

Terrorist attack: extension of the notion of civil party at the investigation stage (ruling 21-80.265)

15/02/2022



Appeal No. 21-80.265

Quashing without referral

QUASHING WITHOUT REFERRAL

Mr SOULARD, President

FRENCH REPUBLIC

RULING OF THE CRIMINAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION)

OF 15 FEBRUARY 2022

Ms [M] [D], a civil party, filed an appeal against the ruling of the investigating chamber of the *cour d'appel* (Court of Appeal) of Paris,

Section 1, dated 16 December 2020, which, in the investigation against Messrs [R] [X], [S] [B], [G] [A], Ms. [P] [H], Messrs [E] [T], [W] [N], [O] [Z], [U] [I] and [K] [F], including counts of murder, attempted murder and aiding and abetting murder, in an organised gang in connection with a terrorist enterprise, terrorist criminal association, confirmed the order of the Investigating Judge declaring his civil action inadmissible.

A written submission was filed.

In the report of Ms Guerrini, judge referee, the observations of SCP Rocheteau and Uzan-Sarano, lawyers representing Ms [M] [D], and the conclusions of Mr Desportes, first advocate-general, the lawyer having pleaded last, following discussions in the public hearing of 25 November 2021 in the presence of Mr Soulard, President,

Ms Guerrini, reporting judge, Ms de la Lance, Mr Bonnal, Mr de Larosière de Champfeu, Ms Ingall-Montagnier, Ms Planchon, Mr Bellenger, Ms Slove, Ms Ménotti, Ms Leprieur, Mr Samuel, Mr Maziau, Mr Turcey, judges of the Chamber, Ms Barbé, Ms de Lamarzelle, judge referees, Mr Desportes, first advocate-general, and Ms Sommier, Chamber Registrar,

the criminal chamber of the *Cour de cassation* (Court of Cassation), composed of the above-mentioned President and judges, after deliberation thereof in accordance with **the** law, has issued this ruling.

Facts and procedure

1. It follows from the ruling under appeal and the contents of the case file that:
2. On the evening of 14 July 2016 in [Address 2], a truck drove into [Address 1] where a crowd had gathered to witness a firework display, travelled two kilometres, killing eighty-six people and injuring several hundred others, before coming to a mechanical stop at the intersection of [Address 1] and rue du Congrès. An exchange of gunfire took place between the police and the driver, later identified as [K] [C], who was shot and killed.
3. An investigation was opened on the above-mentioned charges.
4. Ms [M] [D] filed a civil action, claiming that she was on the promenade that evening, heard the screams of the crowd and gunshots and, understanding that an attack was underway, jumped onto the beach four metres below, injuring her head.
5. By order of 21 February 2020, the Investigating Judge declared this civil action inadmissible.
6. Ms [D] appealed against this decision.

Reviewing pleas

Statement of pleas

7. The plea criticizes the ruling under appeal for declaring Ms [D]'s civil action inadmissible, whereas:

"(1) *the civil action is opened to all those who have personally suffered damage directly caused by the offence* that in this case, Ms [D] claimed that she was at [Address 1] when the truck driven by [K] [C] intruded onto the road, travelled at high speed over several kilometres and killed and injured hundreds of pedestrians before stopping for providential mechanical reasons; that she explained that when she heard screams and gunshots, she immediately realized that an attack was underway and that, fearing for her life, she jumped to the beach four metres below to escape and injured her head in the fall; that, by holding, in order to declare the civil action inadmissible, that *"only the actual trajectory of the truck may be taken into consideration"* and that Ms [D] was not on that trajectory but rather *"beyond the point where the truck stopped"*, the investigating chamber, which subordinated the civil action to a condition not provided for in law, violated Articles 2 and 87 of the Code of Criminal Procedure;

(2) the civil action is opened to all those who have personally suffered damage directly caused by the offence; that in this case, Ms [D] claimed that she was at [Address 1] when the truck driven by [K] [C] intruded onto the road, travelled at high speed over several kilometres and killed and injured hundreds of pedestrians before stopping for providential mechanical reasons; that she explained that when she heard screams and gunshots, she immediately realized that an attack was underway and that, fearing for her life, she jumped to the beach four metres below to escape and injured her head in the fall; that, by holding that the civil action was inadmissible, it was necessary to *"ascertain whether Ms [D] was directly exposed to the attempted murder by [K] [C]"* and that, in the absence of her being on the truck's actual trajectory, she had not been *"directly and immediately exposed to the risk of death or injury sought by the driver"*, with the result that her damages are those suffered by a witness and not a direct victim, the investigating chamber, which subordinated the civil action to a condition not provided for in law, violated Articles 2 and 87 of the Code of Criminal Procedure;

(3) that the civil action is opened to all those who have personally suffered damage directly caused by the offence; that by holding, in order to declare the civil action inadmissible, that Ms [D]'s post-traumatic stress disorder, her fall and the resulting physical injuries were not caused by a proven risk of impact with the truck, but rather by *"the perception of the crowd's panic, the fear by which she was affected and the shots heard"* and therefore *"the trauma experienced by the witnesses of the consequences of the offence and not the damage of a direct victim of the offence"*, when those circumstances were not such as to exclude a direct relation between the alleged damages and the attack, which was the primary and exclusive reason for Ms [D]'s escape and her mental condition, the investigating chamber violated Articles 2, 87 and 593 of the Code of Criminal Procedure;

(4) that the civil action is opened to all those who have personally suffered damage directly caused by the offence; in this case, Ms [D] argued that she was on the truck's trajectory and that if it had not been stopped by providential mechanical damage, it would have taken less than six seconds for her to be hit; that, in order to declare the civil action inadmissible, the *cour d'appel* (Court of Appeal) held that, in order to determine whether Ms [D] had been directly exposed to the attempted murder by [K] [C], *"only the actual trajectory of the truck may be taken into account"* and that, having been beyond the point where it had stopped, Ms [D] had not been *"directly and immediately exposed to the risk of death or injury sought by the driver"*; by refusing to investigate the truck's trajectory in the absence of the mechanical damage and whether, in that case, Ms [D] could have been killed, such that, like any other person present on the scene, she was a target of the murder attempt, the investigating chamber violated Article 121-5 of the Penal Code, together with Articles 2, 87 and 593 of the Code of Criminal Procedure."

Court's response

In view of Articles 2, 3 and 87 of the Code of Criminal Procedure:

8. According to these articles, it is sufficient, for a civil action to be admissible before the investigating judge, that the circumstances that gave rise to it allow the judge to accept as possible the existence of the alleged damage and its direct relationship with an offence under criminal law.
9. In order to confirm the order of the Investigating Judge who declared that Ms [D]'s claim for damages was inadmissible, after establishing that the truck driven by [K] [C] had stopped as a result of mechanical damage, the

ruling under appeal states that it is apparent from the explanations given by Ms [D] that she was out of the range of the shots which followed, beyond the point where the truck stopped, which she did not see, and that the imminent nature of an impact with it does not therefore apply to her situation, consideration being given only to the actual trajectory.

10. The judges add that it was through a specific and fair analysis of Ms [D]'s location in relation to the trajectory of the truck that the investigating judge considered that she had not been directly and immediately exposed to the risk of death or injury sought by the driver.
11. They conclude that it was the perception of the crowd's panic, the fear that affected her as a result and the gunshots heard that caused post-traumatic stress disorder and are related to the trauma experienced by witnesses of the consequences of the offence and not to the damage of a direct victim of the offence, that her physical injuries are due to the fall in these circumstances and not to a proven risk of impact with the truck, such that Ms [D] is not a direct victim of the events with which the investigating judge is concerned as defined in Article 2 of the Code of Criminal Procedure.
12. In so doing, the investigating chamber erred in interpreting the above-mentioned texts and the above-mentioned principle.
13. Indeed, the facts it has found, from which it is apparent that Ms [D] injured herself while attempting to flee the scene of a criminal act whose object was the indiscriminate killing of a large number of persons, to which, by virtue of her proximity, she could legitimately believe that she was exposed. Therefore, this initiative cannot be dissociated from the related criminal action. These elements are sufficient to characterize the possibility of the alleged damage and its direct relationship with the murders and attempted murders under investigation.
14. The ruling must be reversed.

Scope and consequences of the reversal

15. The quashing will take place without referral, since the Cour de cassation (Court of cassation) is in a position to enforce the law directly and settle the dispute, as provided in Article L. 411-3 of the Judicial Code.

ON THESE GROUNDS, the Court:

QUASHES and SETS ASIDE, in its entirety, the abovementioned ruling of the investigating chamber of the cour d'appel (Court of Appeal) of Paris of 16 December 2020;

DECLARES admissible the initiation of a civil action by Ms [D];

DECLARES that there is no need to refer back the case

ORDERS the printing of this ruling, its transcription in the registers of the Registrar of the investigating chamber of the cour d'appel de Paris and its annotation in the margin or following the quashed ruling;

Thus decided by the criminal chamber of the *Cour de cassation* (Court of cassation) and pronounced by the President on the fifteenth day of the month of February of the year two thousand and twenty-two.

President : Mr Soulard

Reporting Judge referee : Ms Guerrini

First advocate-general : Mr Desportes

Lawyer(s) : SCP Rocheteau and Uzan-Sarano

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