COUR DE CASSATION

COURT OF CASSATION

Public Hearing of 11 May 2022

Mr CATHALA, President **Partial quashing**

Appeal No. J 21-14.490 **Ruling No. 654**
FP-B+R

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF 11 MAY 2022, DELIVERED BY THE SOCIAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION)

The company Pleyel centre de santé mutualiste, with registered office at [Adresse 3], has lodged appeal No. J 21-14.490 against the ruling (No. RG: 19/08721) delivered on 16 March 2021 by the *Cour d'appel* (Court of Appeal) *of Paris* (Section 6, Chamber 11), in the dispute between:

1. Ms [M] [E], domiciled at [Adresse 8],

2. the Paris Job Centre, arrondissements 7, 8 and 9, with registered office at [Adresse 4],

respondents in the quashing procedure.

Parties intervening voluntarily:

1. Mouvement des entreprises de France (MEDEF) [National confederation of French employers], with registered office at [Adresse 7],

2. Confédération française démocratique du travail (CFDT) [French Democratic Confederation of Labour], with registered office at [Adresse 6],

3. Syndicat des avocats de France (SAF) [French Union of Lawyers], with registered office at [Adresse 5],
4. Confédération générale du travail-Force ouvrière (CGT FO) [General Confederation of Labour], with registered office at [Adresse 1],

5. Syndicat d'Avocats d'entreprise en droit social (Avosial) [Union of Corporate Lawyers specialized in labour law], with registered office at [Adresse 2].

In support of her appeal, the applicant relies on the two grounds of quashing attached to the present ruling.

The case file was sent to the Prosecutor-General.

On the report of Mr Barincou, Judge, and Ms Prache, Judge Referee, assisted by Ms Safatian, Judge Auditor of the Documentation, Studies and Report service, the observations of SCP Fabiani, Luc-Thaler et Pinatel, lawyer of the company Pleyel centre de santé mutualiste, SCP Thouvenin, Coudray and Grévy, lawyer of Ms [E] and CFDT, SCP Gatineau, Fattaccini and Rebeyrol, lawyer of MEDEF, SCP Zribi and Texier, lawyer of Syndicat des avocats de France (SAF), Me Haas, lawyer of CGT-FO, Me Ridoux, lawyer of Avosial, the pleadings of Me Pinatel for the company Pleyel centre de santé mutualiste, Me Grévy for Ms [E] and the CFDT, Me Grévy substituting Me Haas for the CGT-FO, Me Rebeyrol for the MEDEF, Me Zribi for the SAF and Me Ridoux for Avosial, and the advisory opinion of Ms Berriat, First Advocate-General, after discussions in the public hearing of 31 March 32022, attended by Mr Cathala, President, Mr Barincou, Co-reporting Judge, Ms Prache, Co-reporting Judge Referee, Mr Huglo, Elder Judge, Ms Farthouat-Danon, Mr Schamber, Ms Mariette, Mr Rinuy, Pion, Ms Van Ruymbeke, Mr Pietton, Ms Cavrois, Ms Monge, Ms Ott, Judges, Ms Ala, Ms Chamley-Coulet, Ms Valéry, Judge Referees, Ms Berriat, First Advocate-General, and Ms Piquot, chamber registrar,

the Social Chamber of the *Cour de cassation* (Court of cassation), comprising, pursuant to Articles R. 421-4-1 and R. 431-5 of the Judicial Code, the above-mentioned President and Judges, having deliberated in accordance with the law, has delivered the present ruling.

Examination of its own motion of the admissibility of voluntary interventions, after notice given to the parties pursuant to Article 1015 of the Civil Procedure Code

1. According to Articles 327 and 330 of the Civil Procedure Code, voluntary interventions are only admissible before the *Cour de cassation* (Court of cassation)

if they are made incidentally in support of a party's claims and are admissible only if the author has an interest in supporting said party for the preservation of their rights.

2. Since Syndicat des avocats de France (SAF) and Syndicat d'Avocats d'entreprise en droit social (Avosial) do not justify such an interest in this dispute, their voluntary interventions are not admissible.

3. Confédération française démocratique du travail (CFDT), Mouvement des Entreprises de France (MEDEF) and Confédération générale du travail-Force ouvrière (CGT-FO) are acknowledged for their voluntary intervention.

Facts and procedure

4. According to the ruling under appeal (Paris, 16 March 2021), Ms [E] was hired as coordinator by the company Pleyel centre de santé mutualiste from 2 September 2013. She received an average gross salary of 4,403.75 euros.

5. By letter of 12 September 2017, the employee was called to an interview prior to dismissal on economic grounds. She signed the redundancy support agreement on 4 October 2017 and, by letter of 6 October 2017, her employer notified her of termination of her employment contract on economic grounds from 13 October 2017.

6. In objection to said termination, the employee brought an action before the labour tribunal.
7.

Reviewing pleas

On the first plea, attached hereto

7. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on this plea, which is clearly not of a nature to the quashing.

But on the second plea

Statement of plea

8. The employer complains that the ruling ordered him to pay the employee the sum of EUR 32,000 in compensation for dismissal without actual and serious basis, when:

"1. the law, which is the expression of the general will, is the same for all, whether it protects or punishes; the Court of Appeal, which rejected the application of the scale provided for in Article L. 1235-3 of the Labour Code on the ground that it had been declared in conformity with Article 10 of ILO Convention No. 158 by two advisory opinions of the Plenary Assembly of the *Cour de cassation* (Court of cassation), dated 17 July 2019, would not apply because of the particular circumstances of the case and may therefore be dismissed in the particular case of

the employee, has acted in breach of the constitutional principles of legal certainty and equality before the law, together with Articles 6 of the Declaration of Human and Citizen Rights, 10 of ILO Convention No. 158 and L. 1235-3 of the Labour Code.

2. by not applying the scale provided for in Article L. 1235-3 of the Labour Code when the employee did not fall under any of the exceptions provided for in that text that enabled the non-application thereof, the *Cour d'appel*, which refused to apply the law, failed in its duty in the light of Article 12 of the Civil Procedure Code and Article L. 1235-3 of the Labour Code."

Court's reponse

Having regard to Article 6 of the 1789 Declaration of Human and Citizen Rights, Articles L. 1235-3, L. 1235-3-1 and L. 1235-4 of the Labour Code, in their wording resulting from the Executive Order No. 2017-1387 of 22 September 2017, and Article 10 of International Labour Convention No. 158 concerning the termination of the employment relationship by the employer:

9. Article 6 of the 1789 Declaration of Human and Citizen Rights states that the law must be the same for all, whether it protects or punishes.

10. Pursuant to Article L. 1235-3 of the Labour Code, if the dismissal of an employee occurs for a cause which is not real and serious, the court grants the employee compensation at the employer's expense, the amount of which is between the minimum and maximum amounts set in said text. In determining the amount of the compensation, the Judge may take into account, where appropriate, the severance payments made on the occasion of the termination, with the exception of the severance payment referred to in Article L. 1234-9. This allowance may be accumulated, where appropriate, with the allowances provided for in Articles L. 1235-12, L. 1235-13 and L. 1235-15, within the maximum amounts provided for in the same Article.

11. According to Article 10 of Convention No. 158 of the International Labour Organization (ILO), if the bodies referred to in Article 8 of this agreement conclude that the dismissal is unjustified, and if, in the light of national law and practice, they do not have the power or do not consider it possible in the circumstances to annul the dismissal and/or to order or propose reinstatement of the worker, they must have sufficient power to order the payment of adequate compensation or any other form of relief considered appropriate.

12. The provisions of Article 10 that create rights which individuals may avail themselves of against other individuals and which, having regard to the expressed intention of the parties and the general scheme of the agreement, as well as to its content and terms, are not intended solely to govern relations between States and do not require the intervention of any complementary act, are directly effective in domestic law (see also: Plenary Assembly, advisory opinion of the *Cour de cassation* (Court of cassation), 17 July 2019, Nos. 19-70.010 and 19-70.011). Article 1 of ILO Convention No. 158 states: "The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective

agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations."

13. According to the decision of the Board of the International Labour Organization, having adopted in 1997 the report of the Committee appointed to examine a complaint lodged under Article 24 of the ILO Constitution by several trade union organisations alleging Venezuela's failure to comply with Convention No. 158, the term 'adequate' referred to in Article 10 of the Convention means that compensation for unjustified dismissal must, on the one hand, be sufficiently dissuasive to prevent unjustified dismissal and, on the other hand, allow for reasonable compensation for unjustified loss of employment.

14. In that regard, it should be noted that, under Article L. 1235-3-1 of the Labour Code, Article L. 1235-3 of that code is not applicable when the court finds that the dismissal is vitiated by one of the nullities provided for in paragraph two of this Article. In this case, where the employee does not request the continuation of the performance of his employment contract or his reinstatement is impossible, the Judge awards him compensation, at the employer's expense, which may not be less than the salaries of the last six months.
The nullities referred to in subparagraph one shall be those relating to:

1. The violation of a fundamental freedom;

2. Acts of psychological or sexual harassment under the conditions referred to in Articles L. 1152-3 and L. 1153-4;

3. Discriminatory dismissal under the conditions referred to in Articles L. 1132-4 and L. 1134-4;

4. Dismissal following legal proceedings concerning equality between women and men at the workplace under the conditions referred to in Article L. 1144-3, or a denunciation of crimes and serious offences;
5. Dismissal of a protected employee referred to in sections L. 2411-1 and L. 2412-1 due to the exercise of his power of attorney;

6. Dismissal of an employee in breach of the protections referred to in Articles L. 1225-71 and L. 1226-13.According to well established case-law of the *Cour de cassation* (Court of cassation), freedom of association is recognised as a fundamental freedom pursuant to paragraph 6 of the Preamble to the Constitution of 27 October 1946 (Soc., 2 June 2010, appeal No. 08-43.277; Soc., 9 July 2014, Appeals Nos. 13-16.434, 13-16.805, Bull. 2014, V, No. 186), the right to strike protected by paragraph 7 of the same Preamble (Soc., 25 November 2015, appeal No. 14-20.527, Bull. 2015, V, No. 236), the right to health protection referred to in paragraph 11 of the same Preamble (Soc., 11 July 2012, Appeal No. 10-15.905, Bull. 2012, V, No. 218; Soc., 29 May 2013, Appeal No. 11-28.734, Bull. 2013, V, No. 136), to the principle of equal rights between men and women established in paragraph 3 of the same Preamble (Soc., 29 January 2020, appeal No. 18-21.862, published), to the right to judicial relief under Article 16 of the 1789 Declaration (Soc., 21 November 2018, appeal No. 17-11.122, published), to the freedom of expression, protected by Article 10 of the Agreement for the protection of human

rights and fundamental freedoms (Soc., 30 June 2016, appeal No. 15-10.557, Bull. 2016, V, No. 140; Soc., 19 January 2022, Appeal No. 20-10.057, published).

16. Pursuant to Article L. 1132-1 of the Labour Code, no employee may be discriminated against on grounds of origin, sex, morals, sexual orientation, gender identity, age, marital status or pregnancy, genetic characteristics, particular vulnerability resulting from his or her economic situation, apparent or known to the person responsible, his or her membership or non-membership, whether true or supposed, of an ethnic group, nation or alleged race, his or her political opinions, trade union or mutual activities, or the exercise of an elective office, his or her religious beliefs, physical appearance, family name, place of residence or bank address, or because of his or her state of health, loss of autonomy or disability, ability to speak a language other than French.

17. The protections referred to in Articles L. 1225-71 and L. 1226-13 of the Labour Code concern the protection of pregnancy and maternity, the taking of adoption leave, paternity leave, parental leave, sick leave for a child and the protection of victims of occupational accidents and diseases.

18. Moreover, according to Article L. 1235-4 of the Labour Code, in the case provided for in Article L. 1235-3 of the same Code, the court orders reimbursement by the employer offending the organisations concerned of all or part of the unemployment benefits paid to the dismissed employee from the day of her dismissal to the date of the ruling, within the limit of six months of unemployment benefits per employee concerned. Such reimbursement shall be ordered of its own motion where the bodies concerned did not intervene in the proceedings or did not disclose the amount of compensation paid.

19. It follows, on the one hand, that the provisions of Articles L. 1235-3 and L. 1235-3-1 of the Labour Code, which grant the employee, in the event of unjustified dismissal, compensation payable by the employer, the amount of which is between minimum and maximum amounts according to the monthly salary and length of service of the employee and which provide that, in the cases of null dismissals in the situations listed above, the scale thus established is not applicable, reasonably allow for compensation for unjustified loss of employment.

20. It follows, on the other hand, that the dissuasive nature of the sums charged to the employer is also ensured by the application, by the court, of its own motion, of the above-mentioned provisions of Article L. 1235-4 of the Labour Code.

21. Articles L. 1235-3, L. 1235-3-1 and L. 1235-4 of the Labour Code are thus such as to permit the payment of adequate compensation or relief considered appropriate as defined in Article 10 of ILO Convention No. 158.

22. It follows that Article L. 1235-3 of the Labour Code is consistent with Article 10 of the above-mentioned Convention.

23. To order the employer to pay more than the maximum amount provided for in Article L. 1235-3 of the Labour Code, the ruling states, first, that, for a length of service of less than 4 years, the provision provides for an unjustified redundancy

payment of between EUR 13,211 and EUR 17,615 and, second, that the employee justifies, by virtue of her status as a job-seeker until August 2019 and after deduction of income received from the corresponding Job centre, a loss of more than EUR 32,000. The ruling notes that this amount represents barely half of the damage incurred in terms of the reduction in the employee's finances and therefore, in view of the specific and particular situation of the employee, aged 53 at the date of the termination of employment, does not allow for adequate and appropriate compensation for the damage suffered, consistent with the requirements of Article 10 of ILO Convention No. 158.

24. In so ruling, whereas it was for the Court of Appeal only to assess the employee's actual situation in order to determine the amount of the compensation due between the minimum and maximum amounts determined by Article L. 1235-3 of the Labour Code, the Court of Appeal has acted in breach of the above-mentioned provisions.

ON THESE GROUNDS, the Court:

DECLARES INADMISSIBLE the voluntary interventions of Syndicat des avocats de France (SAF) and Syndicat d'Avocats d'entreprise en droit social (Avosial);

QUASHES AND SETS ASIDE the ruling delivered for the parties by the *cour d'appel* (Court of Appeal) *of Paris* on 16 March 2021, but only in so far as it orders the company Pleyel centre de santé mutualiste to pay Ms [E] the sum of EUR 32,000 in compensation for dismissal without actual and serious basis;

Returns the case and the parties to the status existing prior to the said and refers them to the *cour d'appel* (Court of Appeal) of Versailles;

Orders Ms [E] to pay the costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claims;

States that on the diligence of the Prosecutor-General of the *Cour de cassation* (Court of cassation), the ruling is to be forwarded for transcription in the margin or after the partially quashed ruling;

Thus decided by the Social Chamber of the *Cour de cassation* (Court of cassation), and pronounced by the President at the public hearing of the eleventh day of the month of May of the year two thousand and twenty-two.