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NEWS REPORT

Country:	France
Title:	Court of cassation, Social Chamber, 15 November 2017 n° 16-15281
Date:	13 December 2017
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<u>Context</u>	
Issue at stake:	Scope of indemnification of the annulment of a dismissal based on discrimination on the ground of age
Ground of discrimination:	Age
Source:	National court decision
Field:	Employment
Applicable law:	Articles L1132-1 and L1132-4 of the Labour Code

Content

Case: The Appeal Court judge decided that the claimant was dismissed on account of his age and concluded to the nullity of the dismissal in accordance with Article L1132-4 of the Labour Code providing for integral indemnification. However, the Court deducted from the damages awarded the sums received by the claimant on account of unemployment insurance and salary received in another employment.

The claimant went before the Court of Cassation alleging that this decision violated the principle that the employer could not benefit from violations of fundamental rights covered by the Constitution, ECHR and Directive 2000/78, and that in circumstances where the Court concluded to discrimination, it must conclude to the nullity of the dismissal and payment of all unpaid salaries and advantages, regardless of other sums received by the claimant.

Decision of the Court: The Court of cassation decided that, considering that discrimination on the ground of age is not protected by the Constitution, the principle of compensatory damages applies and requires that all sums received by the claimant be deducted from the damages awarded.

Key points of analysis: In this case, the Court of Cassation takes the opportunity that the ground of age is not covered by the Constitution to narrow down the impact of its previous decisions regarding the compensation of discrimination based on union activities (Cass. soc., 2 June 2010, no 08-43.277), therefore introducing a distinction as regards the compensation of rights and freedoms covered by the French Constitution and rights covered by European law.

Internet link source:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000036053048&fastReqId=387503508&fastPos=1>