

# Persons eligible for compensation from the Fonds de garantie des victimes d'actes de terrorisme (Guarantee Fund for Victims of Acts of Terrorism) (Ruling n° 1097 - 21-24.424)

27/10/2022



Ruling No. 1097

**PARTIAL QUASHING**

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

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## **RULING OF THE *COUR DE CASSATION* (COURT OF CASSATION), SECOND CIVIL CHAMBER, OF 27 OCTOBER 2022**

(1) Ms [M] [Z], spouse [C],

(2) Ms [N] [C], both of address at [Address 1],

lodged appeal No. H 21-24.424 against ruling No. RG: 20/09346 delivered on 16 September 2021 by the *cour d'appel* (Court of Appeal) of Paris, Division 4, Chamber 12, in the dispute between them and:

(1) the the *Fonds de garantie des victimes des actes de terrorisme et d'autres infractions* (Guarantee Fund for Victims of Acts of Terrorism and Other Offences), with registered office at [Address 2],

(2) the local sickness insurance funds of Val-de-Marne, with registered office at [Address 3],

(3) Mr [T] [C], domiciled [Address 1], respondents at the quashing.

In support of their appeal, the plaintiffs rely on the single plea for the quashing attached to this ruling.

The case file was sent to the prosecutor-general.

On the report of Mr Martin, judge, the observations of SCP Marlange and La Burgade, lawyer of Ms [Z] and Ms [N] [C], of SARL Boré, Salve de Bruneton and Mégret, lawyer of the *Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*, and the advisory opinion of Mr Gaillardot, first advocate-general, following discussions in the public hearing of 20 September 2022 in the presence of Mr Pireyre, President, Mr Martin, reporting judge, Ms Leroy-Gissinger, elder judge, Mr Besson, Ms Isola, judges, Mr Ittah, Mr Pradel, Ms Brouzes, Ms Philippart, judge referees, Mr Gaillardot, first advocate-general, and Mr Carrasco, Chamber Registrar,

the Second Civil Chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the abovementioned President and judges, after having deliberated in accordance with the law, has delivered the present ruling.

Account of the dispute

### **Facts and Procedure**

1. According to the ruling under appeal (Paris, 16 September 2021), and the exhibits, Mr [C] was in the Hypercasher store in Vincennes on 9 January 2015, when a terrorist entered. He took refuge in one of the cold rooms in the basement of the establishment until he was freed by the police several hours later.
2. After receiving provisions from the *Fonds de garantie des victimes des actes de terrorisme et d'autres infractions* (FGTI), Mr [C], his spouse Ms [Z], and their daughter, Ms [N] [C], sued it for compensation for damages.

### **Pleas**

### **Review of the plea**

### **Statement of plea**

3. Ms [Z] and Ms [N] [C] object to the ruling declaring them inadmissible in their claims, even though "it follows from Articles L. 126-1, L. 422-1 and L. 422-2 of the Insurance Code that any direct or indirect victim of acts of terrorism committed on national territory is entitled to claim compensation from the FGTI for injury to their person; whereas said texts therefore do not exclude compensation by the FGTI for personal damages to the close relations of the direct victim of an act of terrorism, even if not deceased; whereas, by asserting, in order to hold inadmissible the claims of Ms [Z] and Ms [N] [C], the wife and daughter of Mr [C], respectively, that "the persons entitled to claim compensation for damages are, on the one hand, the direct victims of the act of terrorism, and on the other hand their beneficiaries" and that therefore, "the damages suffered by the close relations of the non-deceased direct victim are not compensated by the FGTI, they do not have the status of beneficiaries", even though the aforementioned texts do not exclude compensation by the FGTI for personal damages suffered by the close relations of the direct victim of an act of terrorism, even if not deceased, the *cour d'appel* (Court of Appeal) infringed Articles L. 126-1, L. 422-1 and L. 422-2 of the Insurance Code."

## Statement of reasons

## Court's response

Pursuant to Articles L. 126-1, L. 422-1 and L. 422-2 of the Insurance Code, in their wording applicable to the dispute:

4. According to the first of these texts, victims of acts of terrorism committed on national territory, persons of French nationality who are victims of these same acts abroad, as well as their beneficiaries, regardless of their nationality, are compensated under the conditions defined in Articles L. 422-1 to L. 422-3.
5. According to the second text, for the application of Article L. 126-1, full compensation for damage resulting from personal damages is provided by the *Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*.
6. According to the third text, the guarantee fund is obliged, within one month of the request made, to pay one or more provisions to the victim who has suffered personal damages or, in the event of the victim's death, to their beneficiaries without prejudice to the right for said victims to refer the matter to the interim judge.
7. None of these texts excludes compensation for the close relations of the direct victim of an attack in the event of their survival.
8. It also follows from the preparatory works for Law No. 86-120 of 9 September 1986, subsequently enacted in the above-mentioned articles, that the legislator's intention was to respond, by applying redress in accordance with the rules of *ius commune*, to the need to fully and promptly compensate personal damages to the victims of terrorist acts, in contrast to the system of compensation for victims suffering personal damages resulting from an offence, which at that time was applicable, resulting from Law No. 77-5 of 3 January 1977, which provided for partial compensation only.
9. Since Law No. 90-589 of 6 July 1990 amending Article 706-3 of the Code of Criminal Procedure extended the principle of full compensation for damages resulting from personal damages to victims of offences for which it provides compensation, the *Cour de cassation* (Court of Cassation) has consistently ruled, following two rulings delivered on 14 January 1998 (2nd Civ., 14 January 1998, appeal No. 96-11.328, Civil Bulletin 1998, II, No. 14, 2nd Civ., 14 January 1998, Appeal No. 96-16.255), that this article does not exclude, when the victim of an offence has survived, compensation for personal damages to his close relations in accordance with the rules of *ius commune*.

10. Interpreting Articles L. 126-1, L. 422-1 and L. 422-2 of the Insurance Code as excluding compensation for the close relations of a surviving victim would lead to the close relations of victims of attacks being treated more unfavourably than those of victims of other offences.
11. There exists no written difference between the texts governing the rights of these victims that would justify such a result, which does not appear to be in line with the legislator's intention.
12. In addition, by ruling delivered in a joint chamber on 25 March 2022 (joint chamber, 25 March 2022, appeal No. 20-17.072 in the process of publication), the *Cour de cassation* (Court of Cassation) admitted compensation for damages caused by expectation and anxiety suffered by the close relations of a victim exposed to a risk that is likely to injure their person, even if the victim survives.
13. In order to declare Ms [Z] and Ms [C]'s claims for compensation inadmissible, the ruling states that the damages suffered by the close relations of the non-deceased direct victim are not compensated by the FGTI, as they do not have the status of beneficiaries.
14. In so ruling, the cour d'appel (Court of Appeal) violated the above-mentioned texts, whereas compensation for personal damages to close relations in accordance with the rules of *ius commune* is not excluded when the direct victim of an act of terrorism has survived.

Operative part of the ruling

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

QUASHES AND SETS ASIDE, but only in so far as it says that Ms [Z] and Ms [N] [C]'s claims are inadmissible, the ruling delivered on 16 September 2021 between the parties by the *cour d'appel* (Court of Appeal) of Paris;

Returns, on this point, 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 Paris, otherwise composed;

Leaves the Public Treasury to bear the costs;

In accordance with Article 700 of the Code of Civil Procedure, dismisses the application made by the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions and orders it to pay Ms [Z] and Ms [N] [C] the total of EUR 3,000;

At the request of the Prosecutor-General of the *Cour de cassation* (Court of Cassation), this ruling shall be forwarded for transcription in the margin or at the bottom of the partially quashed ruling;

Thus decided by the Second Civil Chamber of the *Cour de cassation* (Court of Cassation) and delivered by the President at the public hearing on the twenty-seventh day of the month of October of the year two thousand and twenty-two.

### **Pleas attached**

### **PLEA ATTACHED to this ruling**

Plea submitted by SCP Marlange and La Burgade, Supreme Court Lawyer, for Ms [Z] and Ms [N] [C]

Ms [M] [Z], spouse [C] and Ms [N] [C] object to the ruling under appeal declaring Ms [M] [Z], spouse [C] and Ms [N] [C]'s claims inadmissible,

Whereas it follows from the provisions of Articles L. 126-1, L. 422-1 and L. 422-2 of the Insurance Code that any direct or indirect victim of acts of terrorism committed in the national territory is entitled to claim compensation from the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions (FGTI) for damages resulting from personal injury; whereas said texts do not therefore exclude compensation by the FGTI for damages suffered personally by the close relations of the direct victim of an act of terrorism, even if not deceased

; whereas, by asserting, in order to hold inadmissible, the claims of Ms [M] [Z] and Ms [N] [C], spouse and daughter of Mr [C], respectively, that "the persons entitled to claim compensation for damages are, on the one hand, the direct victims of the act of terrorism, and on the other hand their dependants" and that therefore, "the damages suffered by the close relations of the non-deceased direct victim are not compensated by the FGTI, they do not have the status of beneficiaries" (ruling, p. 11), even though the aforementioned texts do not exclude compensation by the FGTI for personal damages suffered by the close relations of the direct victim of an act of terrorism, even if not deceased, the cour d'appel (Court of Appeal) infringed Articles L. 126-1 , L. 422-1 and L. 422-2 of the Insurance Code.

**President : Mr Pireyre**  
**First advocate-general : Mr Gaillardot**  
**Judge referees : Mr Besson, Ms Isola, judges, Mr Ittah, Mr Pradel, Ms Brouzes, Ms Philippart**  
**Lawyer(s) : SCP Marlange and La Burgade – SARL Boré, Salve de Bruneton and Mégret**

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