



**COMPTRASEC**  
Centre de droit comparé du travail  
et de la sécurité sociale



## Call for Papers 2023/2

**Deadline for responses to the call for papers: 15 October 2022**

### Revue de Droit Comparé du Travail et de la Sécurité Sociale 2023-2 Comparative social jurisprudence

#### “The interference of the judge in the management of the company”

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### ARGUMENT

The Comparative Labour and Social Security Law Journal [Revue de Droit Comparé du Travail et de la Sécurité Sociale] (RDCTSS)<sup>1</sup>, whose aim is to contribute to the development of analyses and exchanges on comparative labour and social security law throughout the world, devotes a special issue each year (No. 2) to a "Comparative Social Jurisprudence" column.

The Journal n°2023/2 proposes to gather studies on case law when confronted with "The interference of the judge in the management of the company".

In France, in an important decision of 8 December 2000 (Ass. Plén., 8 Dec. 2000, no. 97-44.219)<sup>2</sup>, the Court of Cassation considered that it is not for the judge to control the choices made by the employer.

Often presented as enshrining the theory of the employer as "sole judge", this solution - which one might wonder whether it is still applicable today - must be reconciled with other case law which, in the field of economic dismissal, authorises the judge to interfere in the management of the company. In this respect, one thinks of the obligation to reclassify employees prior to dismissal, which was 'invented' by the judge before being enshrined by the legislator.

Conversely, the French judge refuses to interfere in certain decision-making. This is the case for "trendy" companies (church, religious school, etc.). The judge recognises that the employer alone can decide whether the reason for dismissal is correct when an employee's behaviour violates one of the rules of the trendy company (dismissal for an adulterous relationship in violation of the rules of good conduct laid down by the company).

<sup>1</sup> <https://comptrasec.fr/revue-de-droit-compare-du-travail-et-de-la-securite-sociale/>

<sup>2</sup> <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007043454/>

## FRAMING ELEMENTS

We call on you to find out whether your State's case law is "interventionist" or not.

The questions are as follows:

1. Does the judge accept that the employer is the sole judge of how the company is run? If so, on what basis? For example, in France the obligation of good faith may have been a springboard for the judge to intervene.
2. On the contrary, does the judge have the right to interfere in the way the company is run? If the judge in your country refuses to interfere in the management of the company, why does he do so?

## RECOMMENDATIONS TO AUTHORS

### *Format of expected contributions*

Contributions should be written in French, English or Spanish, with a maximum length of **25,000 characters**, including spaces.

In addition, manuscripts should be accompanied by the following items:

- The title of the article;
- 5 keywords (in French and English) to identify the content of the article;
- An abstract (in French and English) of 400 characters;
- The author's institution, title, postal and e-mail addresses.

### *Calendar*

- Deadline for paper proposals (500 word abstract + title): **15 October 2022**

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Copy to: [revue.comptrasec@u-bordeaux.fr](mailto:revue.comptrasec@u-bordeaux.fr)

- Response to authors: **15 November 2022**
- **Deadline for submissions: 1<sup>er</sup> March 2023**

*Nota Bene:* Any author's proposal will first be submitted to the Editorial Board of the Journal. All articles proposed for publication will be evaluated anonymously by two experts.