

Terrorist attack: extension of the notion of civil party at the investigation stage (ruling 21-80.264)

15/02/2022



Appeal No. 21-80.264

Quashing without referring back the case

QUASHING WITHOUT REFERRING BACK THE CASE

Mr SOULARD, President

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

OF 15 FEBRUARY 2022

Mr [G] [L], 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 [V] [K], [M] [S], [O] [W], Ms [E] [Y], Messrs [X] [I], [P] [U], [N] [B], [H] [J] and [R] [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.

Concerning Ms Guerrini's report, judge referee, the observations of SCP Spinosi, lawyers representing Mr [G] [L], and Mr Desportes' submissions, first advocate-general, the lawyer who 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 law, has issued this ruling.

Facts and procedure

1. It follows from the ruling under appeal and the documents relevant to the proceedings that:
2. On the evening of [Date of Death 1] 2016 in [Address 2], a truck drove into the [Address 3] 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 3] and [Address 4]. An exchange of gunfire took place with the police and the driver, later identified as [R] [A] [T], who was shot and killed.
3. An investigation was opened on the above-mentioned charges.
4. Mr [G] [L] filed a civil action before the Investigating Judge. He reported that he was on the beach at [Address 2] at the time and, after hearing loud noises and screams, and understanding what was happening, proceeded to chase the truck to neutralize the driver. He said that he was next to the cab when the shooting between the driver and the police began.
5. By order of 21 February 2020, the Investigating Judge declared this civil action inadmissible.
6. Mr [L] appealed against said decision.

Reviewing pleas

On the first and second pleas,

Statement of pleas

7. The first ground of appeal criticizes the ruling under appeal for upholding the order declaring Mr [L]'s civil action inadmissible, where "*the civil action is admissible on all counts of damages arising from the facts which are the subject of the proceedings; that the trauma inherent to the mere presence in a place where an individual attempts, in a short period of time, to kill the largest number of persons present, without the victims having been determined beforehand - a situation that could be described as mass murder - constitutes a moral damage directly related to the murders and attempted murders, irrespective of the actual exposure to a risk of death* by upholding the order of inadmissibility of the civil action by Mr [L] on the grounds that he would not have

consequences of the attack on [G] [L], induced by the vision of persecuted and deceased victims, are cause of undeniable trauma", the investigating chamber violated Articles 2 and 3 of the Code of Criminal Procedure."

8. The second ground of appeal criticizes the ruling under appeal for upholding the order declaring the inadmissibility of the civil action by Mr [L], whereas "for a civil action to be admissible before the investigating court, it is sufficient for the circumstances on which it is based to enable the judge to accept as possible the existence of the alleged damage and its direct relationship with an offence under criminal law; that even if we accept that the status of Mr [L] as direct victim assumes that he was directly exposed to [R] [A] [T]'s intention to murder, such exposure cannot be excluded as it stands, as he asserts in his statements, the only element on which the investigating chamber relies to justify its decision, *"I came to the scene of the shooting", "at first I was on the driver's side of the truck, and then I went to the passenger's side"*, from which it is inferred that Mr [L] was near the person who committed the offense, which subsequently gives rise to the possibility that he was directly exposed; it is also found that in order to protect an individual present at the scene, Mr [L] decided to push the latter to the ground, which can be inferred that standing there carried a risk of being hit by gunfire; that by nevertheless confirming the order of inadmissibility of the civil action initiated by Mr [L], the investigating chamber violated Articles 2 and 3 of the Code of Criminal Procedure."

Court's response

9. The pleas are joined.

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

10. According to these texts: for a civil action to be admissible before the investigating court, it is sufficient for the circumstances on which it is based to enable the judge to accept as possible the existence of the alleged damage and its direct relationship with an offence under criminal law.
11. To confirm the order of the Investigating Judge who declared the civil action by Mr [L] inadmissible, the ruling under appeal states that it is apparent from his statements that while his position in the town protected him from the truck's trajectory, he took the decision to climb up the roadway of the promenade and chase after it.
12. The judges establish that if Mr [L] stated that he moved from the driver's side to the passenger's side while running, it is not apparent from his explanations that he was near the driver in a possible firing line with regard to the latter, but rather that he ran behind the truck without catching up with it, focusing on the rear door, that he did not see the driver or the shots he might have fired, that he stopped running when he realised that *"it was over"*, with the police firing and that he helped prevent persons from getting closer to the site of the gunfire which he himself had not reached.
13. They add that it is therefore by a specific and fair analysis of Mr [L]'s location in relation to the route taken by the truck that the Investigating Judge considered that he was not directly and immediately exposed to the risk of death or injury stated by the driver.
14. They inferred that the consequences of the attack caused Mr [L] undeniable trauma that arises from the vision of the victims who had been hit and who had died, but that it is the trauma experienced by witnesses of the consequences of the offence and not the damage suffered by a direct victim of the offence.
15. In so doing, the investigating chamber ignored the above-mentioned texts and the above-mentioned principle.
16. It is apparent from the circumstances that it upholds that the action Mr [L] took to interrupt the commission or prevent the recurrence of intentional serious harm to persons, to which he thus exposed himself, is inseparable from these offences, such that the damage that may result for him may be directly related thereto.

18. The quashing will take place without referring back the case, 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 Mr [L];

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* (Court of Appeal) of 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.

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