

## Game, set and match for the “Macron scale”

**In a ruling dated December 15, 2021, the *Cour de Cassation* (French Supreme Court) overturned the decision of a Court of Appeals that had awarded an employee compensation for dismissal without real and serious cause in excess of the so-called “Macron scale”.**

Since the publication of the Ordinances of September 22, 2017 which introduced minimum and maximum amounts of compensation that can be awarded for a dismissal held without real and serious cause, French courts have dealt with numerous attempts to have this scale declared illegal, in particular the compensation ceilings determined according to the employee’s seniority within the company at the date of the termination of his/her employment contract.

The arguments put forth mainly focused on the unconstitutionality of the compensation ceilings and on the incompatibility of such ceilings with European and international conventions.

As such, the *Conseil d’Etat* (French Administrative Supreme Court) had considered in 2017 that neither Article 10 of Convention No. 158 of the International Labor Organization (“ILO”) nor Article 24 of the European Social Charter should be interpreted as prohibiting compensation ceilings lower than 24 months’ salary in the event of dismissal without real and serious cause. The *Conseil d’Etat* had ruled that there was no serious doubt as to the legality of the scale, since it was not applicable in several cases where the dismissal is null and void<sup>[1]</sup>.

The Constitutional Council had not expressed any reservations about the compensation ceilings provided for in the “Macron scale”<sup>[2]</sup>.

However, some first instance courts showed resistance, held that the compensation ceilings were inapplicable and thus “uncapped” the amount of compensation awarded to employees.

Despite two opinions issued by the *Cour de Cassation*, sitting in plenary session, on July 17, 2019, in which it considered that the scale was compatible with international conventions, many decisions handed down by first instance and appellate courts did not follow these opinions and considered that the provisions set forth in Article L.1235-2 of the French Labor Code, which provided for these compensation ceilings, were inapplicable<sup>[3]</sup>.

On December 15, 2021, the *Cour de Cassation* did not rule on the legality of Article L.1235-2 of the French Labor Code, but overturned the decision of the Court of Appeals of Nancy which had awarded an employee compensation in excess of the “Macron scale”.

In the matter at hand, an employee had been dismissed in April 2018 due to unfitness for work and the impossibility to redeploy him to another position. The Court of Appeals of Nancy, ruling that the employee’s dismissal was unjustified, had awarded him compensation **taking into account the circumstances of the termination, his age, his ability to find a new job, his seniority within the company and the company’s workforce.**

The *Cour de Cassation* overturned the decision of the Court of Appeals of Nancy, considering that the employee could only claim, in view of his 29 years of seniority within the company and his 3,168.21 euros gross salary, a maximum compensation of 63,364 euros, i.e., 20 months’ salary, in accordance with the Macron compensation scale referred to in Article L. 1235-2 of the French Labor Code<sup>[4]</sup>.

With a backhand move, the *Cour de Cassation* seems to put an end to the Grand Slam of decisions handed down on this subject since September 2017.

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[1] *Conseil d’Etat*, Summary order, December 7, 2017, No.415243

[2] Constitutional Council, Decision 2018-761 of March 21, 2018

[3] *Cour de cassation*, Opinions No. 15012 and No. 15013 of July 17, 2019

[4] Labor Chamber of the *Cour de Cassation*, December 15, 2021, No. 20-18.782

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