

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° 1101 – 21-13.134)

27/10/2022



Ruling No. 1101

DISMISSAL

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

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

1. Ms [K] [L], 2. Mr [M] [T], both of address at [Address 1],

brought appeal No. K 21-13.134 against the ruling delivered on 21 January 2021 by the *Cour d'appel* (Court of Appeal) of Aix-en-Provence (Chamber 1-6) in the dispute between them and:

(1) 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). (FGTI), with registered office at [Address 3],

(2) the Local Sickness Insurance Fund (CPAM) of the Var, domiciled at [Address 2], respondents at the quashing.

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

The case file was sent to the Prosecutor-General.

On the report by Mr Besson, judge, the comments and arguments of SCP Gouz-Fitoussi, lawyers of Ms [L] and Mr [O], of SARL Boré, Salve de Bruneton and Mégret, lawyers of 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), and the advisory opinion of Mr Grignon Dumoulin, Advocate-General, after discussions in the public hearing of 20 September 2022 in the presence of Mr Pireyre, President, Mr Besson, reporting judge, Ms Leroy-Gissing, elder judge, Mr Martin, Ms Isola, judges, Mr Ittah, Mr Pradel, Ms Brouzes and Ms Philippart, judge referees, Mr Grignon Dumoulin, 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 (Aix-en-Provence, 21 January 2021), Ms [L] and Mr [T], who were present near the site of the attack carried out in Nice on 14 July 2016, by means of a lorry that drove into a crowd, applied to the Guarantee Fund for Victims of Terrorist Acts and Other Offences (FGTI) for compensation for damages, claiming that they had been psychologically affected as a result of the event.
2. As the FGTI refused to compensate them, on the ground that they were not at the scene of the attack, Ms [L] and Mr [T] brought an action before a *tribunal de grande instance* (Tribunal of First Instance).

Pleas

Review of the plea

Statement of plea

3. Ms [L] and Mr [T] complain that the ruling stated that they cannot claim to be victims of an act of terrorism as defined in Law No. 86-1020 of 9 September 1986 or to be compensated by the FGTI, and dismissed all of their claims, whereas:

"(1) the persons involved who were at the scene of the terrorist act at the time and who, having been exposed to the risk, subsequently reported physical or psychological damage directly related thereto, must be given the status of victim; whereas it is sufficient for the person to have been exposed to the risk and not for the risk to have occurred for them to be given said status; whereas, by simply stating, in order to consider that the plaintiffs did not have the status of victims, that the lorry had stopped 400 metres from their location, without investigating, as it was required to do, whether the plaintiffs had been exposed to risk before the lorry came to a halt, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis with regard to Articles L. 126-1 and L. 422-1 of the Insurance Code and Article 421-1 of the Criminal Code;

(2) whereas the persons involved who were at the scene of the terrorist act at the time and who, having been exposed to the risk, subsequently reported physical or psychological damage directly related thereto, must be given the status of victim, whereas it is sufficient for the person to have been exposed to the risk and not for the risk to have occurred for them to be given said status; whereas, in order to deny the status of victims to Mr [T] and Ms [L] by stating that they were 400 metres from the lorry when it came to a halt, the *cour d'appel* (Court of Appeal), which subjected the recognition of the status of victim to the realisation of the risk, violated Articles L.

126-1 and L. 422-1 of the Insurance Code and Article 421-1 of the Criminal Code."

Statement of reasons

Court's response

4. Article 421-1 of the Criminal Code provides that certain offences constitute acts of terrorism when they are intentionally related to an individual or collective enterprise in the aim of seriously disrupting public order using intimidation or terror.
5. According to Article L. 126-1 of the Insurance Code, which codified, in substance, Article 9 of Law No. 86-1020 of 9 September 1986 relating to the combating of terrorism, victims of terrorist acts committed on French territory, persons of French nationality who are victims of such acts abroad, including public officials and military personnel, as well as their beneficiaries, are compensated under the status defined in Articles L. 4221 and L. 422-3.
6. With regard to acts of terrorism in connection with the offences of intentional attacks on life or physical integrity, the status of victim, as defined in the abovementioned Article L.126-1, includes persons who have been directly exposed to an objective danger of death or personal injury.
7. The fact that a person was near the scene of an attack and witnessed it is not, in itself, sufficient to confer upon them the status of victim.
8. The ruling notes that the Palais de la Méditerranée in front of which the lorry stopped was 400 metres from the Verdure theatre, where Ms [L] and Mr [T] were located, and notes that they had not been on the vehicle's trajectory.
9. On the basis of these findings and statements, which show that Ms [L] and Mr [O] had at no time been directly exposed to an objective danger of death or personal injury, the *cour d'appel* (Court of Appeal), which carried out the investigation allegedly neglected, rightly chose to rule that they did not have the status of victims as defined in the above-mentioned texts.
10. The plea is therefore unfounded.

Operative part of the ruling

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Leaves the Public Treasury to bear the costs;

Pursuant to Article 700 of the Code of Civil Procedure, dismisses the claims;

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 Gouz-Fitoussi, Supreme Court Lawyer, for Ms [L] and Mr [T]

Mr [T] and Ms [L] complain that the ruling under appeal stated that they could not claim the status of victims of a terrorist act as defined in the Law of 9 September 1986, and subsequent compensation from the guarantee fund, and that it rejected all of their claims;

Whereas (1) the persons involved who were at the scene of the terrorist act at the time and who, having been exposed to the risk, subsequently reported physical or psychological damage directly related thereto, must be given the status of victim; whereas it is sufficient for the person to have been exposed to the risk and not for the risk to have occurred for them to be given said status; whereas, by simply stating, in order to consider that the plaintiffs did not have the status of victims, that the lorry had stopped 400 metres from where they were, without investigating, as it was required to do, whether the plaintiffs had been exposed to risk before the lorry came to a halt, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis with regard to Articles L. 126-1 and L. 422-1 of the Insurance Code and Article 421-1 of the Criminal Code;

Whereas (2) the persons involved who were at the scene of the terrorist act at the time and who, having been exposed to the risk, subsequently reported physical or psychological damage directly related thereto, must be given the status of victim; whereas it is sufficient for the person to have been exposed to the risk and not for the risk to have occurred for them to be given said status; whereas, in order to deny the status of victims to Mr [T] and Ms [L] by stating that they were 400 metres from the lorry when it came to a halt, the *cour d'appel* (Court of Appeal), which subjected the recognition of the status of victim to the realisation of the risk, violated Articles L.

126-1 and L. 422-1 of the Insurance Code and Article 421-1 of the Criminal Code.

President : Mr Pireyre

Advocate-General : Mr Grignon Dumoulin

Reporting Judge : Mr Besson

Lawyer(s) : SCP Gouz-Fitoussi – SARL Boré, Salve de Bruneton and Mégret

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Institution judiciaire

Translated rulings