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The Ministry of Justice's response to the wave of opposition against the Macron scale

The Ministry of Justice has not remained inactive in the face of judges' resistance to the Macron scale. By a circular dated February 26, 2019, the Ministry of Justice requested Public Prosecutors at the Courts of Appeal to inform it of any and all decisions rendered regarding the incompatibility of the Macron scale with international conventions.

As explained in a previous article published in January 2019[1], the judge is now required to apply the scale for the determination of damages in case of dismissal without real and serious cause introduced by Article L. 1235-3 of the French Labor Code, and to award damages, the minimum and maximum amounts of which are determined on the basis of the employee's seniority and the size of the company. It is this system of compensation scale that many Labor Courts have recently opposed, arguing that it was incompatible with international conventions. These Labor Courts consider that the application of this scale does not allow them to provide employees with an adequate compensation in accordance with Article 10 of Convention No. 158 of the International Labour Organization ("ILO") and Article 24 of the European Social Charter. The number of Labor Court decisions adopting this position and excluding the application of the scale has thus significantly increased in recent months.

In response to this wave of opposition, the Ministry of Justice sent a circular dated 26 February 2019 to Public Prosecutors at the Courts of Appeals, in which it first of all recalled that the scale had been submitted to the Council of State and the Constitutional Council.

It explained that *"some courts have considered, despite the decision of the Council of State which explicitly rejects the argument, that Article L. 1235-3 of the [French] Labor Code is incompatible with Article 10 of*

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Convention 158 of the ILO and Article 24 of the European Social Charter. On the contrary, other courts have ruled against this incompatibility, in accordance with the case law of the Council of State”.

Through this circular, the Ministry of Justice therefore asks to be informed of the decisions rendered which exclude the argument related to the incompatibility of the scale with international conventions, as well as the decisions which, on the contrary, acknowledge its compatibility.

It also asks Public Prosecutors to make sure they are informed of the decisions appealed against in order to make known the opinion of the Public Prosecution Office on this matter.

Some consider that this circular is a real means of pressure from the Ministry on the courts.

It remains to be seen what the courts’ reaction will be.

In any case, we are still eagerly awaiting the first decisions that will be issued by Courts of Appeals, and above all, by the *Cour de Cassation* (French Supreme Court), on whether or not the Macron scale is compatible with international conventions. In the meantime, we recommend remaining vigilant when applying the scale to estimate the risk incurred in case of a potential dismissal without real and serious cause.

[1] Cf. article entitled [Judges’ resistance to Macron’s scale for the determination of damages](#)

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