

The "Macron" scale validated by the French Supreme Court

The "Macron" Ordinances of 22 September 2017 introduced a scale to cap the compensation owed by employers to employees unfairly dismissed, taking into account the size of the company on the one hand and the seniority of the dismissed employee on the other hand (so-called Macron scale).

Since the scale entered into force, about ten labour tribunals had refused its application. They considered that the scale did not respect **the rights of workers unfairly dismissed to adequate compensation or other appropriate remedy** (the right enshrined in Article 10 of International Labour Organisation (ILO) Convention No. 158 and in Article 24 of the European Social Charter).

The rejection of the Macron scale by the judges of first instance has always occurred in cases where the employee concerned had a relatively low seniority within the company (from a few months' seniority to 5 years). In these cases, the labour tribunals had considered that the legal scale provided for compensation was too low and unsuitable to compensate for the damage suffered by the former employee as a result of his dismissal.

In this context the French Supreme Court had been asked for an opinion by two labour tribunals.

In its two opinions delivered on 17 July 2019, the French Supreme Court stated that the Macron scale of compensation

granted to a former employee for dismissal **without real and serious cause is in line with international standards.**¹

The French Supreme Court first excludes the application of Article 24 of the European Social Charter by considering that this provision does not have direct effect in national law in a dispute between private persons.

Secondly, even if the French Supreme Court considers that private persons may invoke Article 10 of ILO Convention No. 158, it considers that the term "adequate" qualifying compensation for unfair dismissal must be understood as reserving **a margin of appreciation** for signatory States in the application of this provision.

Thus, according to the French Supreme Court, by providing for a scale of compensation applicable in the event of unfair dismissal, which application is excluded in the event of a void dismissal (for example in the event of discriminatory dismissal), **the State has merely used the margin of appreciation left by the text to implement the principle of adequate compensation in the event of unfair dismissal.**

Consequently, for the French Supreme Court, the Macron scale complies with Article 10 of ILO Convention No. 158.

There is no legislation requiring labour tribunals and courts of appeal to comply with these opinions.

¹ Opinion n° 19-70.010 and 19-70.011 of 17 July 2019

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Nevertheless, if the courts persist in refusing to apply the legal scale, as a last resort, an appeal may be filed with the French Supreme Court, so that the case will end up before the French Supreme Court, i.e. the court that decided that the legal scale was in accordance with international conventions.

The Grenoble labour tribunal however apparently intended to resist the opinions of the French Supreme Court. On 22 July 2019, it indeed expressly rejected the opinions delivered on 17 July 2019 by the French Supreme Court, in a "départage"

judgment (chaired and drafted by a professional judge²), in which it has concluded that the Macron scale did comply with the European Social Charter and the ILO Convention to compensate an employee for her unfair dismissal.³

The next major decisions (to be rendered by the Paris and Reims courts of appeal) are expected on 25 September 2019. Let us hope that they will contribute to providing greater legal certainty in the highly sensitive area of compensation for employees unfairly dismissed.

² The French labour tribunals are in principle composed of lay judges.

³ Labour Tribunal of Grenoble, 22 July 2019, No. 18/00267

Contact:



Viviane Krosse
Avocat à la Cour
Partner
vkrosse@soffal.fr



Gabrielle Ménard
Avocat à la Cour
gmenard@soffal.fr



Constance Deville
Avocat à la Cour
cdeville@soffal.fr

SOFFAL 
Société Juridique & Fiscale Franco-Allemande

153, Boulevard Haussmann
75008 Paris
Tél. : +33 1 53 93 94 00
www.soffal.com