THE FRENCH SUPREME COURT CONFIRMS THE MAXIMUM AMOUNT OF DAMAGES FOR UNFAIR DISMISSAL

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The French Supreme Court confirmed the application of the scale provided by the French labor code[1] for claims of unfair dismissal (called the Macron Scale) in two decisions dated 11 May 2022,[2] thereby providing some security to employers in relation to their potential exposure for compensation to former employees.

Before September 2017, there was no ceiling on compensation available to employees for unfair dismissal. This situation created legal and financial insecurity for employers. Depending on the court, a company could be ordered to pay damages for unfair dismissal of up to 24 months' salary or even three or four years' salary.

Since its introduction in September 2017, the Macron Scale has provided minimum and maximum amounts of compensation for unfair dismissal, expressed in months of gross salary, varying according to the employee's length of service and the number of employees in the company. In practice, the court analyzes the specific circumstances of the employee in order to determine the amount of compensation due in accordance with the Macron Scale.

The Macron Scale is not applicable in cases of dismissal for a protected reason (e.g., related to discrimination, harassment, or violation of a fundamental freedom, etc.) and dismissal of protected employees (e.g., members of an employee representatives body, trade union delegates, etc.).[3]

Application of the Macron scale has been strongly challenged by trade unions and employees' lawyers who argued that courts should be able to reject its application on a case-by-case basis depending upon the employee's personal situation. Some jurisdictions have even refused to apply the Macron Scale so that French companies were in an uncertain position.

Therefore, the position of the French Supreme Court was widely anticipated in France in order to close the debate.

COMPATIBILITY OF THE MACRON SCALE WITH EUROPEAN AND INTERNATIONAL CONVENTIONS

The trade unions and employees' lawyers opposed to application of the Macron Scale argued that this Scale was not compatible with European and International Conventions.

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According to the French Supreme Court, the Macron Scale is compatible with the Convention No. 158 of the International Labor Organization (ILO)[4], which provides for the payment of “adequate compensation”.

On this point, the French Supreme Court emphasized that French law provisions sufficiently prevent employers from dismissing without cause and that the current system allows for reasonable compensation for the unjustified loss of employment.

Furthermore, the French Supreme Court considered that Article 24 of the European Social Charter, which provides for the “right to protection in case of dismissal,” cannot be invoked directly by an individual before the French courts.

NO APPLICATION ON A CASE-BY-CASE BASIS

One of the main questions presented was whether judges could reject application of the Macron Scale and take into account an employee's personal situation.

This question arose mainly for employees facing specific difficulties (e.g., employees at least 50 years old, with a low seniority, have difficulties finding a job after the termination of their employment contracts, etc.)

The French Supreme Court rejected the possibility of applying the Macron Scale on a case-by-case basis, considering in particular that such an application would create uncertainty regarding the applicable rule of law and undermine the principle of equality of citizens before the law.

It should also be noted that the Macron Scale does not cover any additional claims relating to the performance of the employment contract, which are usually brought before French labor jurisdictions (e.g., claims relating to overtime hours, payment of bonuses, etc.).

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The French Supreme Court has finally provided certainty to companies with employees in France: the maximum amount of damages provided by the Macron Scale for unfair dismissal must be applied by the French courts whatever the personal situation of the dismissed employee.

FOOTNOTES

[1] Article L. 1235-3 of the French Labor Code

[2] *French Supreme Court*, 11 May 2022, n°21-14.490, n°21-15.247

[3] *Article L. 1235-3-1 of the French Labor Code*

[4] Article 10 of Convention No. 158

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