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Reminder of the conditions in which the criminal liability of legal entities can be incurred

Introduced by the Law n°92-683 of July 22, 1992 relating to the reform of the general provisions of the French Criminal Code, the criminal liability of legal entities is, under French law, a liability through imputation that requires actions/infringements by natural persons.

Indeed, pursuant to Article 121-2 of the French Criminal Code: "*legal entities, with the exception of the State, are criminally liable for [...] the offenses committed on their account by their bodies or representatives*", it being specified, however, that this liability does not naturally exclude that of the natural persons who are the perpetrators or accomplices of the same offenses.

On this legal basis, the Criminal Chamber of the *Cour de Cassation* has, through the famous "Sollac" judgment rendered on June 20, 2006[1], established the presumption according to which a recklessness offense was attributable to the legal entity. This position caused a stir among French legal writers and authors.

Fortunately, the *Cour de Cassation* has recently overturned this Sollac case-law, by re-adhering to the letter of the text, in line with the principle of strict interpretation of criminal law[2].

The facts of the commented case: while performing fitting-out works inside a school, two employees of the company Charpente Euro Picardie, a sub-contractor of the company Charpentes et traditions bois, were injured in the collapse of a wall and roof-frame. One of them died of his wounds and the other became unable to work for a period of less than three months.

The First Instance Criminal Court found the companies Charpentes et traditions bois and BTT, responsible for the stone works, guilty of involuntary manslaughter and unintentional injuries resulting in a work disability of

less than three months. Both companies lodged an appeal.

By a decision dated April 6, 2011, the Criminal Chamber of the Amiens Court of Appeals upheld the judgment of the Criminal Court and pointed *"an indisputable lack of rigor, if not laxity, on the part of the various involved parties [...] with respect to applicable hygiene and safety legal and regularity provisions [...] constituting a direct and immediate causality link with the occupational accident sustained by Messrs. MM. Y... and X..."*.

Hearing the appeal lodged by the companies Charpentes et traditions bois and BTT, the *Cour de Cassation* considered that by ruling so *"without further examining whether the identified infringements resulted from the abstention of one of the bodies or representatives of the sued companies and whether such infringements had been committed on behalf of these companies, as per Article 121-2 of the French Criminal Code, the Court of Appeals failed to ground its decision"*.

This decision confirms the repositioning of the *Cour de Cassation* initiated by its decision dated April 11, 2012[3], applauded by French legal writers and authors, in which it had recalled that the criminal liability of legal entities may only be sought if the requirements set forth in aforementioned Article 121-2 of the French Criminal Code are met.

The mere ascertainment of a wrongful behavior and the establishment of a causal link between such behavior and the damage suffered by the victim are no longer sufficient: the trial judge must also now establish that the offense, whether intentional or unintentional, was committed (i) by (*de jure* or *de facto*) corporate bodies or representatives (i.e. appointees who have been granted a delegation of authority) of the relevant legal entity and (ii) on behalf of such legal entity (i.e. while such bodies or representatives were acting in their official capacity) .

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[1] Criminal Chamber of the *Cour de Cassation*, June 20, 2006, n°05-85.255.

[2] Criminal Chamber of the *Cour de Cassation,* October 2, 2012, n°11-84.415, FS-P+B

[3] Criminal Chamber of the *Cour de Cassation*, April 11, 2012, n°10-86.974.

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