

Second civil chamber : right to a fair trial and reinforced protection of the debtor's home

17/09/2020



Implementation of ECHR case law : time-delayed effect of a new case law considering the right to a fair trial and reinforced protection of the debtor's home.

Dismissal

Ruling no 827 of 17 September 2020 (18-23.626) – Cour de cassation (Court of Cassation) - Second Civil Chamber
ECLI:FR:CCAS:2020:C200827

Dismissal

Summary

1°. It follows from Article 542 and Article 954 of the Civil Procedure Code that, when the appellant does not request, within the operative part of their conclusions, the reversal or the annulment of the judgement, the cour d'appel (Court of Appeal) can only confirm the judgement. The immediate application of this rule of procedure would result in the infringement of the rights of the appellants to a fair trial.

Thus, this rule of procedure comes from the new interpretation of a provision concerning the reform of the appeal procedure with obligatory representation from Decree No 2017-891 of 6 May 2017. It was never affirmed by the Cour de cassation (Court of Cassation) in a published ruling, in proceedings introduced by a declaration of appeal prior to the date of this ruling. Consequently, the ruling of a cour d'appel (court of appeal) that sets up a judgement without this reversal having been requested is found legally justified, once the declaration of appeal is prior to this ruling.

2°. The right to personal privacy, which is of constitutional value, and the inviolability of the home, also established by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, excludes that a precautionary measure can be carried out by the creditor in a location that serves as a residence for the debtor without an authorisation given by a court. Consequently, a precautionary measure cannot be carried out by the creditor in a location that serves as a residence for the debtor without the enforcement judge having authorised it according to Article R. 121-24 of the Civil Enforcement Proceedings Code, and this even in the case provided for in Article L. 511-2 of the same code in which the creditor obtains a writ of enforcement or a court decision that is not yet enforceable. In absence of this, such a measure must be annulled.

Appellant(s) : Müflis T. Imar Bankasi T.A.S. Iflas Idaresi Respondent(s) : Mr A... X...

Facts and Procedure

1. According to the ruling under appeal (Paris, 6 September 2018), the company, T. Imar Bankasi T.A.S.(the bank) having gone into bankruptcy, the company Müflis T. Imar Bankasi T.A.S Iflas Idaresi (the liquidator), began legal proceedings against its executives, one of whom is Mr X.... Since the latter was charged by the judgements of the tribunal of first instance of Istanbul to pay a certain sum to the bank, the liquidator of the bank began the process of precautionary seizure of receivables and shareholder rights and securities, as well as a precautionary seizure of tangible personal property present at the home of Mr X.... The latter referred to an enforcement judge in order to oppose these measures.

Reviewing pleas

On the third part of the second plea,

2. In application of Article 1014, Section 2 of the Civil Procedure Code, it is not necessary to have a specially reasoned decision on this ground which is clearly not of such a nature as to entail quashing the ruling.

On the first plea

Statement of plea

3. The liquidator of the bank objects to the ruling to annul the precautionary seizure of tangible personal property of 25 August 2017, whereas "Article 910-4 of the Civil Procedure Code provides that the parties be able to present all of their claims in substance as soon as they present their conclusions mentioned in Article 905-2. If they are not able to present them, they are automatically considered inadmissible. Article 954 adds that the claims are summarised in a provision, and the cour d'appel (Court of Appeal) only rules on the claims noted in the provision. When the cour d'appel (Court of Appeal) pronounced the reversal of the judgement, in that it had dismissed the objection of Mr X... related to the precautionary seizure of tangible personal property of 25 August 2017 and in that it charged Mr X... for costs, after having noted that the provision of its first conclusions of 13 March 2018 were served in the one-month delay provided for in Article 905-2 of the Civil Procedure Code, the reversal of the judgement was not requested. Without asking for the reversal of the judgement, the cour d'appel (Court of Appeal) violated Article 905-2, Article 910-4, and Article 954 of the Civil Procedure Code."

Response by the Court

4. It follows from Article 542 and Article 954 of the Civil Procedure Code that, when the appellant requests within the operative part of their conclusions neither the reversal nor the annulment of the judgement, the cour d'appel (Court of Appeal) can only confirm the judgement.

5. However, the immediate application of this rule of procedure would result in infringement of the rights of the appellants to a fair trial. Thus, this rule of procedure comes from the new interpretation of a provision concerning the reform of the appeal procedure with obligatory representation from Decree No 2017-891 of 6 May 2017. It was never affirmed by the Cour de cassation (Court of Cassation) in a published ruling in proceedings introduced by a declaration of appeal prior to the date of this ruling.

6. It being noted that in the operative part of its conclusions, served on 13 March 2018, the appellant did not request the reversal of the contested judgement, but the annulment of the entries, their withdrawal or their ring-fencing. The cour d'appel (Court of Appeal) could only confirm this judgement.

7. However, the declaration of an appeal being prior to this ruling, it is not necessary to apply the rule mentioned in paragraph 4 of the current proceedings.

8. On purely legal grounds, substituted for the contested elements in question, under the conditions provided for in Article 620, Section 1, and Article 1015 of the Civil Procedure Code, the ruling is considered legally justified.

On the first, second, and fourth parts of the second plea

Statement of plea

9. The liquidator of the bank presents the same objection to the ruling, whereas : “1°/ Article L. 142-3 of the Civil Enforcement Proceedings Code provides for, on the expiry of a delay of eight days starting from a summons to pay served by a bailiff, and remaining without a response, the bailiff being able to, when justified with a writ of enforcement, enter into a location that serves as a residence and, if applicable, have the doors and furniture opened. This is only applicable to the measures of enforcement and not to precautionary measures. In annulling the precautionary seizures of tangible personal property carried out on 25 August 2017 for not conforming to Article L. 142-3 of the Civil Enforcement Proceedings Code, this text not being applicable to precautionary seizures, the cour d’appel (Court of Appeal) violated Article L. 142-3 of the Civil Enforcement Proceedings Code by falsely applying said article ;

2°/ Article L. 142-3 of the Civil Enforcement Proceedings Code, references a summons to pay served by a bailiff and remaining without a response, in that it leads to believe that the text only relates to a sale on seizure, as well as the jurisdiction of parliamentary work, since the requirement of a summons to pay for a precautionary seizure would remove any useful effect from the seizure, affect its consistency and its clarity as to the scope of application. In ruling as it did, the cour d’appel (Court of Appeal) violated Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ; 3°/ In supposing Article L. 142-3 of the Civil Enforcement Proceedings Code as applicable to precautionary measures, non-compliance with this provision is not sanctioned by the precautionary seizure being declared void. The article provides that, at the expiry of a delay of eight days starting from the summons to pay served by a bailiff that remains without response, this bailiff can, with a writ of enforcement, enter into a location that serves as a residence and, if necessary, have the doors and furniture opened. This text, by annulling the precautionary seizures of tangible personal property that took place on 25 August 2017 for not conforming to Article L. 142-3 of the Civil Enforcement Proceedings Code, supposing it is applicable to precautionary seizures, not being sanctioned by virtue of precautionary seizure being declared void, the cour d’appel (Court of Appeal) violated Article L. 142-3 of the Civil Enforcement Proceedings Code by falsely applying said article.”

Court’s response

10. According to Article L. 142-3 of the Civil Enforcement Proceedings Code, at the expiry of a period of eight days starting on the summons to pay served by a bailiff and remaining without response, the bailiff can, with justification of a writ of enforcement, enter into a location that serves as a residence and, if necessary, have the doors and furniture opened.

11. Notwithstanding the location of this text in Book 1 of the Civil Enforcement Proceedings Code, entitled “general provisions”, which requires that entry into a location that serves as a residence and the eventual opening of doors and furniture be preceded by a summons and that the bailiff have a writ of enforcement, the text itself excludes its application to a precautionary measure which, in application of Article L. 511-1 of the same code, does not require the prior issue of a summons and can be carried out without a writ of enforcement.

12. However, if it follows from Article L. 521-1 of the same code, according to which the precautionary seizure can cover all tangible and intangible movable property belonging to the debtor, that the creditor can have the precautionary seizure carried out of the goods belonging to their debtor located in a location that serves as a residence and, if necessary, have the doors and furniture opened. The right to personal privacy, of constitutional value, and the inviolability of the home, also established by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, excludes that such a measure could be carried out without authorisation given by a court.

13. Consequently, a precautionary measure cannot be carried out by the creditor in a location that serves as a residence for the debtor without the enforcement judge having authorised it according to Article R. 121-24 of the Civil Enforcement Proceedings Code, and this even in the case provided for in Article L. 511-2 of the same code in which the creditor obtains a writ of enforcement or a court decision that is not yet enforceable. In absence of this, such a measure must be annulled.

14. By this strictly legal meaning, suggested by the defence, substituted to those that are disputed, the ruling, which stated that the bailiff did not have court authorisation to enter into the location serving as residence of Mr X..., is legally justified.

ON THESE GROUNDS, the Court :

DISMISSES the appeal ;

President : Mr Pireyre

Reporting judge : Ms Lemoine, Judge Referee

Advocate-General : Mr Girard

Lawyer(s) : SCP Ortscheidt – SCP Spinosi et Sureau

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Translated rulings