

Cour de Cassation, Chambre Sociale, 17 April 2008, No. 06-45270

1) Reference Details

Jurisdiction: Court of Cassation, Labour Chamber, France

Date of Decision: 17 April 2008

2) Facts

The case concerned Mr X, who brought his employer, European synchrotron, before the employment tribunal regarding the expatriation indemnity which was granted to foreign workers under article 50 of the company's convention.

3) Law

- Articles L.122-35 and L. 140-2 of the Labour Code
- Articles 14 of the ECHR
- Articles 12 and 39 of the EC

4) Legal Arguments

Mr X argued that the grant of an expatriation bonus for foreign workers alone, independently of any actual expatriation, was discriminatory in nature. He argued that the fact that the bonus had the sole objective of facilitating the employment of foreign workers in order to create a pole of international scientific excellence, was not an objective justification without discrimination.

5) Decision

The principle of non-discrimination on the basis of nationality contained within article 12 of the EC only applies to cases covered by community law. Its purpose is to guarantee the free movement of workers with the result that they cannot be invoked by an employee who has not benefited from the freedom of movement in order to work in another Member state.

Furthermore, the Court decided that article 50, the expatriation grant, is intended to compensate for inconveniences resulting from the expatriation of the employee and their family, in order to contribute to a pole of international scientific excellence. The fact that French workers do not benefit from this grant is based on an objective reason which is not discriminatory and is proportional to the objective pursued.