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### NEWS REPORT

<b>Country:</b>	France
<b>Title:</b>	Paris Court of Appeal, Social Chamber, 31 January 2018, No. 15/11389 in the case of the 848 Moroccan Railroad workers
<b>Date:</b>	28 February 2018
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<b>Update of news report nr:</b>	<a href="#">France - Decisions relating to 832 Migrant workers VS SNCF, Paris Labor court, 21 /09/2015, RG N°F 05/12309 and following (PDF 66 kB)</a>
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Statutory discrimination on the ground of nationality, i.e. indirect discrimination on the ground of origin, throughout the claimants' career
<b>Ground of discrimination:</b>	Racial/ethnic origin
<b>Source:</b>	National court decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 14 ECHR, Protocol No. 1 to the ECHR, ILO Convention No. 111, Articles L1132-1 and following of the Labour Code

### **Content**

**Case:** In the 1970's, SNCF (French public railway service) hired 2000 Moroccan employees through a twelve-months recruiting process, to fill lower execution jobs. However, they were not hired in the same conditions as the French employees, the regulatory status of the SNCF imposing a requirement of French Nationality to be hired under the Permanent Employee Status.

Therefore, Moroccan employees were hired as contractual agents, under a specific status 'PS25', used for temporary employees and for persons holding a list of jobs that were not covered by the statutory regime. The claimants spent all of their careers at SNCF. Their specific employment conditions were less favourable than those applicable to French permanent employees: they did not have access to career evolution beyond a certain level of lower execution jobs (when only 2% of French employees holding the permanent status ended their career at these levels), these jobs were more strenuous physically, and this did have an impact on their physical condition at retirement, lower salary evolutions, less favourable overtime conditions and less favourable retirement conditions in term of period of service and age requirements for access to full pension, financial conditions of retirement and financial conditions of their widows pension rights (an average of 300€ per month). While half became French citizens, only 113 of the 2000 Moroccan employees obtained permanent status, all the others kept the PS25 status. The claimants filed suit after retirement, claiming damages for their career and retirement conditions.

SNCF argued that the various legal instruments prohibiting discrimination on the ground of origin were not in force in France at the time of the formation of the contract and during the period covering part of its execution, that Article 14 ECHR was not applicable and that the claimants' claims were time barred beyond a period of 30 years after the signature of the contracts. Furthermore, it argued that the claimants could not be held to be in a comparable situation as employees hired under the Permanent Employee Status because they did not exercise the same jobs, and that the requirement of French nationality was authorised by rules applicable to requirements related to the exercise of national sovereignty, and that therefore it could not give rise to the liability of SNCF.

In September 2015, the Labour Court found that the claimants were victim of discrimination since the early 1970's on the ground of Article 14 ECHR, and the ILO Convention No. 111. In addition, the Labour Court found that the contract provided for an equal treatment clause, stating that the employees would be entitled to equal remuneration with French employees, that has been breached by the SNCF.

The Labour court found that jobs covered by Employment Status PS25 were comparable to those held by French employees but were only designated otherwise in order to employ foreign employees under another employment status and meet the formal requirements of the two employment statuses. SNCF did not demonstrate that the activities of the French employees holding comparable jobs related to the exercise of sovereignty justifying a distinct status reserved to French nationals. It concluded that the claimants' employment status constituted indirect discriminations on the ground of origin. The claims were admitted, except in a few cases, and the damages awarded ranged from 150 000€ to 250 000€. SNCF appealed before the Paris Court of Appeal.

**Decision of the Court:** On 31 January 2018, the Paris Court of Appeal delivered its judgment. The Court confirmed the decision of the Labour Court and concluded to discrimination in the career and retirements rights of the employees.

It dismissed the respondent's argument based on prescription on the basis that in this case the discrimination was composed of a succession of continuous acts that ended at the termination of the employment contract at the time of retirement in 2007. Considering that the claims were filed before the Labour Court in 2007, they are not concerned by the statute of limitations. The same applied to the claims based on retirement rights.

Given the mass of evidence relating to the career and functions of the Moroccan employees, the judge held that the shift in the burden of proof applicable in matters of discrimination imposes on the employer the obligation to justify that the difference of treatment was justified by objective elements foreign to all discrimination based on nationality.

The employer argued that the regulation reserving the permanent employee status to French nationals was justified because the railroad was considered at the time to participate to the public service. The Court of Appeal held that this argument is not admissible, as the SNCF's representative had argued many times over the years that the text was not modified because of the financial burden that would result from integrating foreign worker to the status of French workers.

The Court concluded that the condition of nationality contravenes the bilateral conventions between France (and the EU) and Morocco, and that this condition of nationality constitutes a violation of Article 14 ECHR and Protocol No. 1 to the ECHR.

The Court awarded compensation to each of the claimants in the amount of 173 000€ for the loss of career as well as 60 555€ for loss of pension benefits, 3000€ for loss of

training and 5 000€ for moral damages. These decisions are immediately enforceable. Given that there are 848 claimants, the overall liability of the SNCF as a result of the decisions of the Court of Appeal is estimated at 180 million Euros.

**Key points of analysis:** The Court of Appeal followed an approach based on Article 14 ECHR and Protocol No. 1 ECHR, by choosing to attack the statutory basis of the status of the foreign workers. This allowed the Court to give a legal basis to a conclusion of discrimination that dates back to the early 70's, before the ILO Convention was ratified by France in 1981 and before the transposition of the prohibition of indirect discrimination based on origin on the basis of EU Law and Directive 2000/43.

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