4 of the Labour Code** provides that the dismissal for economic reason can be used by the employer but **only** when he did **all the efforts of formation/retraining** and **adaptation** and when the **reclassification** of the employee is **impossible**.

The employer has a duty to do a **serious** effort for reclassifying the employee, in any situation :

- ✗ be the dismissal **individual** or **collective**
- ✗ whatever the **workforce** of the company

As we will study below, this condition is very important because if the employer doesn't comply with it, **the courts will consider the dismissal to be unjustified.**

The **new job** proposed, has to be:

- ✗ on the **same grade** which belongs to the same **professional category** of the employee's one, or an **equivalent** one
- ✗ or, if it is not possible, a job classified in an professional category which is **inferior** but only with the **consent** of the employee
- ✗ in the **company** or in another firm which belongs to the same group of undertakings

The employer must search a job compatible with the professional skills and competences of the employee. If it's necessary, he has to plan a training or an adaptation to the job. The employer must fulfil his duty of reclassification with **loyalty**. The proposal of reclassification has to be in **writing and clear** : **article L1233-4 of the Labour Code**.
The offer proposed by the employer must also be **concrete and personal.**

– Order of dismissals

The employer must define precisely the **criteria** which allow him to determine the **order** of dismissals.

The **article L1233-5 of the Labour Code** provides that those criteria have to be **determined** by:

- ✗ **collective bargaining**

or

- ✗ by the **employer unilaterally** after consultation of the **works council** or another kind of **workers representatives**.

Those criteria must take into account :

- ✗ the **family situation** (particularly the ones for isolated parents)
- ✗ the number of **years of service** in the company / **seniority** in the firm
- ✗ the situation of the employees who show **social characteristics** that lead to a particularly difficult professional reinsertion, especially the persons with **disability** and **senior** employees.
- ✗ the **professional skills** appreciated in each category.

➔ Note that this list is not limitative

– **the social plan for saving employees' jobs**

The **article L1233-61 of the Labour Code** provides that: in a firm of at least **50 employees** (with or without employees' representatives), a social plan for saving employees' jobs has to be established when the project of dismissal for economic reasons, concerns **10 or more employees in a 30 days period.**

The social plan has a **double aim**:

- ✗ to **avoid** the dismissal or to **limit** the number of dismissal
- ✗ to make easier the **reclassification** of the dismissed employees

Types of measures :

- ✗ action of **internal reclassification**
- ✗ action in **favour of external replacement**
- ✗ **creation** of new activities
- ✗ t**raining actions**

The establishment of the social plan for saving jobs is subject to a **strict control** done by the **employees' representatives** and *a posteriori* by **the judge.**

In case of **failure** to establish such a plan or when the social plan is **not sufficient** regarding the requirements provided by the law, **the sanction is that the procedure of dismissal is avoid as well as the social plan.**
Then , the judge can pronounce the **reinstatement** of the employee into the company if the employee is asking so, except when the reinstatement is not possible, which is the case particularly when either the employer has closed the firm and ceased his activity, or because there is no more jobs available.

b. Is there additional protection provided through collective bargaining/ agreements?

The principles are governed by the **statute of January, the 3rd of 2003 about the collective bargaining of dismissals for economic reason**. It has authorized in a experimental way, the

conclusion of **special collective bargaining** (“*accords dérogatoires de méthodes”*) which can partially **depart** from the legal rules, when the employer plans to make a big dismissal for economic reason, that is to say when **he contemplates to dismiss at least 10 employees**. Those agreements develop the work council consultation procedure. But the law limits the liberty of the trade unions and employer associations with **binding obligations**

That is to say, the collective agreement cannot infringe:

- the legal duty of the employer to make serious effort trying to retrain ,adapt and reclassify the employee.
- the general rules as provided by the Labour Code concerning the information and consultation of the work council.
- the legal duty to give the information to the worker’s representatives as provided by the Labour Code.

Since the **statute of January, 18th of 2005**, those special collective bargaining were reasserted and they are now regulated in the **article L1233-21 of the Labour Code**.

Those special collective bargaining can have the aim of:

- ✗ planning the **establishment** and the **content** of the **social plan**
- ✗ planning how the social plan could **become** a collective agreement.
- ✗ planning the **organisation** of **professional and geographical mobility** in the company: confirming that those special collective bargaining could have a real and strong impact.

The **statute of January, the 18th of 2005** has **extended** the application of these agreements: it’s now possible to conclude these special collective bargaining at the professional field level: **art. L1233-2.**

It’s possible to contest these agreements:

- ✗ 3 months after the registration at the labour administration
- ✗ 12 months if the agreement concerns a social plan for saving jobs (**L1233-24**)

It should be noted that the law plans adjustments limit as well the liberty of the trade unions and employer associations with **unbreakable** provisions (**L1233-22 and L1233-23**).

By the way, a collective agreement can **improve the social plan**. For instance, the employer and the trade-unions may negotiate **further compensation granted to the employees dismissed**, or a classification leave which is longer than the legal one etc...

Termination of the contract based on economical grounds

1. Social actors: Which actors are involved with the termination of a contract at the initiative of the employer based on economic grounds? What are their functions?

The actors involved with the termination of a contract at the initiative of the employer based on economic grounds are the following :

- **the employer** who has an obligation to **propose** and do **everything** to **reclassify** the employee.
- **the employees**
- **worker's representatives** (works council or other workers representatives) who needs to be **consulted** when the dismissal concerns **more than one employee**. Their functions are to make **proposals** to the **employer** about the project of dismissal during the consultation period.
- **the labor administration** must be **informed** about the dismissal project.
- **financial administrative authority** may also intervene when the company is in severe economic troubles or in cessation of business.

2. Procedural requirements: What are the main procedural requirements in case of dismissal (individual/collective) and what are their aims?

➢ Main procedural requirements in case of dismissal :

There are two types of dismissal based on economic grounds. What is important to remind is that the procedure varies according to the number of employees who are concerned by the dismissal.

On the first hand, there is the **individual dismissal** which concerns the dismissal of **one** employee only. On the other hand, there is the **collective dismissal** which concerns more than one employee.

The **collective dismissal** is divided into 2 sub-categories :

- the dismissal which concerns less than 10 employees during a period of 30 days : "small dismissals"
- the dismissal which concerns at least 10 employees during a period of 30 days "big dismissals"

Every dismissal based on economic grounds will follow the **legal procedure** provided by the Labour Code. As for the big dismissals, there is in addition to the legal procedure of dismissal based on economic grounds, **a compulsory consultation** of the **employees' representatives** required by the Labour Code.

➔ It should be noted that the consultative procedure for dismissal of at least 10 employees requires more restrictive conditions for the employer.

On the one hand, we shall study the legal procedure of dismissal based on economic grounds which applies to both individual and collective dismissal.
On the other hand, we shall explain the procedure of consultation of the employees' representatives and the notification to the labour inspection of the dismissal project elaborated by the employer.

➢ The legal procedure of dismissal based on economic grounds

The employer **must follow a legal procedure** to dismiss, which applies to every dismissal contemplated even the non-economic one. (ie : letter inviting the employee to attend the meeting, meeting, letter informing the employee of the employer's decision to dismiss)

But there is also specific and additive requirements **when the dismissal is based on economic grounds:**

✗ The meeting prior to the dismissal :

There must be a first meeting prior to the dismissal, between the employer and the employee, by which the employer has to explain that he may consider his/her dismissal for one of the economic reasons. He also has to hear the employee's arguments. Moreover the employee can be assisted by a fellow or a trade union's member (when there are no workers' representatives in the company).

In addition to these requirements, **the article L1233-65 of the Labour Code** lays down the principle that :

➔ Concerning the companies employing less than 1000 employees :

the employer must propose during this prior meeting, **a personal reclassification convention or a professional transition contract**. If the employee does agree with this proposal, the contract of employment is **broken**, and the employee get the support of accompanying, orientating, and training actions in order to reclassify and find him another job.

➔ Concerning the companies employing at least 1000 employees :

the provision to apply is the **article L1233-71 of the Labour Code** : **during the prior meeting the employer must propose to the employee a reclassification leave or a mobility leave which offers him the benefit of retraining actions and services of an accompanying reclassification cellule which may help him to find a new job.**
The reclassification leave which suspends the contract of employment must not exceed 9 months.
If these compulsory propositions **are not made** by the employer during the prior meeting, **the sanction is the payment of the equivalent of 2 months wages**. (**article L1235-16 of the Labour Code**)

✗ Obligation to write a letter notifying the dismissal to the company

The employer must notify the dismissal in **writing** and the letter must contain both the **economic reasons** and other mentions such as :

- the proposition for the employee to benefit from **a personal reclassification convention** or a **reclassification leave** (**article R 1233-20 of the Labour Code**)
- the right for the employee to benefit from a **re-engagement priority** subjected to the condition that the employee must request it in the year following the dismissal (**article L1233-16 of the Labour Code**)

➔ period limit to send the letter notifying the dismissal based on economic grounds :

The employer must not send the letter notifying the dismissal **before 7 days** from the date settled for the prior meeting with the employer, **or 15 days for the dismissal of an executive employee**. (**article L1233-15 of the Labour Code**)

✗ Obligation to give information about the dismissal to the labour administration :

The employer must inform the labor administration about the dismissal within 8 days from the date the letter has been sent. (**article D 1233-3 of the Labour Code**)
If he does not send the letter informing the labour administration, the employer can be prosecuted and charged for the breach of that duty, and sentenced to pay a fine. (**article R 1238-4 of the Labour Code**)

➢ **The specific procedural requirements for the collective dismissal based on economic grounds : the obligation to inform and consult the employees' representatives**

Where the employer is contemplating to dismiss at least two employees for economic reason, he has **the duty to consult the workers' representatives before deciding any dismissal.**
This procedure has been established with the purpose of allowing workers' representatives to discuss with the employer about the order of dismissals and the social plan for saving jobs.

Duty of consulting and informing the workers' representatives before the meeting prior to the dismissal :

✗ **The employer, while contemplating the dismissals must inform and consult the works council** (a body which has to be established in each company that employs at least 50 employees)

✗ **Or if there is no works council, the employer must inform and consult another kind of workers' representatives** (employees' representatives who must exist and be elected by the employees when the company employs at least 11 employees).

✗ **Content of the information** that must be given to the employees' representatives is to be found in the **article L1233-10 of the Labour Code** which provides that :

At this stage, the employer must give them every useful information about the dismissal project, including :
1° the economic, financial or technical reason(s) of the dismissal project
2° the number of dismissal contemplating
3° The professional categories concerned and the criteria proposed in order to dismiss
4° The number of employees, permanents or not, employed in the structure.
5° the forecast calendar of the dismissal
6° the economic measures planned

Moreover, the employer who employs at least 50 employees and contemplates to dismiss at least 10 employees, must establish a social plan for the safeguard of jobs and give it to the works council.

→The general principle is that there are two meetings between the employer and the works council/ workers' representatives, which are separated by a limited period (usually 14 days).

→In addition, the works council has the possibility **to seek the assistance of a certified public accountant** which has the effect to complicate the procedure of consultation.
The decision to seek that assistance is taken at the first consultative meeting. Consequently the second meeting must not take place before the 20th day and not after the 22nd day. The works council holds a third meeting while complying with the delay provided by the law.

The certified public accountant will help the works council to understand economic information given by the employer. In that way, the works council is more able to give its opinion and make propositions to the employer.

→The works council can also be consulted on the causes of the project of dismissals in the restructuring framework of the company.
Both procedures can be cumulative even if the second concerning the consultation in a restructuring framework is less strict meaning that the works council just has to have "a sufficient delay" before giving its opinion.

The workers' representatives will declare an informed opinion to the employer (which is not binding) trying to modify the project of dismissals. For instance, they will give their opinion about the order of dismissals.

It should be noted that :

- In the situation where no less than 10 employees refused the modification of their contract based on economic grounds, the procedure must also be followed.
- There are legal provisions to avoid the risk that the employer would intentionally dismiss no more than 10 employees in order to escape these heavy procedural requirements.

Aim of the information and consultation of workers' representatives :

The aim of these rules is to improve and encourage the possibilities for the workers' representatives to modify the project of dismissal by way of discussing with the employer.

The works councils can make proposals to the employer to improve the social plan. The employer must bring a motivate answer to these propositions.

3. The economic reason for the dismissal

- How is this "economic reason" described, what should be understood by economic reason? For instance, could transnational relocation be considered as an "economic" reason?

The dismissal based on economic grounds is defined in the **article L1233-3 of the Labour Code**.

A dismissal exists when it is done by the employer for one or several reasons not related to the person of the employee, and when it results from a suppression or transformation of jobs or from a modification refused by the employee to an essential element of his/her contract of employment, mainly consecutive to economic difficulties or technological transformations.

Requirements for a dismissal to be lawful :

✗ The employer must have done everything to reclassify the employee (as we will see below)
✗ The dismissal must rely on a economic reason. ie : the cause is not inherent in the person of the employee
✗ An **economic reason** for the dismissal which must be **real and serious** (**L1235-3 Labour Code**)
✗ **Which has consequences on the undertaking's jobs.**

Economic reasons which the employer may invoke to justify the dismissal(s):

➔ The law provides 2 forms of economic reasons, which are :

– **economic difficulties/troubles** :

It may be for instance : financial loss of the company, turnover loss, important troubles in the company' s accounts, important troubles concerning the funds of the company.

Caselaw considers that the aim of improving the financial results of the company or to save money **do not constitute an economic reason.**

Also caselaw makes a distinction as to which **level** the economic troubles must be regarded :

- ✗ When the company does not belong to a group of companies, **the difficulties must be regarded at the company level only**, even if the dismissal is contemplated at one establishment .
- ✗ When the company belong to a group of companies, the existence of the economic troubles **must not be regarded in relation to the whole group**. The judges must consider whether economic troubles exist within the scope of activities of the group to which the company belongs.

Another important condition to satisfy is that the economic troubles must exist at the date of the dismissal(s).

– **technological transformations** :

It can result from the introduction of **new technologies**. The important transformations, in that case, may **disturb** the existence of specific jobs or **reduce** the number of jobs available in the undertaking.
However, before pronouncing any dismissal, the employer must **comply** with the **legal obligation to adapt and train** the employees to the foreseeable change/ of their jobs.

The Supreme Court (*Cour de Cassation*) has created other economic reasons from which the dismissal can be based on :

– **restructuration/ reorganisation of the company for saving its competitiveness** :

It does constitute an economic reason **only if it is done for saving the competitivity of the company.** This was first established by the Supreme Court in a decision of 5th April 1995 called Vidéocolor : it is only to save the competitiveness of the company is established that the reorganisation of the company can constitute an economic reason. For instance the will to increase profits is not enough.

In a famous decision called Pages Jaunes of 11th January 2006, the Supreme Court held t**hat the will to avoid and anticipate the economic difficulties does constitute an economic reason.**
It means that companies which do not have economic difficulties at the date of the dismissals can dismiss employees if it is with the **purpose of saving the competitiveness** of the company, and if **the reorganisation of the company is to prevent economic difficulties.**

The company must justify the circumstances but the judge cannot interfere in the choice making by the employer when several choices are possible. This principle was established in a decision called "SAT" of the 8th December of 2000.
The reorganisation of the company must be regarded either at the **company level** (if the company does not belong to a group of companies) or **within the scope of activities** of the group of companies to which the company belongs.
The need to reorganise the company must be considered at the **date of the dismissals**. But some future factors can be regarded as well.

- **the cessation of activity/business : the employer has ceased the activity**

The cessation of business must be total. **It means that the closing down of only one establishment is not enough, it must concern the closing down of the whole undertaking.**

The closing down must be definitive. It has been held in 2002, that the employer must have **entirely** and **definitively ceased** his business.
Secondly, in 2001 and 2002 the cessation **must not result from the employer's fault.**

Recent caselaw consider that **the closing down of a company which has been induced by another company of the group, is not a lawful cessation of activity.**
The relevant decisions are the decision called Jungheinrich and the decision called Goodyear K-Dis of 2011. The Supreme Court set the principle of **the co-employers**. This situation exists whenever **two companies belong to the same group of companies, and one exercises its authority over the employees of the other**. It can also exist when there are t**wo separate establishments, and the employer who has employed the employee , does not have a real power of making decisions concerning the employees because another company which belongs to the group, induces the employer's decision and dictates him how to manage his workforce/staff.**

As regarding the transnational relocation, it must be justified by one of the **criteria** cited above. And the loss of jobs must be regarded at the **company level**. It means that if one of the economic reasons can justify the loss of jobs in the company, the undertaking is allowed to proceed to a **transnational relocation** by which similar jobs will be created. But the judges will hold the dismissal **unlawful** if the dismissal **was only pronounced to benefit from low financial costs of another country.**

- Based on this reason, can the dismissal be either, individual, plural or collective? In this case, is the meaning of the "economic reason" changing in any way? (a less strict requirements, for instance)

In every dismissal, whenever individual or collective, must satisfy all the conditions provided by law and caselaw.

- Is the employer obliged to justify the dismissal or to prove the economic situation and how?

Firstly, the employer must **justify** the dismissals by one of the **economic reasons** already cited above.
Secondly, the employer must also **prove** that the economic reason has **consequences** on the undertaking's jobs:

- **The loss of jobs :** when the employee's tasks entirely ceased to exist, or when some of them still exist but they are given to other employees of the undertaking. The employer **can not employ** someone for doing the same work as the employee dismissed or **replace him by fixed-term contracts**.

- **The transformation of the job** is defined as a **change** regarding the nature of job concerned. It can involve the need to achieve new qualifications. It can be linked to the **technological transformations.**

- **The modification of the contract of employment :** the dismissal can be justified by the fact that **the employee refused the modification of an essential element** of his contract of employment.

Here, the reason for the dismissal **is not the refusal**, but **the economic situation** which lead the employer to propose a modification of the employment contract. Here the reason for the modification proposed must be one of the **economic reasons** cited above.

The economic reason for dismissal and its consequence on the undertaking's jobs must be both expressly stated into the letter which informs the employee about the dismissal. If not, the dismissal will be held as unlawful by the judges.

4. Social and economic interests.

- Is one of the aims of the rules to consider all the parties' interests? For instance, is the employer obliged to examine alternatives to dismissal?

In French law, the employer is considered as having the **direction power**, it means that the employer handles the **management** of the company.
No one else can **exercise** this power or force the employer to choose other alternatives, **even the judge.**
This principle was established in a famous case law of 1956, called BRINON.
The Supreme Court held that the judge **cannot interfere** in the choice of the employer when many solutions are possible.

➢ Is there a duty of adaptation or reinstatement of the workers?

The labour code provides the **duty of adaptation**. So, the employer **cannot dismiss** an employee after trying to **retrain and adapt the employee for other posts**.
For instance, in order to adapt the employees to the new technologies, he has to guarantee to the employees the possibility of retraining.

Concerning the **duty of reclassification,** it was created by a case law of 1992. In fact, judges used the **duty of good faith of the employer to impose the duty of reclassification.** So, according to the duty of good faith, the employer has to reclassify his employees.
Since, a statute of the 17th January of 2002, the duty of reclassification **is not based** on the duty of good faith anymore, but o**n the right of any employee to get a work which is a constitutional principle.**

This Act provides that the employer will be able to dismiss an employee **when he took every necessary steps for the adaptation and reclassification of the employee in the company**. It is **compulsory** for the employer to respect this obligation otherwise the dismissal will be considered as an **unfair** dismissal.

A case law of april 1995 held that the employer has to **propose** a work in the company or in the group to which the company belongs. The employer can do so, when companies have the same activity, organization and localisation. Consequently, **the major criterion is that employees can easily switch their posts.**

The employee **can refuse the proposal,** but in such a case if the employee refuses several proposition, **the employer can dismiss him**. Then, the dismissal will be **fair**.

➢ Is there a priority list for dismissals ("last-in first-out" or "social selection", for instance)?

When the employer wants to dismiss his employees in a case of redundancy, statutes provide many criteria:

- **the family situation** (for instance if the employee is married or has children)
- the **seniority** in the company
- the **professional skills**
- **characteristics of the employee** (for instance if he has a disability) that might foster difficulties to find a new job

The employer has the duty to take into account all the criteria but he can give priority to one of then. Anyhow, he **cannot choose a criterion which is discriminatory.**
If the employer does not respect this list, he will have to pay a fine of **750 euros** and will pay **damages** granted to the employee.

➢ Is the employer allowed to hire new employees once the dismissals have taken place?

In a case of **redundancy**, the hiring of an employee **on a fixed-term contract** is forbidden when this hiring takes place within **six months after the dismissals.**
But there are **exceptions**, for instance, when the duration of the fixed term contract **is less than three months.**

After this six months period, the employer is **enabled** to conclude fixed-term contracts of employment.
When the employer wants to hire employees, the redundant employees will have the **priority**.

- What are the guarantees for the employees prior to dismissals taking place (money, right for training, guarantee for replacement etc) and how are they implemented: social plan, (collective) negotiations?

The statute of the 17th January 2002 provides **damages** for the redundant employees.
The employer has the **obligation** to make **a social plan** in order to **avoid** dismissals or to **reinstate** the redundant employees. Some guarantees are **implemented** in this social plan.
In addition to **the duty of reclassification**, it can contain the **creation of new activities** for the company, an **help** for the employees who want to create their **own companies**, a right for **training**, a **reduction** of the time of work.
This social plan has to be **examined by the worker's representatives**.

5. Consequences of dismissal based on economic grounds and access to the Court ?

- What are the consequences of a lawful dismissal ?

The employee dismissed on economic grounds:

- receives a **compensation** like each worker who looses his job **without his fault:** legal, and extra-legal redundancy payment (e.i negociated in the social plan)
- can **subscribe** to the **national agency for employment** ("*Pôle Emploi*") and is also paid **70% of his last wage** by Pôle Emploi
- becomes **job-seeker** and must be **active** in his job seeking
- **financial help** for financing trainings
- **financial help** for creating his own business / activity
- has the **priority** during **one year** after dismissal for going back to his last employer if the employer hires new employees

- When is the dismissal considered to be unlawful and what are the consequences ?

If the employment tribunal state that the dismissal is **not based on economic grounds**, the employee can benefit from at least **6 months of wages for compensation** (if the company employs at least 10 employees and the employee has at least 2 years of service in this company).
The judge can either pronounce the **reinstatement of the employee** into the company if the employee is asking so, **except** when the reinstatement is **not** possible, which is the case particularly when either the employer has closed the firm and ceased his activity, or because there is no more jobs available.

- Do the employees and the employee's representative body have access to a Court in case or termination at the initiative of the employer ?

The **employee's representative body has access** to the Court to **contest** the **regularity** of the dismissals and of the **procedure of consultation and of information** during **12 months** after the last meeting of the works council.

For the employee, he can **claim** before the employment tribunal during **12 months** after the termination of his contract (12 months only if it is written in the letter of dismissal).
The **trade unions** can **represent** the employee, can **act on behalf** on the employee by informing first the employee they represent and if the employee doesn't refuse to be represented in a 15 days delay.

- Draft legislation: Are there any law changes projected or new draft legislation on dismissal based on economic grounds? If that is the case, which are the main objectives and new rules?

In France, there is **no real project** or new draft legislation on dismissal based on economic grounds because **2012 is a year of elections**. For the moment, we only have the projects of the candidates on this subject. But it's not one of the most important topic of the campaign.