

# Court of Appeal rules on testimony of executive board members

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**Facts**  
**Decision**  
**Comment**

On 10 November 2016 the Court of Appeal issued a decision concerning testimony given by executive board members of a party to a dispute.

## Facts

The dispute arose out of a conflict between A, a public limited liability company, and B, one of its employees.

A accused B of:

- stealing its products;
- missing work; and
- covering up these misconducts in various ways.

Consequently, A dismissed B with immediate effect on the grounds of gross misconduct.

When the matter went to court, A had E, one of its board members, testify as its witness. B challenged E's testimony based on the rule that a party cannot be a witness at its own trial (Article 399 of the New Code of Civil Procedure). As a legal entity can be represented only by its representative body, B argued that A was testifying through E as a witness at its own trial.

## Decision

The Court of Appeal admitted that a natural person entitled to represent a legal entity in court is a party to the proceedings and therefore cannot be heard as a witness. However, in the case of a public limited liability company, the representative body is the board of managers as a whole and not an individual board member (who would not be entitled to solely represent the company). However, if an individual board member is also the company's managing director, they will be considered to be the company's representative body. The Court of Appeal decided to consider E's testimony because he was not the company's managing director.

According to its decision, the court was also required to:

- assess the sincerity of E's testimony and the credibility of his statements; and
- discredit his testimony if it appeared to lack the required impartiality.

## Comment

The court's decision contradicts case law that seemed to have overcome this problem with regard to public limited liability companies (although it was somewhat divided on the issue). In a 30 June 2005 decision, the Supreme Court (whose rulings should normally be observed by the Court of Appeal) confirmed that a managing director cannot testify as a witness for their company and extended this interpretation to individual directors of public limited liability companies.

Hence, at present, there is no consensus among the courts as to whether the testimony of a director who individually has no power to represent their legal entity will be taken into consideration.

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