

# Social chamber : Validity of the E101 certificate

31/03/2021



**Validity of the E101 certificate in the context of proceedings for undeclared work (after preliminary ruling) : in the case of an E101 certificate whose validity has been confirmed by the issuing authority, the criminal conviction based on a definitive finding of fraud established in breach of European Union law is not res judicata.**

Ruling n°428 of 31 March 2021 (16-16.713) – Cour de cassation (Court of Cassation) - Social chamber-  
ECLI:EN:CCAS:2021:SO00428

**Partial quashing**

Only the french version is authentic

## Summary

Firstly, by ruling of 14 May 2020 (*Bouygues travaux publics and others*, C-17/19), the Court of Justice of the European Union ruled that an E 101 certificate issued by the competent institution of a Member State under Article 14(1)(a) or Article 14(2)(b) of Regulation (EEC) No 1408/71 to workers carrying out their activities in the territory of another Member State and an A1 certificate issued by that institution under Article 12(1) or Article 13(1) of Regulation (EC) No 883/2004 to such workers, are only binding on the courts of the latter Member State in social security matters.

It follows that maintaining an E101 certificate does not prevent the court of the host Member State from applying the national rules of labour law relating to the employment relationship in question and penalising the employer's breach of obligations under labour law.

Moreover, by ruling of 2 April 2020 (*CRPNPAC and Vueling airlines*, C-370/17 and C-37/18), the Court of Justice of the European Union ruled that :

1°. Article 11(1)(a) of Regulation No 574/72 must be interpreted as meaning that a court or tribunal of a Member State, seised of an action in legal proceedings brought against an employer with respect to facts that might indicate that E 101 certificates issued pursuant to Article 14(1)(a) of Regulation No 1408/71 had been fraudulently obtained or used for workers employed in that Member State, may make a finding of fraud and consequently disregard those certificates only when it has satisfied itself that :

- first, the procedure laid down in Article 84a(3) of that regulation was promptly initiated and the competent institution of the issuing Member State was thus put in a position to review the grounds for the issue of those certificates in the light of the concrete evidence submitted by the competent institution of the host Member State that indicates that those certificates were fraudulently obtained or relied on, and
- second, the competent institution of the issuing Member State has failed to undertake such a review and has failed to make a decision, within a reasonable time, on that evidence, cancelling or withdrawing the certificates at issue, where appropriate.

**2°.** Article 11(1) of Regulation No 574/72 and the principle of the primacy of EU law must be interpreted as precluding, in a situation where an employer has, in the host Member State, acquired a criminal conviction based on a definitive finding of fraud made in breach of EU law, a civil court or tribunal of that Member State, bound by the principle of national law that a decision which has the authority of res judicata in criminal proceedings also has that authority in civil proceedings, from holding that employer to be liable, solely by reason of that criminal conviction, to pay damages intended to provide compensation to the workers or a pension fund of that Member State who claim to be affected by that fraud.

Consequently, a ruling that orders an employer to pay various sums by way of fixed compensation for concealed employment by concealment of activity for failure to make declarations to the social security bodies and to pay damages for failure to make social security contributions in France by relying, in the presence of an E 101 certificate whose validity has been confirmed by the issuing authority, on the authority of res judicata acquired through a criminal conviction based on a definitive finding of fraud carried out in disregard of European Union law must be quashed.

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*Appellant : Vueling airlines, a foreign company with an establishment in France*

*Respondent : Mr A.. X...*

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## Facts and procedure

1. According to the ruling under appeal (Paris, 4 March 2016), the company Vueling Airlines is a commercial company established under Spanish law in 2004 with its registered office in Barcelona. It operates an activity in the international air transport of passengers. On 21 May 2007, the company began operating flights to several Spanish destinations from Paris-Charles de Gaulle airport. On 31 May 2007 it registered at the Bobigny Trade Court Registry the creation of an "air transport and ground handling" business based at Paris-Charles de Gaulle airport.
2. Mr X. was hired by Vueling Airlines as a co-pilot from 21 April 2007 under a contract drawn up in the English language and under Spanish law. By an amendment agreement dated 14 June 2007, he was seconded to Paris-Charles de Gaulle airport.
3. An E 101 certificate was issued by the competent Spanish authority which, following cancellation by a decision of this institution at the request of Urssaf, was subsequently maintained following a hierarchical appeal lodged against this decision by Vueling Airlines.
4. By letter of 30 May 2008, the employee resigned, claiming in particular the illegality of his contractual situation under French law. He withdrew his resignation by email of 2 June 2008. Then, by letter of 9th June 2008, he gave formal notice of the termination of his contract of employment.

5. By ruling of 31 January 2012, the Criminal appeals chamber of the cour d'appel (Court of Appeal) of Paris, holding that it had been proven that Vueling Airlines was established in France, found the company guilty of the offence of concealed employment by concealment of activity for having failed to declare to the social security bodies its employees working in its establishment in France, as provided for in Article L. 8221-3, 2°, of the Labour Code. It also ordered Vueling Airlines to pay various sums in damages as compensation for the injury caused by the offence to eleven employees, including Mr X, and to Urssaf.

6. By ruling of 11 March 2014 (Crim., 11 March 2014, No. 12-81.461, Bull. crim. 2014, No. 75), the Criminal chamber of the Cour de cassation (Court of Cassation) without referring a preliminary ruling to the Court of Justice of the European Union dismissed the appeal lodged by Vueling Airlines against the ruling of 31 January 2012.

7. By a ruling of 4 March 2016, the cour d'appel (Court of Appeal) of Paris ordered the company to pay Mr X... inter alia, a lump-sum payment of compensation for concealed employment, back pay, annual leave entitlements, a precariousness bonus and damages for failure to pay contributions to the supplementary pension fund for civil aviation flight personnel. It also ruled that the termination of the employment contract produced the effects of an unfair dismissal and ordered the company to pay various sums in this respect.

8. An appeal was lodged against this ruling. By ruling of 10 January 2018 (Soc., 10 January 2018, appeal no. 16-16.713, Bull. 2018, V, no. 1), the Cour de cassation (Court of cassation) referred questions to the Court of Justice of the European Union for a preliminary ruling on the second plea of appeal.

## Reviewing pleas

### On the first plea

#### Statement of plea

9. Vueling Airlines objects to the ruling in so far as it declares inadmissible his request for a stay of proceedings and for a preliminary ruling, whereas :

"1°/ the authority of res judicata in criminal matters over civil matters only applies to what has been the subject of a judgment and has been decided in its operative part ; that only the final decisions of the criminal courts ruling on the merits of the public action have authority in civil matters over all parties ; that in order to declare inadmissible the requests relating to the stay of proceedings and the preliminary question formulated by Vueling Airlines, the cour d'appel (Court of Appeal) relied on the authority of res judicata arising from the ruling handed down by the Criminal chamber of cour de cassation (Court of Cassation) on 11 March 2014 (No. T 12-81. 461) in which the latter refused to refer a similar preliminary ruling to the Court of Justice of the European Union ; that in so ruling, although the refusal to refer a preliminary ruling by the Criminal chamber of the Cour de cassation (Court of Cassation) did not have the authority of res judicata with regard to the civil court, the cour d'appel (Court of Appeal) infringed Article 1351 of the Civil Code and Article 480 of the Code of Civil Procedure ;

2°/ the authority of res judicata in criminal matters over civil matters is attached only to what has been judged in criminal matters stricto sensu, to the exclusion of decisions of the criminal court in civil matters ; that in civil matters, for the authority of res judicata to be invoked, the claim must be based on the same cause and must be between the same parties, and filed by them and against them in the same capacity ; in declaring inadmissible the requests relating to the stay of proceedings and the preliminary ruling by so relying on the authority of res judicata which would have resulted from the ruling of Criminal chamber of the Cour de cassation (Court of Cassation) on 11 March 2014 which refused to

refer a preliminary ruling to the Court of Justice of the European Union even though this decision of the Cour de cassation (Court of Cassation) did not relate to the same claims and did not have the same purpose, the cour d'appel (Court of Appeal) infringed Article 1351 of the Civil Code and Article 480 of the Code of Civil Procedure, ;

3°/ only the final decisions of the criminal courts ruling on the merits of the public action have authority in civil matters with regard to all ; in refusing to refer a preliminary ruling to the Court of Justice of the European Union the court does not rule on the merits ; accordingly, in declaring inadmissible the requests relating to the stay of proceedings and the preliminary ruling, on the basis of the authority of res judicata of the ruling of the Criminal chamber of the Cour de cassation (Court of Cassation) of 11 March 2014 by which the Cour de cassation (Court of Cassation) refused to refer a preliminary ruling to the Court of Justice of the European Union, the cour d'appel (Court of Appeal) again infringed Article 1351 of the Civil Code and Article 480 of the Code of Civil Procedure. "

## **Court's response**

10. By the above-mentioned ruling of 10 January 2018, the Social chamber of the Cour de cassation (Court of Cassation) referred questions for a preliminary ruling and stayed the proceedings pending the decision of the Court of Justice of the European Union.

11. There is therefore no need to rule on this plea which is redundant.

**On the second plea, in so far it criticises the ruling of having ordered Vueling Airlines to pay the employee various sums in respect of the regularisation of his salary from April 2007 to May 2008 with regard to French law, corresponding annual leave, and damages to compensate for the annual leave**

## **Statement of plea**

12. Vueling Airlines objects to the ruling in so far as it ordered it to pay various amounts to the employee in respect of the regularisation of his salary from April 2007 to May 2008 with regard to French law, the corresponding annual leave, and damages to compensate for annual leave, whereas :

"1°/ the offence of concealed employment is only constituted if the company or the entrepreneur has not made the declarations that must be made to the social protection bodies or to the tax authorities ; that by virtue of the principle of the uniqueness of social security legislation, and by virtue of Article 13 of EEC Regulation 1408/71 on the application of social security schemes to workers and their families circulating within Community, persons to whom this Regulation is applicable are only subject to the legislation of one Member State ; according to Regulation (EEC) No 574/72, a person who pursues his activity in the territory of two or more Member States shall inform the institution designated by the competent authority of the Member State in whose territory he resides of this situation, which shall issue him with an E 101 certificate (now form A1) certifying that he is subject to its legislation ; that as long as the E 101 certificate has not been withdrawn or declared invalid, the issue of this certificate is equivalent to a presumption of regularity of affiliation ; that the French judge, when faced with an application for a conviction for concealed employment, cannot call into question the validity of the affiliation of workers to a social security body of another State which has issued such certificate to a company or contractor ; that the res judicata effect of a criminal decision cannot be an obstacle to these provisions of European law ; that in the present case, Vueling Airlines submitted to the debates the secondment certificate (E 101) issued by the Spanish administration for Mr. X... and argued that, by application of European

regulations, this certificate, which was valid and had not been withdrawn, attested to the employee's affiliation to the Spanish social security system, thereby excluding any concealed employment due to a lack of affiliation in France ; it argued that the principle of *res judicata* did not allow for derogation from European law, which should take precedence ; by nevertheless basing itself, in order to condemn Vueling Airlines for concealed employment, on the authority of *res judicata* of a decision of the *cour d'appel* (Court of Appeal) of Paris of 31 January 2012, without responding to this decisive argument, the *cour d'appel* (Court of Appeal) infringed Article 455 of the Code of Civil Procedure ;

2° / in condemning Vueling Airlines for concealed employment on the basis of the authority of *res judicata* of the ruling of the *cour d'appel* (Court of Appeal) of Paris of 31 January 2012, without examining whether the issuance to Mr X... by the Spanish administration of an E 101 certificate attesting to his affiliation to the Spanish social security system excluded his affiliation from the French social security system and, accordingly, stood in the way of Vueling Airlines being convicted concealed employment, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis in the light of Article 267 of the Treaty on the Functioning of the European Union, Article 11(1) of Regulation No 574/72/EC of 21 March 1972, Articles 13 and 14 of Regulation No 1408/71, Articles 11 and 12a of Regulation No 574/72, and Article 5 of Regulation No 987/2009 of the European Parliament and of the Council of 16 September 2009 ;

3° / the criminal judgment is binding upon the civil judge with regard to the facts that constitute the necessary support for the criminal decision ; in this case the *cour d'appel* (Court of Appeal) of Paris , merely considered in its ruling of 31 January 2012 that the employees of Vueling Airlines working at Roissy-Charles-de-Gaulle airport should, in its view, be covered by French social security legislation ; that such a decision did deprive the civil judge of the power to assess the scope of the Spanish social security authority's issuance to Mr X.. X... of an E 101 certificate, and consequently of the right to set aside the classification of concealed employment in the light of civil law criteria ; in holding to the contrary, the *cour d'appel* (Court of Appeal) infringed Article 1351 of the Civil Code and Articles 4 and 4-1 of the Code of Criminal Procedure, together with the principle of the authority of *res judicata* in criminal cases over civil cases."

## Court's response

13. According to the settled case law of the Social chamber of the Cour de cassation (Court of Cassation), the issuance of an E 101 certificate by the social security body of a Member State of the European Union does not obstruct the competence of the French employment tribunal, pursuant to Article 19 of EC Regulation No. 44/2001 of 22 December 2000 on jurisdiction, determined on the basis of the conditions under which the work was performed and the choice of the parties (Soc, 10 June 2015, Appeal No. 13-27.799, Bull. 2015, V, No. 123) and only relates to the social security schemes, pursuant to Article 1 of Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, of self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 (Regulation No 1408/71) (Soc. , 29 September 2014, Appeal No. 13-15.802, Bull. 2014, V, No. 216).

14. Asked by the Criminal chamber of the Cour de cassation (Court of Cassation) to give a preliminary ruling (Crim. 8 January 2019, Appeal No. 17-82.553), the Court of Justice of the European Union, by ruling of 14 May 2020 (Bouygues travaux publics and Others, C-17/19) ruled that an E 101 certificate issued by the competent institution of a Member State under Article 14(1)(a) or Article 14(2)(b) of Regulation No 1408/71 to workers carrying out their activities in the territory of another Member State and an A1 certificate issued by that institution under Article 12(1) or Article 13(1) of Regulation (EC) No 883/2004 of the European Parliament and Council of 29 April 2004, relating to the coordination of the social security systems as amended by Regulation (EC) No 465:5012 of the European Parliament and Council of 22 May 2012, to such workers, are only binding on the courts of the latter Member State in social security matters.

15. The Court of Justice of the European Union specified in paragraph 48 of that ruling that those certificates have no binding effect with regard to obligations imposed by national law in matters other than social security, within the meaning of those regulations, such as, *inter alia*, those relating to the employment relationship between employers and

workers, in particular their employment and working conditions.

16. It follows that the retention of an E 101 certificate does not prevent the court of the host Member State from applying the national rules of employment law relating to that employment relationship and thereby penalising the employer's breach of obligations under employment law.

17. The cour d'appel (Court of Appeal) noted that the employee is entitled to regularisation of his salary for the duration of his employment contract, from May 2007 to May 2008 inclusive. It then held that Spanish law on annual leave is less favourable than French law, pursuant to which the employee could claim the benefit of five additional days of annual leave for one year of work, that he had not enjoyed his annual leave entitlements, and that there was nothing to suggest that the 118 "days off" invoked by the employer could be construed as annual leave, contrary to what is mentioned in the pay slips, such that the employee, having worked without any annual leave from May 2007 to May 2008 inclusive, is entitled to claim damages in compensation for the injury suffered as a result of him being unable to benefit from his annual leave entitlement during the entire period for which he worked for Vueling Airlines.

18. Since the E 101 certificate is only binding on the courts of the host Member State in relation to social security matters, the plea is inoperative.

**But on the second plea, in so far as it criticises the ruling for having ordered Vueling Airlines to pay the employee various sums by way of a lump-sum compensation for concealed employment and damages for the failure to make social security contributions in France**

#### **Statement of plea**

19. Vueling Airlines complains that the ruling ordered it to pay the employee various sums in the form of a lump-sum indemnity for concealment of activity and damages for the absence of social security contributions in France, whereas :

"1°/ the offence of concealed employment is only constituted if the company or the entrepreneur has not made the declarations that must be made to the social protection bodies or the tax authorities ; that by virtue of the principle of the uniqueness of social security legislation, and by virtue of Article 13 of EEC Regulation No. 1408/71 on the application of social security schemes to workers and their families moving within the Community, persons to whom this Regulation is applicable are subject to the legislation of only one Member State ; that, according to Regulation (EEC) No 574/72, a person who pursues his activity in the territory of two or more Member States shall inform the institution designated by the competent authority of the Member State in whose territory he resides of this situation, which shall issue him with an E 101 certificate (now Form A1) certifying that he is subject to its legislation ; that as long as the E 101 certificate has not been withdrawn or declared invalid, the issuance of this certificate is equivalent to a presumption of regularity of affiliation ; that the French judge, to whom an application has been submitted for a conviction for concealed employment, cannot call into question the validity of the affiliation of workers to a social security body of another State which has issued such a certificate to the company or the entrepreneur ; that the authority of res judicata of a criminal decision cannot be an obstacle to these provisions of European law ; that in the present case, Vueling Airlines has submitted to the debates the certificate of secondment (E 101) issued by the Spanish administration for Mr. X.. and argued that, by application of European regulations, this certificate, which was valid and had not been withdrawn, attested to the employee's affiliation to the Spanish social security system, and as such ruled out any concealed employment due to a lack of affiliation in France ; it therefore argued that the principle of res judicata did not allow for any derogation from European law, which should take precedence ; in nevertheless condemning Vueling Airlines for concealment employment on the basis of the authority of the res judicata of a decision of the cour d'appel (Court of Appeal) of Paris of January 31, 2012, without answering this decisive plea, the cour d'appel (Court of Appeal) infringed

article 455 of the code of civil procedure ;

2° / in condemning Vueling Airlines for concealed employment on the basis of the res judicata authority of the ruling of the cour d'appel (Court of Appeal) of Paris of January 31, 2012, without examining whether the issuance by the Spanish administration to Mr. X.. of an E 101 certificate attesting to his affiliation to the Spanish social security system did not exclude his affiliation from the French social security system and did not, consequently, prevent the conviction of Vueling Airlines for concealment of activity, the cour d'appel (Court of Appeal) deprived its decision of a legal basis in the light of article 267 of the Treaty on the Functioning of the European Union, Article 11(1) of Regulation 574/72/EC of 21 March 1972, Articles 13 and 14 of Regulation 1408/71, Articles 11 and 12a of Regulation 574/72, and Article 5 of Regulation 987/2009 of the European Parliament and of the Council of 16 September 2009 ;

3° / the res judicata in criminal cases is binding on the civil judge with regard to the facts that constitute the necessary support for the criminal decision ; in this case, in its ruling of 31 January 2012, the cour d'appel (Court of Appeal) of Paris merely considered that the employees of the Vueling Airlines working on the site of Roissy-Charles-de-Gaulle airport should, in its view, have been attached to the French social security legislation ; that such a decision did not deprive the civil judge of the power to assess the scope of the Spanish social security authority's issuance to Mr X.. X... of an E 101 certificate, and consequently of the right to set aside the classification of concealed employment in the light of civil law criteria ; in holding the contrary, the cour d'appel (Court of Appeal) infringed Article 1351 of the Civil Code and Articles 4 and 4-1 of the Code of Criminal Procedure, together with the principle of the authority of res judicata in criminal cases over civil cases."

## Court's response

In view of Articles 13 and 14 of Regulation No 1408/71, Articles 11 and 12a of Council Regulation (EEC) No 574/72 of 21 March 1972 setting out detailed rules for the implementation of Regulation No 1408/71, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 (Regulation No 574/72) :

20. Seized by the Cour de cassation (Court of Cassation) in this appeal, the Court of Justice of the European Union, by ruling of 2 April 2020 (CJEU, CRPNPAC and Vueling Airlines, C-370/17 and C-37/18), ruled that Article 11(1)(a) of Regulation No 574/72 must be interpreted as meaning that a court or tribunal of a Member State, seized of an action in legal proceedings brought against an employer with respect to facts that might indicate that E 101 certificates issued pursuant to Article 14(1)(a) of Regulation No 1408/71 had been fraudulently obtained or used for workers employed in that Member State, may only make a finding of fraud and consequently disregard those certificates when it has satisfied itself, firstly, that the procedure laid down in Article 84bis, paragraph 3 of that regulation was promptly initiated and the competent institution of the issuing Member State was thereby in a position to review the grounds for the issuance of those certificates in light of concrete evidence submitted by the competent institution of the host Member State that suggests that those certificates were obtained or relied upon fraudulently, and secondly, the competent institution of the issuing Member State has failed to undertake such a review and to make a decision, within a reasonable period of time, on these elements by cancellation or withdrawing, said certificates, where appropriate.

21. The Court of Justice further ruled that Article 11(1) of Regulation No 574/72 and the principle of the primacy of EU law must be interpreted as precluding, in a situation where an employer has, in the host Member State, acquired a criminal conviction based on a definitive finding of fraud made in breach of EU law, a civil court or tribunal of that Member State, bound by the principle of national law that a decision which has the authority of res judicata in criminal proceedings also has that authority in civil proceedings, from holding that employer to be liable, solely by reason of that criminal conviction, to pay damages intended to provide compensation to the workers or a pension fund of that Member State who claim to be affected by that fraud.



22. In condemning Vueling Airlines to pay the employee various sums in respect of the lump-sum compensation for concealment of activity, the cour d'appel (Court of Appeal) held that the company had been convicted by a decision having the force of res judicata for concealment of activity for facts relating, in particular, to the employment of the employee, that the ruling of 31 January 2012 of the cour d'appel (Court of Appeal) of Paris had become final following the dismissal of the appeal in cassation lodged against it by the ruling of 11 March 2014, and that the pleas of the company to the contrary were unfounded. Then, in ordering Vueling Airlines to pay damages for failure to make social security contributions in France, the cour d'appel (Court of Appeal) held that during the entire period of secondment in France, from June 2007 to May 2008, social security contributions were paid in Spain, whereas the employee should have benefited from French law, that he accordingly did not contribute to the pension fund for professional flight personnel of civil aviation (CRPNPAC), and that this failure to make contributions deprived him of an increase in his retirement pension of 300 euros per month, i.e. 3,600 euros for the 12-month period during which his employment contract was performed in France.

23. In so ruling, when in fact it was requested to deliberate on the question of the validity of an E 101 certificate produced by Vueling Airlines in order to contest the proceedings brought against it pursuant to the provisions of Article L. 8221-3, 2° of the Labour Code, and the company held, without having been contradicted on this point, that the Departmental Directorate of Decentralised Management of the General Treasury of Social Security of Barcelona had, on 15 December 2014 confirmed the validity of the E 101 forms in question, so that the criminal conviction based on a final finding of fraud carried out in disregard of European Union law could not be binding upon the labour court hearing to whom a claim for concealed employment and a failure to register with the French social security system had been submitted, the cour d'appel (Court of Appeal) infringed the aforementioned texts.

## **And on the third plea, first part**

### **Statement of the plea**

24. Vueling Airlines company objects to the ruling for having held that the termination of the employee's employment contract was attributable to it and that it constituted an unfair dismissal, and for having ordered it to pay the employee various sums by way of damages for unfair dismissal, compensation for notice period, annual leave, and severance pay, and for having rejected its request to order the employee to pay damages for non-performance of the notice period, whereas :

"quashing consequently entails, without the need for a new decision, the setting aside of any decision which is the continuation, application or execution of the decision set aside or which is connected to it by a necessary link of dependence ; that by application of Article 624 of the Code of Civil Procedure, the quashing of the operative part of the ruling condemning the exhibiting company for concealed employment and considering that the employee had been illegally attached to Spanish legislation results, by way of consequence, in the censure of the operative part which, on these grounds, held that the notification of the decision to terminate the employment contract produced the effects of an unfair dismissal, awarded the employee back pay, severance pay and damages, and dismissed the company's claim for damages for non-execution of the notice period."

### **Court's response**

In view of Article 624 of the Code of Civil Procedure :

25. The quashing of the provisions of the ruling on the second plea of appeal entails the quashing, by way of consequence, of the parts of the ruling criticised by the third plea of appeal, which are connected to it by a link of necessary dependence.

## Scope and consequences of the quashing

26. The quashing of the operative paragraphs ordering the employer to pay the employee various sums in respect of the lump-sum compensation for concealed employment and damages for the failure to make social security contributions in France does not entail the quashing of the operative paragraphs of the ruling ordering the employer to pay the costs as well to pay an amount under Article 700 of the Code of Civil Procedure, which are justified by other sentences pronounced against the employer and which have not been called into question

## ON THESE GROUNDS, and without having to rule on the other objections, the Court :

QUASHES AND SETS ASIDE the ruling of the cour d'appel (Court of Appeal) of Paris of 4 March 2016 between the parties but only insofar as it orders Vueling Airlines to pay Mr. X... the amount of 26,422 euros in lump-sum compensation for concealed employment and the amount 3,600 euros in damages for the failure to make social security contributions in France, declares that the termination of the employment contract is attributable to the employer and produces the effects of an unfair dismissal, orders Vueling Airlines to pay Mr. X... 10,000 in damages for unfair dismissal, 13,210.77 euros in compensation for notice, in addition to 1,321 euros for annual leave, 5,019 euros for severance pay, and dismisses Vueling Airlines' request that Mr. X... be ordered to pay it the amount of 9,000 in damages for non-performance of the notice period,

Returns the case and the parties on these points back to the status existing prior to said ruling and refers them to the cour d'appel (Court of Appeal) of Paris otherwise composed ;

**President : Mr Cathala**

**Reporting Judge : Mrs Prache - Mr Le Masne de Chermont, Legal Advisors, assisted by Mrs Safatian**

**Advocate General : Ms Berriat**

**Lawyers : SCP Célice, Texidor, Périer - SCP Lyon-Caen et Thiriez**

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