

# Effective right of access to a court under Article 6§1 of ECHR and inadmissibility of the appeal lodged against the decisions of the director of the French national institute of industrial property

28/10/2021



**Effective right of access to a court under Article 6§1 of European Convention on Human Rights and inadmissibility of the appeal lodged against the decisions of the director of the French national institute of industrial property (INPI) resulting from the omission of required elements in the statement of appeal.**

Ruling no 473 of 12 May 2021 (18-15.153) - Cour de cassation (Court of Cassation) -  
Commercial Chamber  
- ECLI:FR:CCAS:2021:CO00473

## Quashing

Only the French version is authentic

*Appellant(s) : Giphar "Sogiphar", société coopérative à forme anonyme à capital variable (variable capital co-operative company)*

*Respondent(s) : Biogaran, société par actions simplifiée (simplified joint-stock company) and others*

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## Facts and procedure

1. According to the ruling under appeal (Douai, 8 February 2018), the co-operative company Giphar (the Sogiphar company), owner of the complex trademark "LIBEOZ", filed on 25 July 2016 and registered under no 16 4 289 499, to designate, inter alia, pharmaceutical products, hygienic products for medicine, foodstuffs and dietetic substances for medical use, food supplements, plasters, materials for dressings, disinfectants, surgical and medical devices and instruments, orthopaedic articles and suture materials, lodged a request for objection<sup>[1]</sup> to the application for registration no 16 4 298 576 relating to the word sign 'LIBZ', filed on 12 September 2016 by the company Biogaran, to designate identical and similar goods.

2. By decision of 21 June 2017, the Director of the French national institute of industrial property (Institut National de la Propriété Industrielle, INPI) dismissed the request for objection. The company Sogiphar appealed this decision.

## Reviewing plea

For the second part of the plea

## Statement of plea

3. Sogiphar objects to the ruling for having declared its appeal inadmissible, whereas "limitations on the right of access to a court relating to the conditions of admissibility of an appeal can only be reconciled with Article 6, §1 of the Convention for the Protection of Human Rights and Fundamental Freedoms if they pursue a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Thus, the rules in question or the application of them should not prevent litigants from making use of an available remedy. The precise identification of the legal entity "in the person of its legal representatives" makes it possible to determine the body which represents it in order, where appropriate, to verify its powers and capacity, so that it is a manifestly disproportionate limitation on the right of access to a court to rule out the admissibility of an appeal filed against a decision of the director of the INPI on behalf of a legal entity "in the person of its legal representatives" and precisely identified, in particular by its form and identification number, when the body representing it is thus made identifiable and the sanction deprives the litigant of all access to the court. By holding nevertheless inadmissible Sogiphar's appeal, the cour d'appel (Court of Appeal) infringed Article 6, §1 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

## Court's response

### Admissibility of the plea

4. Biogaran objected to the admissibility of the plea, as Sogiphar had not invoked Article 6, §1 of the Convention for the Protection of Human Rights and Fundamental Freedoms to justify the admissibility of its appeal against the decision of the director of the INPI before the cour d'appel (Court of Appeal), and that it was not admissible to do so before the Cour de cassation (Court of Cassation) for the first time.

5. However, the plea, which does not refer to any consideration of fact that does not result from the statements of the trial judges, is purely legal in nature.

6. The plea is therefore admissible.

### Merits of the plea

In view of Article 6, §1 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

7. It follows from this convention, as interpreted by the European Court of Human Rights, that the "right to a court", of which the right of access is a particular aspect, is not absolute and is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired, and such limitations will not be compatible with Article 6, §1 of the Convention for the Protection of Human Rights and Fundamental Freedoms if they do not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aims sought to be achieved (ECHR, rulings of 28 October 1998, Pérez de Rada Cavanilles v. Spain, app. 116/1997/900/1112, §44; of 26 January 2017, Ivanova and Ivashova v. Russia, app. nos. 797/14 and 67755/14, §42, and of 13 March 2018, Kuznetsov and

others v. Russia, app. nos. 56354/09 and 24970/08, §40).

8. With regard more specifically to the rules on the form in which appeals may be lodged, the aim is to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty, and the European Court of Human Rights has held that those concerned must expect those rules to be applied, recalling in this respect that it is their primary responsibility to make every effort to defend their interests.

9. The provisions of Article R. 411-21 of the Intellectual Property Code, in their then-applicable formulation, which provide that, in order to be admissible, the statement of appeal against a decision made by the director of the INPI shall include, when the appellant is a legal entity, the details of its form, its name, its registered office and the body which legally represents it, are legitimate, since, applying to an appeal against the individual administrative act which constitutes the issue of an industrial property title by the director of the INPI (Com., 31 January 2006, appeal no 04-13.676, Bull., no 26), they are intended to ensure compliance with the principle of legal certainty. Indeed, the obligation for the legal entity to mention the body representing it allows the court and the responding party to ensure that the appeal is lodged by a body authorised to commit and represent the legal entity.

10. This formality, which is clearly stated in the above-mentioned provision, can easily be fulfilled, since the legal entity necessarily knows the identity of its legal representative, so that this provision does not create any uncertainty and allows the appellant, who must expect these rules to be applied and make every effort to defend his or her interests, to comply with the requirements of the provision.

11. However, while Article 126 of the Civil Procedure Code provides that, in the event that the situation giving rise to the objection to admissibility can be regularised, the inadmissibility will be set aside if the cause has disappeared at the time the court rules, it has been consistently held that the provisions of Article R. 411-21 of the Intellectual Property Code are specific, that they exclude the application of Article 126 of the above-mentioned code and that it is therefore not possible to proceed with the subsequent regularisation of required elements that were missing (Com., 7 January 2004, appeal no 02-14.115; Com., 17 June 2003, appeal no 01-15.747, Bull., no 102).

12. Yet, the possibility of regularisation until the court rules would not prevent the court's control and would not affect the legitimate interests of the responding party. Moreover, the objectives of legal certainty and proper administration of justice, which are served by inadmissibility for lack of one of the required elements, would not be affected by opening up such a possibility of regularisation.

13. Consequently, Article R. 411-21 of the Intellectual Property Code, as it has so far been interpreted, does not ensure a reasonable relationship of proportionality between the means employed and the aim sought to be achieved, and excessively infringes on the right of access to the court.

14. It therefore appears necessary to abandon the above-mentioned case law and henceforth interpret Article R. 411-21 of the Intellectual Property Code in the sense that its provisions are not exclusive of the application of Article 126 of the Civil Procedure Code and that, consequently, the inadmissibility of the appeal lodged against the decisions of the director of the INPI resulting from the omission, in the statement of appeal, of one of the required elements, will be set aside if, before the court gives a ruling, the appellant communicates the missing information.

15. However, this new interpretation cannot be invoked against Sogiphar for not having regularised the situation resulting from the failure to mention the body representing it in its statement of appeal, insofar as the previous case law excluded any possibility of regularisation.

16. In order to declare Sogiphar's appeal inadmissible, the ruling notes that it had been lodged by this company, "in the person of its legal representatives", and holds that, since a public limited company does not have the same legal representative, depending on whether it has a board of directors or a management board and supervisory board, the mere mention of its corporate form does not make it possible to deduce the body legally representing it.

17. In so ruling, whereas it had to set aside Article R. 411-21 of the Intellectual Property Code, as interpreted at the time, insofar as it disproportionately affected Sogiphar's right of access to a court, the cour d'appel (Court of Appeal) disregarded the requirements of the above-mentioned provision.

## **ON THESE GROUNDS, and without having to rule on the other objection, the Court:**

QUASHES AND SETS ASIDE, all provisions, the ruling delivered on 8 February 2018, between the parties, by the cour d'appel (Court of Appeal) of Douai;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the cour d'appel (Court of Appeal) of Douai, otherwise composed;

**President: Ms Mouillard**

**Reporting Judge: Ms Darbois**

**Advocate-General: Ms Beaudonnet**

**Lawyer(s): SCP Delvolvé et Trichet - SARL Meier-Bourdeau, Lécuyer et associés**

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