

In case of a provisional penalty payment, it is up to the court receiving the referral to evaluate the proportionality of the infringement of the debtor's right to property in the light of the legitimate aim pursued

20/01/2022



Ruling of 20 January 2022, appeal no. 20-15-261

Quashing

According to Article L. 131-4 of the Civil Execution Proceedings Code, the provisional penalty payment is assessed by taking into account the conduct of the party against whom the injunction was addressed and the difficulties the party has encountered in complying with it. It shall be waived in whole or in part if it is established that delayed or full non-compliance with the injunction is due, in whole or in part, to an extraneous cause. According to Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law

. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties

. Insofar as the nature of the penalty, by assessing a quantum, imposes a pecuniary sentence on the debtor of the obligation, it is likely to affect a substantial interest of the debtor, and therefore falls within the scope of the protection of property covered by this protocol. Consequently, the penalty payment does not itself constitute a measure used in contradiction to the protocol's requirements in that it seeks, in the interests of the proper administration of justice, to ensure the effective enforcement of court decisions within a reasonable time. In the event of total or partial failure to comply with the obligation, it requires the court called upon to assess the penalty payment, to take into account the difficulties the debtor has encountered in fulfilling it, and their willingness to comply with the injunction. It is nonetheless up to the court receiving the referral to evaluate the proportionality of the infringement of the debtor's right to property in the light of the legitimate aim it pursues. The ruling is rendered liable for quashing as in order to assess the provisional penalty payment at a certain quantum, it holds that a flagrant disproportion between the sum claimed for the penalty payment and the stakes of the dispute cannot be admitted as a cause of reduction, without fully examining if there was a reasonable relationship of proportionality between the assessed penalty payment quantum and the stakes of the dispute.

COUR DE CASSATION (COURT OF CASSATION), SECOND CIVIL CHAMBER, delivered the following ruling:

CIV. 2

CM COUR DE CASSATION (COURT OF CASSATION) Public hearing of 20 January 2022

Quashing Mr PIREYRE, President

Ruling No. 107 FS-B+R

Appeal No. B 20-15.261 F R E N C H R E P U B L I C

IN THE NAME OF THE FRENCH PEOPLE

RULING OF THE COUR DE CASSATION (COURT OF CASSATION), SECOND CIVIL CHAMBER, OF 20 JANUARY 2022

Fret SNCF, a simplified joint-stock company, whose registered office is at [Address 1], which acquired the rights of EPIC (Public industrial and commercial establishment) SNCF Mobilités, lodged appeal no. B 20-15.261 against the ruling delivered on 6 February 2020 by the *cour d'appel* (Court of Appeal) (Chamber 8, Section 3) of Douai, in the dispute between it and the Travailleurs du rail, solidaires unitaires et démocratiques (SUD Rail) trade union, whose registered office is at [Address 2], respondents to the quashing.

In support of its appeal, the appellant relies on the single plea for quashing appended to this ruling.

The file has been sent to the Prosecutor-General.

On the report from Mr Martin, Judge, the observations of SCP Célice, Texidor, Périer, lawyer for Fret SNCF, SCP Rocheteau and Uzan-Sarano, lawyer for Travailleurs du rail, solidaires unitaires et démocratiques (SUD Rail) trade union, and the opinion of Mr Grignon Dumoulin, Advocate-General, after the arguments at the public hearing of 1 December 2021,

where were present Mr Pireyre, President, Mr Martin, Reporting Judge, Ms Leroy-Gissinger, Elder Judge, Mr Besson, Ms Bouvier and Ms. Chauve, Judges, Mr Talabardon, Ms Guého, Mr Ittah, Mr Pradel, 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 aforementioned President and Judges, after having deliberated in accordance with the law, has delivered the present ruling.

Facts and procedure

1. According to the ruling under appeal (Douai, 6 February 2020), a judgment accompanied by an order for provisional immediate enforcement, served on 20 February 2015, confirmed by irrevocable ruling of *acour d'appel* (Court of Appeal), in a dispute between the Syndicat des travailleurs du rail, solidaires unitaires et démocratiques (SUD Rail) (trade union) and the SNCF, ordered the latter to implement classifications of higher pay position of a number of agents for the years 2011 to 2013.
2. The decision was accompanied by a provisional penalty payment of EUR. 1,000 per agent per day of delay, starting two months after the judgment was served and for a duration of two months.
3. On 23 July 2018, the trade union applied to an execution judge to assess the quantum of the penalty payment.

Reviewing pleas

On the first six parts of the plea, appended hereafter

4., Pursuant to Article 1014, paragraph 2 of Civil Procedure Code, there is no need to rule by a specially reasoned decision on the first part of the plea which is inadmissible and on the second, third, fourth, fifth and sixth parts of the plea which are clearly not of a nature to lead to the quashing. However on the seventh part of the plea

Statement of plea

5. Fret SNCF, which acquired the rights of *EPIC* (Public industrial and commercial establishment) SNCF Mobilités, itself having acquired the rights of SNCF, objects to the ruling issued by judgment of the Lille *Tribunal de grande instance* (Tribunal of First Instance) dated 5 February 2015, which assesses the provisional penalty quantum at EUR. 1,020,000. The ruling also orders *EPIC* (Public industrial and commercial establishment) SNCF Mobilités to respect the imposed provisional penalty to pay the trade union this sum, whereas "at the time it was imposed, it only constituted a threat intended to dissuade the debtor from not complying with the injunction issued against it. Hence, the amount could then be set at a high level considering the debtor's capacity to resist. Once assessment of the provisional penalty payment and full compliance of the injunction are completed, its purpose is exclusively punitive and constitutes a private penalty, the amount of which must therefore be in proportion with regard to the seriousness of the debtor's failure to comply with the injunction, his personal situation, the stakes of the dispute and the creditor's behaviour. In the present case, SNCF argued that it agreed to allocate 17 additional pay positions as of 8 August 2015. The average difference between two pay positions was approximately EUR. 50 per month for an employee. The trade union waited almost three years after compliance with the judgment had been fully completed before filing for penalty payment assessment with the enforcement judge on 23 July 2018. Therefore, it argued that assessing the quantum of the penalty payment according to the terms initially set by the 5 January 2015 judgment, was manifestly excessive in view of the seriousness of the alleged non-compliance, the issues at stake in the dispute, and the date of the application for assessment. To justify refusing the control of the proportionality on the penalty payment amount assessed and to assess the penalty payment at EUR. 1,000 per employee and per day of delay - for a total amounting to EUR. 1,020,000 to be allocated to the trade union instead of the employees concerned - the *cour d'appel* (Court of Appeal) notably stated that 'the flagrant disproportion between the

claimed penalty payment sum and the stakes involved in the dispute cannot be accepted as a reason for reducing the amount' and that 'the plea based on the late nature of the trade union's assessment request is irrelevant'. In so ruling, the *cour d'appel* (Court of Appeal) infringed on Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, together with Article L. 131-4 of the Civil Execution Proceedings Code."

Court's response

In view of Article L. 131-4 of the Civil Execution Proceedings Code, as interpreted in the light of Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

6. According to this text, the provisional penalty payment is assessed by taking into account the conduct of the party against whom the injunction was addressed and the difficulties the party has encountered in complying with it. It shall be waived in whole or in part if it is established that delayed or full non-compliance with the injunction is due, in whole or in part, to an extraneous cause. 7. According to established case law, the court receiving the referral in the request for assessment can only determine the matter in the light of these criteria. Consequently, the court cannot limit the assessed penalty payment amount on the grounds that the amount of the penalty payment requested by the creditor would be excessive (Second Civil Chamber, 25 June 2015, appeal no. 14-20.073) nor that it would be too much under the circumstances of the case (Second Civil Chamber, 7 June 2012, appeal no. 10-24.967) or the nature of the dispute (Second Civil Chamber, 30 January 2014, appeal no. 13-10.255). The ruling of a *cour d'appel* (Court of Appeal) that referred to the "manifestly disproportionate" nature of the amount was thus quashed (Second Civil Chamber, 26 September 2013, appeal no. 12-23.900), as was the ruling that reduced the penalty payment assessment quantum based on "the application of the proportionality principle" (Second Civil Chamber, 19 March 2015, appeal no. 14-14.941). In none of these cases was the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol 1 invoked.

8. However, according to the latter text, invoked by the plea, "

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties

." 9. Insofar as the nature of the penalty payment, by assessing a quantum, imposes a pecuniary sentence on the debtor of the obligation, it is likely to affect a substantial interest of the debtor. It thus falls within the scope of the protection of property guaranteed by this Protocol.

10. It follows that the court who rules on the assessment of a provisional penalty payment must evaluate the proportionality of the infringement of the debtor's right to property with respect to its intended legitimate purpose.

11. Consequently, the penalty payment does not itself constitute a measure used in contradiction to the Protocol's requirements in that it seeks, in the interests of the proper administration of justice, to ensure the effective enforcement of court decisions within a reasonable time. In the event of total or partial failure to comply with the obligation, it requires the court receiving the referral to assess the penalty payment, to take into account the difficulties the debtor has encountered in fulfilling it and their willingness to comply with the injunction. It is nonetheless up to the court receiving the referral to again evaluate, in a concrete manner, whether there is a reasonable proportionality between the amount at which the penalty payment is assessed and what is at stake in the dispute.

12. In order to assess the provisional penalty payment at EUR. 1,020,000, the ruling holds that the flagrant disproportion between the sum claimed for the penalty payment and the stakes of the dispute cannot be accepted as a reason for

reducing the amount.

13. In so determining, without examining in a concrete manner whether there was a reasonable proportionality between the amount at which it assessed the penalty payment and the stakes of the dispute, the *cour d'appel* (Court of Appeal) did not provide a legal basis to its decision.

ON THESE GROUNDS, the Court:

QUASHES AND SETS ASIDE all provisions of the ruling delivered on 6 February 2020, between the parties, by the *cour d'appel* (Court of Appeal) of Douai;

Returns 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 Douai otherwise composed.

Orders the Syndicat des travailleurs du rail, solidaires unitaires et démocratiques (SUD Rail) to pay the costs;

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

States that, at the request of the Prosecutor-General of the *Cour de cassation* (Court of cassation), the present ruling will be transmitted to be transcribed in the margin or following the ruling being quashed;

Thus decided by the *Cour de cassation* (Court of cassation), Second Civil Chamber, and pronounced by the President at the public hearing of the twentieth of January, two thousand twenty-two.

President : Mr Pireyre

Reporting Judge : Mr Martin, Judge

Advocate-General : Mr Grignon Dumoulin

Lawyer(s) : SCP Célice, Texidor, Périer – SCP Rocheteau and Uzan-Sarano

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International

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