

## Unfair dismissal: the French *Cour de Cassation* confirms the conventionality of the “*Macron scale*”.

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In 2017, French labour law introduced a scale capping the compensation any employee would be entitled to receive in Court where her/his dismissal would be deemed without a real and serious cause (so-called “*Macron scale*”). Such *Macron scale* sets an unfair dismissal indemnity considering the concerned employee’s seniority and the number of employees employed by the concerned company.

Since its creation, the validity of the *Macron scale* had been challenged, in particular by various Courts of Appeal, which invoked its non-conformity with international and European law.

Notably, the Parisian Court of Appeal (*Cour d’appel de Paris*, March 16, 2021 RG 19/08721) had ruled out the application of the *Macron scale*, justifying that the amount provided for “*barely represented half of the damage*” suffered by the employee considering her specific and individual situation, namely her seniority of less than four years, and her age (aged 53 years old). The Court considered that the employee did not receive an adequate and appropriate compensation for the damage she had suffered.

In two major decisions rendered on May 11, 2022, by the highest order civil court, the *Cour de Cassation* ruled that “*the determination of the amount compensating for the damage caused by a dismissal without real and serious cause cannot be reviewed in concreto*”, and therefore, the *Macron scale* must be observed in all circumstances.

Thus, the *Cour de Cassation* considers that the *Macron scale* is “not contrary” to Article 10 of Convention No. 158 of the International Labour Organization (French *OIT*), which provides that



in the event of unfair dismissal, the judge may order the payment of "adequate" compensation to the employee. Furthermore, the *Cour de Cassation* rules that a case-by-case implementation :

- would create uncertainty for individuals as the rules of law could vary, in a case-by-case basis, in the light of individual circumstances applicable and their assessment by the Court;
- would constitute an infringement of the principle of equality of citizens before the law, which is provided for in Article 6 of the French *Déclaration des Droits de l'Homme* of 1789.

Moreover, the *Cour de cassation* pointed out that Article 24 of the European Social Charter, which recognises the right of employees who have been dismissed without good reason to "*adequate compensation*", cannot be invoked directly before national courts by individuals.

All in all, the *Cour de Cassation* confirms that the *Macron scale* cannot be set aside by judges, even on a case-by-case basis, and that neither employers, nor employees, will be able to invoke the Convention No. 158 of the International Labour Organization or the European Social Charter, in the event of a dispute.

In practice, this is a welcome decision for companies, for the preservation of legal certainty and predictability which is essential to their activity.

***Cass. Soc, 11 May 2022, n° 21-14.490 and n° 21-15.247***

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