

The specific compensation due to an employee in case of void dismissal can be reduced by the judge only if the employer expressly so requests

Wherever a dismissal is declared null and void because it is based on a prohibited or unlawful ground, the judge is required to examine the other grounds for dismissal, if any, that have been raised in order to determine the amount of the specific compensation to be awarded to the employee... But only if he/she is expressly asked to do so by the employer.

In August 2022, we commented a ruling of the *Cour de Cassation* (French Supreme Court) which held that in case of unsubstantiated abuse of a fundamental freedom relied upon to justify the dismissal of an employee, the dismissal was void even if other grounds could justify the termination of the employment contract.^[1] The prohibited ground for dismissal which led to the nullification of the dismissal therefore “contaminates” the other grounds for dismissal, even if such other grounds justified the dismissal.

In a ruling handed down on October 9, 2022^[2], the *Cour de Cassation* ruled for the first time on the determination of the specific compensation to be awarded to an employee in case of a void dismissal and in the presence of a “contaminating ground”.

The French Labor Code provides that an employee whose dismissal is declared void is entitled – when he/she does not request the continuation of his/her employment contract or when his/her reinstatement within the company is impossible – to a specific compensation which may not amount to less than 6 months’ salary^[3].

It should be recalled that a dismissal is void when it is based on a prohibited or unlawful ground. Moreover, when several grounds for dismissal are raised, the mere fact that one of them is prohibited or unlawful entails the nullity of the dismissal, even if the other grounds constitute a real and serious cause that can also justify the dismissal.

However, while the judge is not required to assess the other grounds for dismissal because of the “contaminating” nullity of the sole prohibited ground, such nullity **does not exempt the judge** from considering such other grounds in order to take them into account, at his/her discretion, in the determination of the specific compensation to be awarded to the employee^[4].

In its October 19, 2022 decision, the *Cour de Cassation* clarified the scope of the judge’s obligation to examine the other grounds put forth to justify the dismissal. It specified that the judge has the obligation to proceed with this examination **only if the employer expressly asks him/her to do** so during the adversarial debate.

As such, it is only when the employer raises this defense that the judge has the obligation to consider the other grounds for dismissal in order to determine the amount of the specific compensation to be awarded to an employee if his/her dismissal is declared void.

In this way, the employer has the possibility to provide arguments in the hope that the judge will reduce the amount of the specific compensation, which in any case may not be less than 6 months’ salary, as expressly provided for in Article L. 1253-3-1 of the French Labor Code.

^[1] See article entitled [The unlawfulness of a ground for dismissal “contaminates” the other grounds for dismissal](#) published on our Blog in August 2022

^[2] Labor Chamber of the *Cour de Cassation*, October 19, 2022, No. 21-15.533

^[3] Article L. L. 1253-3-1 of the French Labor Code

^[4] Article L. 1235-2-1 of the French Labor Code

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