



This amicable agreement between employer and employee to end the contract between them, called « rupture conventionnelle » in France and « arbeitsrechtlicher Aufhebungsvertrag » in Germany is interesting in that it stands out from dismissal in both countries. This contractual termination is closely linked to economic crises and allows us to better perceive the current historical and economic context. Of course, the consensual nature of this rupture, which must guarantee a free choice of the parties, has advantages, but with an increasingly important use of this, whether in France or Germany, it is necessary to analyse it critically. Indeed, practice shows that the interest of the employer often surpasses that of the employees. The employee can nevertheless benefit from this termination agreement, especially when he wants to accept a better job or to avoid a dismissal on personal grounds.

German law introduced this rupture as early as the 19th century and this "Aufhebungsvertrag" has always been and remains rather favourable to employers. This despite the German will to present this termination form as having a pacification function. French law introduced the "rupture conventionnelle individuelle" in 2008, followed by the "rupture conventionnelle collective" ten year later and despite greater protection of employees than in German law, one can only observe that the contractual compensation can easily induce employees to agree to the loss of their employment. The French contractual termination thus corresponds to the German termination agreement and seeks to avoid confrontation and to obtain a solution through the payment of a financial compensation to the employee. However, these two mechanisms are neither controlled nor implemented in the same way in these two countries.