



Published on 25 August 2022 by **Matthieu Blaschczyk**, Member of the Paris Bar

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The unlawfulness of a ground for dismissal “contaminates” the other grounds for dismissal

In case of unsubstantiated abuse of a fundamental freedom relied upon to justify the dismissal of an employee, the dismissal is void even if other grounds could justify the termination of the employment contract.

In a decision issued on June 29, 2022^[1], the *Cour de Cassation* (French Supreme Court) applied for the first time the principle of “contaminating ground for dismissal” in the context of the use of freedom of expression.

It considered that when a dismissal letter refers to several disciplinary grounds – one of which relates to an abuse of freedom of expression by an employee within a company – to justify the termination of the employment contract, the mere fact that the abuse of this freedom is found unsubstantiated renders the dismissal null and void, even if the other grounds invoked would be likely to constitute a real and serious cause for dismissal.

Indeed, as a matter of principle, when a dismissal letter includes several grievances against an employee, the judge must examine all the grounds for dismissal raised by the employer. The termination of the employment contract may be considered legitimate by the judge, even if one of the grounds put forth is not deemed as being real and serious.

However, when one of the grievances mentioned in the dismissal letter is based on an employee’s abuse of his/her freedom of expression, the judge must first consider this ground for dismissal. The unsubstantiated abuse of this fundamental freedom renders the dismissal null and void and “contaminates” the other grounds, even if any such other grounds could justify the dismissal decision made by the employer.

It should be noted that since the so-called “Macron” Ordinances of 2017, a judge faced with a ground for dismissal that infringes a fundamental freedom is required to examine the other grounds, as long as he/she has



the possibility of taking them into account for the assessment of the compensation to be awarded to the employee.

It should be remembered that a dismissal found to be void entitles the employee to a greater compensation than a dismissal without real and serious cause as the indemnities provided for under the Macron compensation scale^[2] do not apply in this case.

[1] Labor Chamber of the *Cour de Cassation*, June 29, 2022, No. 20-16.060

[2] See article entitled [Game, set and match for the “Macron scale”](#) published on our Blog in December 2021

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