

Mutual assistance for the recovery of tax claims: challenge to the standardised instrument (Ruling n° 665 – 21-11.574)

11/10/2023



Ruling No. 665

Setting aside without referral

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 11 OCTOBER 2023

Mr [Z] [R], domiciled at [Address 1], lodged appeal No. Q 21-11.574 against the ruling delivered on 3 December 2020 by the *cour d'appel* (Court of Appeal) of Paris (Section 4, Chamber 8) in the dispute between himself and the accounting officer of the Special Claims Directorate of the Treasury, domiciled at [Address 2], respondent at the quashing.

The appellant relies their appeal on one ground of quashing.

The case file has been sent to the Prosecutor-General.

On the report of Ms Lion, judge referee, the observations of SCP Boullez, lawyer of Mr (R), SCP Foussard and Froger, lawyer of the accounting officer of the Special Claims Directorate of the Treasury, after debate in the public hearing of 29 August 2023 in the presence of Mr Vigneau, president, Ms Lion, judge referee – reporting judge, Mr Mollard, Elder Judge, and Ms Fornarelli, Chamber Registrar,

the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of Cassation), composed of the above-mentioned president and judges, after having deliberated in accordance with the law, has issued this ruling.

Account of the dispute

Facts and Procedure

1. According to the ruling under appeal (Paris, 3 December 2020), by letter of 8 March 2019, the Treasury's Special Claims Directorate sent Mr [R] a uniform instrument from the German authorities, enabling the recovery of a tax claim pursuant to Council Directive No. 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.
2. Mr [R] brought an action against the tax authorities to obtain the annulment of said uniform instrument before the execution judge of a *tribunal de grande instance* (Tribunal of First Instance), who declared his application inadmissible.

Reviewing plea

On the plea, in so far as it criticises the ruling declaring inadmissible the application for annulment of the notification of the European uniform instrument by the French State

Statement of plea

3. Mr [R] objects to the ruling for having declared his application for annulment of the notification of the uniform instrument by the French State inadmissible, whereas "in the case of recovery assistance for any of the claims referred to in Council Directive No. 2010/24/EU of 16 March 2010, the issue of a uniform instrument permitting the adoption of enforcement measures in the requested Member State is subject to the condition that the debtor has first been notified of the claim which is the subject of the recovery order in the language of the requested State in such a way that he/she is in a position to challenge it effectively by the exercise of an effective judicial remedy before the courts of the requesting State; it follows that the right to an effective judicial remedy and the right to a fair trial require the execution judge of the requested State to refuse assistance to the requesting State when the debtor was not in a position to contest the claim effectively because it was not duly notified to him/her, in the absence of having been informed of the grounds on which the claim was based in the language of the requested State which he understood prior to the issue of the uniform instrument ; that in considering, on the basis of article R. 283 C of the Tax Procedures Code, that it was not for it to rule on the legality of the prior notification of the German administrative decision of 30 August 2018, in the absence of precautionary or enforcement measures taken in France on the basis of the uniform instrument, or of any dispute relating to the legality of the notification of the uniform instrument, when Mr. [R] argued in this respect that the

Finanzmat had notified him of a claim for the amount of 633,949.73 euros by a decision dated 30 August 2018, which was not translated, in conditions that did not allow him to exercise an effective legal remedy in good time, the *cour d'appel* (Court of Appeal) violated Articles 6 and 13 of the European Convention on Human Rights, Article L. 213-6 of the Judicial Code, as well as Article L. 283 C, V and VI, of the Tax Procedures Code."

Statement of reasons

Court's response

4. Contrary to the allegations in the plea, as the *cour d'appel* (Court of Appeal) has not ruled on an application for annulment of the notification by the French authorities of the uniform instrument issued by the German authorities, which was not referred to it, the plea must be rejected.

But on the plea for lack of jurisdiction raised of its own motion.

5. After notice given to the parties in accordance with Article 1015 of the Code of Civil Procedure, Article 76, paragraph 2, of the same Code is applied.

In view of Article R. 283 C-3 of the Tax Procedures Code:

6. It follows from this text, which transposes Article 14(2) of Council Directive No. 2010/24/EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures, that the dispute relating to the validity of the uniform instrument allowing for the adoption of enforcement measures in the requested Member State is brought by the addressee before the competent body of the requesting Member State.

7. The ruling notes that Mr [R]'s request seeks the annulment of the uniform instrument issued by the German authorities, maintaining that he was not duly notified of the German administrative decision of 30 August 2018 which prompted the request for recovery assistance.

8. It follows that this dispute, which relates to the validity of the uniform instrument, falls within the jurisdiction of the competent German body.

9. The ruling under appeal must therefore be set aside, the lack of jurisdiction of the French courts to rule on this action must be established and to invite the parties to a competent court for further appeal.

Operative part of the ruling

ON THESE GROUNDS, and without having to rule on the plea in so far as it criticises to the ruling for declaring inadmissible the request for annulment of the uniform instrument, the Court:

SETS ASIDE, in all its provisions, the ruling delivered on 3 December 2020 by the *cour d'appel* (Court of Appeal) of Paris;

DECLARES that there is no need to refer back the case

Declares that the French courts lack jurisdiction;

Refers the parties to a more competent court;

Orders Mr [R] to pay the costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claim made by Mr (R)

Finds that, at the behest of the Prosecutor-General at the *Cour de cassation* (Court of cassation), the present judgment will be forwarded for transcription in the margin or at the bottom of the repealed judgment

Thus decided by the Commercial, financial and economic chamber of the *Cour de cassation* (Court of Cassation), and pronounced by the President in the public hearing of the eleventh day of the month of October of the year two thousand and twenty-three, signed by him and Mr Mollard, Elder Judge, in replacement of the reporting judge who was prevented from attending, in accordance with the provisions of Articles 452 and 456 of the Civil Procedure Code.

President : Mr Vigneau
Elder Judge : M. Mollard
Judge referee : Ms Lion
Lawyer(s) : SCP Boullez – SCP Foussard and Froger

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