

Four-year statute of limitation to the claim for compensation of an owner having exercised its right of abandonment and invoking a loss arising from the resale of the property by the municipality for purposes unrelated to the public interest

28/10/2021



Ruling no 538 of 10 June 2021 (19-25.037) - Cour de cassation (Court of Cassation) - Third Civil Chamber  
- ECLI:FR:CCAS:2021:C300538

**Dismissal**

## Summary

**The claim for compensation brought against a municipality, resulting from the loss of capital gains generated from the resale of these plots of land after the right of abandonment has been exercised, relates to a claim subject to the four-year statute of limitations as set out in Article 1, paragraph 1 of Act No 68-1250 of 31 December 1968, which must be invoked before the court receiving the referral in first instance has ruled on the merits**

---

*Appellant(s): the municipality [Locality 1] represented by its current mayor*

*Respondent(s): Ms [W] [B]*

---

## Facts and procedure

1. According to the ruling under appeal (Lyon, 19 November 2019) delivered on remand after quashing (Third Civil Chamber, 18 April 2019, appeal no 18-11.414), Mr [W] and Mr [S], owners of a plot of land located in a site reserved under the municipal land use plan (plan d'occupation des sols, POS), gave formal notice to the municipality [Locality 1] (the municipality) to acquire it, pursuant to the abandonment procedure as set out in Article L. 123-9 of the Urban Planning Code.
2. As no agreement was reached on the sale price, a judgement of 20 September 1982 ordered the transfer of property to the municipality and a ruling of 8 November 1983 set the purchase price.
3. On 22 December 2008, the land was resold and a building permit was granted on 18 October 2011.
4. On 29 October 2013, Ms [B] as successor to Mr [W] and Mr [S], sued the municipality for damages.

## Reviewing pleas

### On the third and fourth pleas, appended hereafter

5. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision neither on the third plea, which is inadmissible, nor on the fourth plea, which is clearly not of a nature to lead to the quashing.

## On the first plea

### Statement of plea

6. The municipality objects to the ruling for having declared the claim for damages as admissible based on Article 1 of Supplementary Protocol No 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and ordering it to pay Ms [B] the sum of 4,907,014.58 euros, whereas "unless an exception is provided for by law, the statute of limitations for claims against public authorities is set at four years from the first day of the year following that in which the rights were acquired, whatever the cause. By deciding that the claim which Ms [B] could invoke against the municipality [Locality 1] was a civil claim, to which a five-year statute of limitations from Article 2224 of the Civil Code applied, the cour d'appel (Court of Appeal) infringed Article 1 of Act No 68-1250 of 31 December 1968."

### Court's response

7. According to Article 7, paragraph 1 of the Act of 31 December 1968, the four-year statute of limitations must be invoked before the court receiving the referral in first instance has ruled on the merits.

8. Ms [B] sued the municipality for compensation for her loss by writ dated 29 October 2013.

9. Her claim for compensation, resulting from the loss of capital gains generated from the resale of these plots of land, was related to a claim that was subject to the four-year statute of limitations as set out in Article 1, paragraph 1 of the above-mentioned law.

10. However, the municipality only invoked the four-year statute of limitations before the cour d'appel (Court of Appeal) to which the case is referred.

11. It follows that Ms [B]'s action was admissible.

On purely legal ground, suggested by the defence, substituted to those that are disputed, under the conditions provided for by Article 620, paragraph 1 of the Civil Procedure Code, the ruling is lawfully justified.

## On the second plea

### Statement of plea

13. The municipality objects to the ruling that orders it to pay Ms [B] the amount of 4,907,014.58 euros, whereas:

"1°/ Article L. 123-1 of the Urban Planning Code, in its formulation that was applicable between 1973 and 1983, provided that municipal land use plans were to set out the locations to be reserved for public roads and structures, for general interest facilities and for green spaces. It was not disputed that, after the joined parties [W] and [S] had sold it to the municipality, the land at issue, which was a site reserved for a green space, had remained as a green space used by the public for twenty years, before being developed and used as a preschool for eight

years. By holding that the municipality had not designated the building for the property's reserved use on the grounds that the municipality had not provided any explanation about the "development" of the green space, the cour d'appel (Court of Appeal), which added a condition to the law that was not provided, infringed Article L. 123-1 of the Urban Planning Code, in its wording applicable to the dispute, together with Article 1 of Supplementary Protocol No 1 to the European Convention for the Protection of Human Rights, by misapplication;

2°/ Only an obligation on an owner to transfer property to a public body without it being used for the public interest purpose which justified the transfer constitutes disproportionate interference with the right of ownership. The cour d'appel (Court of Appeal) itself had noted that the disputed land had been developed for use as a preschool from 2002 to 2008. The cour d'appel (Court of Appeal) had held that joined parties [W] and [S], who had been duly compensated in 1983 by the expropriation judge, had suffered unjustified interference to their right to property. By giving its decision on grounds that failed to establish that the municipality was not pursuing an aim in the public interest in 1983 and had not subsequently fulfilled that aim, the cour d'appel (Court of Appeal) deprived its decision of a legal basis under Article 1 of Supplementary Protocol No 1 to the European Convention for the Protection of Human Rights."

## **Court's response**

14. In its 18 April 2019 ruling, the Cour de cassation (Court of Cassation) found that the predecessor of Ms [B], on the basis of the right of abandonment and for a price of 800,000 francs (121,959.21 euros), had sold the property to the municipality - the property at the time designated for the reserved purpose of establishing green spaces - and that the municipality, without preserving its use for general interest which was the justification for the expropriation had modified the urban planning rules thereby making the land buildable. The municipality then resold the land to a private party for 5,320,000 euros. The result was that, despite the very long period of time between the two acts, the loss of any compensation excessively infringed Ms [B]'s property rights with regard to its original legitimate aim. By dismissing her claim for compensation of damages, the cour d'appel (Court of Appeal) infringed Article 1 of Supplementary Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

15. Therefore the Cour de cassation (Court of Cassation) carried out a control of proportionality itself, the plea, which seeks to call into question the control of proportionality that was carried out to a high degree by the referring cour d'appel (Court of Appeal), is irrelevant.

## **ON THESE GROUNDS, the Court:**

DISMISSES the appeal;

**President: Mr Chauvin**

**Reporting Judge: Ms Renard, Judge Referee**

**Advocate-General: Mr Burgaud, Advocate-General Referee**

**Lawyer(s): SCP Gaschignard – SCP Boré, Salve de Bruneton et Mégret**

> [Read the french version](#)

---

Real estate

Translated rulings