


Right of access to a court of appeal – Applicability of formal requirement to mention the challenged charges of the judgment in matters where representation by a lawyer is not mandatory

09/09/2021



- **civil appeal**
- procedure without compulsory representation
- act of appeal
- necessary reference material
- charges of judgment challenged
- default
- scope



- Please note that the ruling has been partially translated-

Summary

Under Article 6, § 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, the right of access to a court implies that the parties must be put in a position to effectively carry out the procedural obligations incumbent on them. The effectiveness of this right requires, in particular, consideration to be given to whether or not the parties are required to appoint a lawyer to represent them.

Unlike Article 901 of the Civil Procedure Code, which governs the procedure with compulsory representation by a lawyer, Article 933 of the same code, as well as all the other provisions governing the procedure without compulsory representation before the *cour d'appel* (Court of Appeal), establishes a lighter formalism, intended to effectively enable the parties to carry out the acts of the appeal procedure. It can be deduced from Article 562, paragraph 1, which is included in the common provisions of this code and which provides that the appeal refers to the *cour d'appel* (Court of Appeal) the knowledge of the charges of the judgment which it expressly criticises and those which depend on them, that when the statement of appeal seeks the reversal of the judgment without mentioning the charges of the judgment which are criticised, the devolutive effect is inoperative (2nd Civil Court, 30 January 2020, appeal no. 18-22.528, Bull. 2020, II).

Such rules are unambiguous for parties represented by a legal professional (2nd Civ., 2 July 2020, appeal no. 19-16.954, Bull. 2020, II). However, in proceedings without compulsory representation, such a high standard of formalities to be fulfilled by the appellant would constitute an excessive procedural burden, since the appellant is not required to be represented by a legal professional. The possibility of regularising the statement of appeal would not remedy this. It follows that in matters of procedure without compulsory representation, the statement of appeal which mentions that the appeal is for the reversal of the decision referred to the *cour d'appel* (Court of Appeal), by not indicating the charges of the judgment that are being criticised, must be understood as referring all the charges of this judgment to the *cour d'appel* (Court of Appeal).

Appellant(s): Organization for the Collection of Social Security and Family Benefit Contributions Provence-Alpes-Côte d'Azur (URSSAF)

Respondent(s): Flo Reims, a single-member private limited liability company ; and others

L'union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (URSSAF) de Provence-Alpes-Côte d'Azur (Organization for the Collection of Social Security and Family Benefit Contributions), whose registered office is at [Address 3], lodged appeal nos. P 20-13.662, R 20-13.664, S 20-13.665, U 20-13.667, V 20-13.668, W 20-13.669, X 20-

13.670, Y 20-13.671, Z 20-13.672, A 20-13.673, B 20-13.674, C 20-13.675, D 20-13.676, F 20-13.678, J 20-13.681, K 20-13.682, M 20-13.683, N 20-13.684, P 20-13.685, Q 20-13.686, R 20-13.687, S 20-13.688, B 20-13.697, C 20-13.698, D 20-13.699 and F 20-13.701 against ruling nos. RG: 18/05217, 18/05245, 18/05212, 18/05273, 18/05219, 18/05214, 18/05218, 18/05252, 18/05270, 18/05261, 18/05210, 18/05241, 18/05209, 18/05211, 18/05377, 18/05247, 18/05266, 18/05208, 18/05257, 18/05478, 18/05263, 18/05205, 18/19722, 18/19724, 18/19820 and 18/19725 delivered on 20 December 2019 by the cour d'appel (Court of Appeal) of Aix-en-Provence (Chamber 4-8), in the disputes opposing respectively:

1°/ Flo Reims, a single-member private limited liability company, whose registered office is [Address 2],

2°/ Flo Concess, a general partnership,

3°/ Flo Evergreen, a simplified joint-stock company,

4°/ Flo Tradition, a general partnership, succeeding to the rights of Flo Metz,

all three of which have their registered office at [Address 9],

5°/ Floderer, a simplified single shareholder company with its registered office at [Address 7], formerly known as Brasserie Flo,

6°/ Hippo gestion et cie, a general partnership with its registered office at [Address 9], succeeding to the rights of Hippo Est,

7°/ L'Excelsior, a simplified joint-stock company with its registered office at [Address 2],

8°/ La Coupole, a public limited company, whose registered office is [Address 9],

9°/ Tablapizza, a simplified single shareholder company, succeeding to the rights of Tabla Est, 10°/ Tablapizza, a simplified single shareholder company, succeeding to the rights of Tabla Sud,

both having their registered office at [Address 6],

11°/ Taverne de Maître Kanter, a public limited company,

12°/ Taverne de Maître Kanter, public limited company, succeeding to the rights of TMK Est,

13°/ Taverne de Maître Kanter, public limited company, succeeding to the rights of TMK Nord-Ouest,

all three having their registered office at [Address 9],

14°/ BST, a simplified joint stock company, whose registered office is at [Address 4],

15°/ [R], a professional civil law company, whose registered office is at [Address 1], represented by Mr [R], in his capacity as liquidator of the company Boeuf à 6 pattes - Gif-sur-Yvette,

16°/ Groupe Flo, a public limited company, succeeding to the rights of Le Golf,

17°/ Hippo gestion et cie, a general partnership, succeeding to the rights of Hippo Nord-Ouest,

18°/ Hippo gestion et cie, a general partnership, succeeding to the rights of Hippo Paris,

19°/ Hippo Gestion et Cie, a general partnership, succeeding to the rights of Hippo Sud,

20°/Le Vaudeville, a limited liability company,

all five of which have their registered office at [Address 9],

21°/ Tablapizza, a simplified single shareholder company, having its registered office at [Address 6], succeeding to the rights of Tabla Nord-Ouest,

22°/ Terminus Nord, a limited liability company,

23°/ Ago, a public limited company, succeeding to the rights of Bistro romain Est,

24°/ Ago, a public limited company, succeeding to the rights of Bistro romain Nord-Ouest,

25°/ Ago, a public limited company, as succeeding to the rights of Bistro romain Paris,

26°/ Flo fidélité, a simplified single shareholder company, formerly known as Flo gestion régionale,

all five of which have their registered office at [Address 9],

respondents to the appeal. In support of its appeals, the appellant relies on the two common pleas of quashing appended to this ruling. The files have been sent to the Prosecutor-General.

On the report of Mr de Leiris, Judge Referee, the observations of SCP Gatineau, Fattaccini et Rebeyrol, lawyer for URSSAF de Provence-Alpes-Côte d'Azur, SCP Spinosi, lawyer for Flo Reims, Flo Concess, Flo Evergreen, and Flo tradition, succeeding to the rights of Flo Metz, Floderer, formerly Brasserie Flo, Hippo gestion et cie, succeeding to the rights of Hippo Est, L'Excelsior, La Coupole, Tablapizza, succeeding to the rights of Tabla Est, Tablapizza, succeeding to the rights of Tabla Sud, Taverne de Maître Kanter, Taverne de Maître Kanter succeeding to the rights of TMK Est, Taverne de Maître Kanter, succeeding to the rights of TMK Nord-Ouest, BST, SCP [R], in the person of Mr [R], acting as liquidator of the company Boeuf à 6 pattes - Gif-sur-Yvette, Groupe Flo, succeeding to the rights of Le Golf, Hippo gestion et cie, succeeding to the rights of Hippo Nord-Ouest, Hippo gestion et cie, succeeding to the rights of Hippo Paris, Hippo gestion et cie, succeeding to the rights of Hippo Sud, Le Vaudeville, Tablapizza, succeeding to the rights of Tabla Nord-Ouest, Terminus Nord, Ago, succeeding to the rights of Bistro romain Est, Ago, succeeding to the rights of Bistro romain Nord-Ouest, Ago, succeeding to the rights of Bistro romain Paris and Flo fidélité, formerly known as Flo gestion régional, and the opinion of Mr Aparisi, Advocate-General Referee, after the arguments at the public hearing of 16 June 2021, at which were present Mr Pireyre, President, Mr de Leiris, Reporting Judge Referee, Ms Martinel, Elder Judge, Ms Kermina, Ms Durin-Karsenty, Ms Maunand, Judges, Ms Jollec, Ms Bohnert, Mr Cardini, Ms Dumas, Judge Referees, Mr Aparisi, Advocate-General Referee, and Ms Thomas, 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 above-mentioned President and Judges, after having deliberated in accordance with the law, has delivered the present ruling.

Joining

1. Appeal nos. P 20-13.662, R 20-13.664, S 20-13.665, U 20-13.667, V 20-13.668, W 20-13.669, X 20-13.670, Y 20-13.671, Z 20-13.672, A 20-13.673, B 20-13.674, C 20-13.675, D 20-13.676, F 20-13.678, J 20-13.681, K 20-13.682, M 20-13.683, N 20-13.684, P 20-13.685, Q 20-13.686, R 20-13.687, S 20-13.688, B 20-13.697, C 20-13.698, D 20-13.699, F 20-13.701 were joined by order of 10 June 2020 because of their connection.

Facts and procedure

2. According to the rulings under appeal (Aix-en-Provence, 20 December 2019, RG nos. 18/05217, 18/05245, 18/05212, 18/05273, 18/05219, 18/05214, 18/05218, 18/05252, 18/05270, 18/05261, 18/05210, 18/05241, 18/05209, 18/05211, 18/05377, 18/05247, 18/05266, 18/05208, 18/05257, 18/05478, 18/05263, 18/05205, 18/19722, 18/19724, 18/19820 and 18/19725), following an inspection covering the years 2009 to 2011, URSSAF de Provence-Alpes-Côte d'Azur (URSSAF)

notified the companies Flo Reims, Flo Concess, Flo Evergreen, Flo Metz, Brasserie Flo, Hippo Est, L'Excelsior, La Coupole, Tabla Est, Tabla Sud, Taverne de Maître Kanter, TMK Est, TMK Nord-Ouest, BST, Boeuf à 6 pattes - Gif-sur-Yvette, Le Golf, Hippo Nord-Ouest, Hippo Paris, Hippo Sud, Le Vaudeville, Tabla Nord-Ouest, Terminus Nord, Bistro romain Est, Bistro romain Nord-Ouest, Bistro romain Paris and Flo gestion régional (the companies), on 29 October 2012, a letter of observations, followed by formal notices.

3. The companies appealed to a social security court.

Reviewing pleas

On the first part of the first plea, appended hereafter

4. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on this plea, which is clearly not of a nature to lead to the quashing.

On the second part of the first plea

Statement of plea

5. URSSAF objects to the rulings for declaring the appeals admissible, for reversing all the provisions of the judgments handed down on 1 February and 8 November 2018 by the Bouches-du-Rhône Social Security Court, ruling again, and setting aside the adjustments notified to the appellant companies and collected by it, for dismissing its claim for irrecoverable costs and ordering it to pay the costs of the proceedings, whereas "except when it is regularised by another statement of appeal within the time limit given to the appellant to conclude on the merits, the statement of appeal which seeks the reversal of the judgment without mentioning the charges of the judgment under appeal deprives the appeal of its devolutive effect. In the present case, the cour d'appel (Court of Appeal) noted that the statements of appeal filed by the appellant companies on 22 March 2018 indicated that these appeals were aimed at "repealing or at least reversing the decision referred to" without expressly referring to the charges of the judgment under appeal, so that in the absence of any regularisation carried out within the time limit, the cour d'appel (Court of Appeal) did not receive any plea. By reversing all the provisions of the judgments handed down by the Bouches-du-Rhône Social Security Court and by setting aside the recovery of adjustments levied by URSSAF against the appellants, without noting that the statements of appeal of 22 March 2018 had been regularised within the time limit, the cour d'appel (Court of Appeal), which did not receive any plea, exceeded its powers and infringed Article 562 of the Civil Procedure Code."

Court's response

Admissibility of the plea

6. The companies challenge the admissibility of the plea. They argue that it is new and mixed in fact and law.

7. However, the plea is purely legal since, assuming that the rule of law it invokes is correct, the cour d'appel (Court of Appeal), which noted that the statement of appeal did not include an indication of the charges of the judgment that were expressly criticised, could not have ruled on the appeal without noting the regularisation of this statement of appeal before the closure of the arguments.

8. The plea is therefore admissible.

Merits of the plea

9. Under Article 6, § 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, the right of access to a court implies that the parties must be put in a position to effectively carry out the procedural

obligations incumbent on them. The effectiveness of this right requires, in particular, consideration to be given to whether or not the parties are required to appoint a lawyer to represent them.

10. Under the terms of Article 933 of the Civil Procedure Code, as amended by Decree No. 2017-891 of 6 May 2017, governing the procedure without compulsory representation before the cour d'appel (Court of Appeal): "The declaration shall contain the requirements prescribed by Article 58. It shall designate the judgment being appealed, specify the charges of the judgment being appealed to which the appeal is limited, unless the appeal is for the setting aside of the judgment or if the subject matter of the dispute is indivisible, and mention, where appropriate, the name and address of the appellant's representative before the court. It is accompanied by a copy of the decision."

11. Unlike Article 901 of the same code, which governs the procedure with compulsory representation by a lawyer, Article 933, as well as all the other provisions governing the procedure without compulsory representation before the cour d'appel (Court of Appeal), establishes a lighter formalism, intended to effectively enable the parties to carry out the acts of the appeal procedure.

12. It can be deduced from Article 562, paragraph 1, which is included in the common provisions of this code and which provides that the appeal refers to the cour d'appel (Court of Appeal) the consideration of the charges of the judgment which it expressly criticises and those which depends on them, that when the statement of appeal seeks the reversal of the judgment without mentioning the charges of the judgment which are criticised, the devolutive effect is inoperative (2nd Civil Court, 30 January 2020, appeal no. 18-22.528, published). Such rules are unambiguous for parties represented by a legal professional (2nd Civ., 2 July 2020, appeal no. 19-16.954, published).

13. However, in proceedings without compulsory representation, such a high standard of formalities to be fulfilled by the appellant would constitute an excessive procedural burden, since the appellant is not required to be represented by a legal professional. The possibility of regularising the statement of appeal would not remedy this.

14. It follows that in matters of procedure without compulsory representation, the statement of appeal which mentions that the appeal is for the reversal of the decision referred to the cour d'appel (Court of Appeal), by not indicating the charges of the judgment that are being criticised, must be understood as referring all the charges of this judgment to the cour d'appel (Court of Appeal).

15. Having noted that the statements of appeal filed by the companies indicated that their appeal was for setting aside or, at the very least, reversing the decision referred to, without mentioning the charges of the judgment under appeal, it is without incurring the grievances of the plea that the cour d'appel (Court of Appeal) reversed the judgments that were referred and ruled again on the cases.

16. The plea is consequently unfounded.

[...]

ON THESE GROUNDS, the Court:

DISMISSES the appeals; Orders URSSAF de Provence-Alpes-Côte d'Azur to pay the costs; Pursuant to Article 700 of the Civil Procedure Code, dismisses the claim made by URSSAF de Provence-Alpes-Côte d'Azur and orders it to pay to Flo Reims, Flo Concess, Flo Evergreen, Flo tradition, succeeding to the rights of Flo Metz, Floderer, formerly known as Brasserie Flo, Hippo gestion et cie, succeeding to the rights of Hippo Est, L'Excelsior, La Coupole, Tablapizza, succeeding to the rights of Tabla Est, Tablapizza, succeeding to the rights of Tabla Sud, Taverne de Maître Kanter, Taverne de Maître Kanter, succeeding to the rights of TMK Est, Taverne de Maître Kanter, succeeding to the rights of TMK Nord-Ouest, BST, SCP [R], in the person of Mr [R], as liquidator of Boeuf à 6 pattes - Gif-sur-Yvette, Groupe Flo, succeeding to the rights of Le Golf, Hippo gestion et cie, succeeding to the rights of Hippo Nord-Ouest, Hippo gestion et cie, succeeding to the rights of Hippo Paris, Hippo gestion et cie, succeeding to the rights of Hippo Sud, Le Vaudeville, Tablapizza, succeeding to the rights of Tabla Nord-Ouest, Terminus Nord, Ago, succeeding to the rights of Bistro romain Est, Ago, succeeding to the rights of Bistro romain Nord-Ouest, Ago, succeeding to the rights of Bistro romain Paris and Flo fidélité, formerly known

as Flo gestion régional, the total sum of EUR 3,000;

President : Mr Pireyre
Reporting Judge : Mr de Leiris, Judge Referee
Advocate-General : Mr Aparisi, Advocate-General Referee
Lawyers : SCP Gatineau, Fattaccini et Rebeyrol – SCP Spinosi

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Procédure civile

Translated rulings