

France: participants in Temptation Island are employees, not performers

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"The Supreme Court considers that the participants in the reality TV program had no role to play and that there was no text. They were simply asked to be themselves and express their reactions to the situations they faced. The artificial nature of these situations was not enough to give them the quality of actors."

L'île de la Tentation is the French version of the American reality television program *Temptation Island*, in which couples agree to live on an exotic island with a group of singles of the opposite sex, in order to test the strength of their relationships.

53 participants in this television series applied to the Labour Court on the grounds that the "set of rules applicable to the participants" had to be qualified as being a labour law agreement and that they should be recognised as performers, and therefore should be granted performers' rights.

In a judgement of 24 April 2013, the Cour de Cassation, the French Supreme Court, upholds the findings of the Court of Appeal of Versailles which ruled that the participants are employees under the French Labour Code, but not performers (Court of Appeal of Versailles, 6th chamber, 5 April 2011, RLDI 2011/71, no 2346), it being specified that under French law, performers are usually considered as being employed by their producer.

The Supreme Court first recalls that the program is described by the television channel as follows: "four unmarried couples, not in civil unions, childless, test their feelings for each other during a stay of a period of twelve days on an exotic island, during which they are filmed in their everyday life, especially during activities (diving, horse riding, waterskiing, sailing, etc.), that they share with singles of the opposite sex. Following their stay, the participants talk about their feelings with their partner. There are neither winners nor prizes".

Concerning the existence of an employment contract and its condemnation to pay salaries and damages, the television channel *TF1 Production* argued that the participants are not in a relationship of subordination (which is the case law criterion for the existence of a labour contract), since simply being filmed and expressing one's feelings does not constitute intellectual or manual labour. However, the Supreme Court approves the Court of Appeal which had noted that a script described the imposed activities, the directed interviews, the clothes that had to be worn, the schedules, the obligation to live on site, etc. All this proves the existence of a relationship of subordination between the participants and the television channel, and therefore the existence of a labour contract.

For their part, the participants challenged the Court of Appeal's judgement for denying their performer status. The participants argued that article L.212-1 of the French Intellectual Property Code provides that "performers shall be those persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, music, circus or puppet acts". The Supreme Court however considers that the participants in the TV program had no role to play and that there was no text. They were simply asked to be themselves and express their reactions to the situations they faced. The artificial nature of these situations was not enough to give them the quality of actors. The Court of Appeal was therefore correct in finding that their performance did not involve any interpretation.

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