Ruling n°654 of 2 April 2021 (19-18.814) – Cour de cassation (*Court of Cassation*) - Plenary Assembly - ECLI:EN:CCASS:2021:AP00654

Only the French version is authentic

Quashed Labour, health and safety

Set Aside

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Appellant: Mr A... X...
Respondent: Société Air liquide France industrie

Facts and procedure

1. According to the ruling under appeal (Paris, 5 July 2018), delivered on remand after quashing (Soc., 28 September 2016, appeal no. 15-19.031 and 15-19.310), Mr X... was hired as a manufacturing employee by Air liquid and subsequently by Air liquide France industrie (company ALFI).

2. Considering that he was victimised due to trade union issues, he applied to the conseil des prud'hommes (*Labour Tribunal*) to request a new position of employment, back pay and damages in respect of non-material injury. On appeal, claiming that he had worked on different sites where he had allegedly been exposed to asbestos, Mr X... filed an additional claim for damages in compensation for anxiety-related injury.

3. In a ruling of 1 April 2015, the cour d'appel (*Court of Appeal)* of Paris upheld this claim and ordered ALFI to pay damages. In the above-mentioned ruling of 28 September 2016, the Cour de cassation (*Court of Cassation*) quashed the decision on this ground since the cour d'appel (*Court of Appeal*) failed to examine whether the facilities where the employee was assigned featured in fact on the list of facilities deemed eligible for the grant of an early retirement allowance for asbestos workers (ACAATA), contained in Article 41 of Law No. 98-1194 of 23 December 1998 on the financing of social security for 1999.

Reviewing pleas

<u>On the plea of the cross-appeal, annexed hereto, that must be examined first.</u>

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

<u>On the plea in the main appeal</u>

<u>Statement of plea</u>

5. MR X... objects to the ruling rejecting his claim for damages in compensation for his anxiety-related injury, whereas: "*pursuant to the ordinary rules of law governing the employer's safety obligations, an employee who can prove that he was exposed to asbestos, generating a high risk of developing a serious pathology, may bring an action against his employer for the latter's failure to fulfil his safety obligation, even if he did not work in one of the facilities mentioned in Article 41 of the Act of 23 December 1998; by refusing to compensate the employee for the anxiety-related injury resulting from his exposure to asbestos dust at the Vitry-sur-Seine and Blanc-Mesnil facilities of Air liquide France industrie where he worked from 1982 to 2007 and where asbestos was used for insulating heating installations, on the grounds that these facilities were not mentioned on the ministerial list referred to in*

Article 41 of the Act of 23 December 1998, the Cour d'appel (Court of Appeal) *infringed Article 1147 of the Civil Code applicable at the time, as well as Articles L. 4121-1 and L. 4121-2 of the Labour Code.* "

Court's response

Admissibility of plea

6. ALFI contests the admissibility of the plea in law arguing that the plea criticises the cour d'appel (*Court of Appeal)* for having ruled in accordance with the ruling of the Cour de cassation (*Court of Cassation*) that was remanded to it.

7. The Cour de cassation (*Court of Cassation)* has held since 1971 that a plea relating to a decision whereby the referring court has complied with the doctrine of the ruling of the Cour de cassation (*Court of Cassation*) is inadmissible, regardless of the fact that the Cour de cassation (*Court of Cassation*) may have delivered in another matter, subsequent to the ruling brought before the referring court, a ruling that reverses the solution expressed in the ruling remanding the case back to the referring court (Ch. 30 April 1971, Appeal n° 61-11.829, Bull. des arrêts de la Cour de cassation, Ch. mixte, n° 8, p. 9; Ass. plén, 21 December 2006, Appeal No. 05-11.966, Bull. 2006, Plenary Session, No. 14).

8. This judicial rule, resulting from an interpretation *a contrario* of Article L. 431-6 of the Judicial Code, is based chiefly on the principles of the proper administration of justice and of legal certainty in that it precludes the reconsideration of a decision that has been delivered in conformity with the quashing pronounced, thereby ensuring that the dispute is brought to an end.

9. Nevertheless, the decision to take into account a change of norm, such as a reversal of case law, to the extent that an irrevocable decision has not ended the dispute, is a matter for the court which must then re-examine the situation when an appeal is lodged. The demands of legal certainty do not result in an established right to a body of case law set in stone, and a reversal of case law, to the extent that it is strongly reasoned, satisfies the requirement of foreseeability of the norm.

10. This consideration of the new or modified norm contributes to the effectiveness of access to justice and ensures the equality of treatment of litigants in similar situations in that it allows a party to a dispute that has not been settled by an irrevocable decision to benefit from this change.

11. Finally, it contributes both to legal coherence and to the uniform application of the law.

12. Accordingly, the admissibility of a plea challenging the decision by which the court complied with the doctrine of the quashing ruling which referred the case to it must be allowed in the event a change of norm occurring after that ruling is invoked, and for as long judicial redress is available against the decision on referral.

13. Mr X... is seeking compensation for anxiety-related damage caused by exposure to asbestos in invoking the rule adopted by the Cour de cassation (*Court of Cassation*) (Plenary Court, 5 April 2019, Appeal No. 18-17.442, published) and subsequent to the ruling under appeal, according to which such damage gives rise to compensation in accordance with the principles of ordinary law and in specific conditions, even if the employee has not worked in a facility on the list drawn up pursuant to Article 41 of the Act of 23 December 1998. This is his case.

14. The plea is therefore admissible.

Merits of the plea

In view of Articles L. 4121-1 and L. 4121-2 of the Labour Code, the former in its formulation preceding the formulation resulting from Order No. 2017-1389 of 22 September 2017:

15. It follows from these texts that, in application of the rules of common law governing the employer's safety obligation, an employee who provides evidence of exposure to asbestos generating a high risk of developing a serious pathology, may bring an action against his employer for the latter's failure to fulfil his safety obligation, even if he did not work in one of the facilities mentioned in Article 41 of the Law of 23 December 1998.

16. In rejecting Mr X.'s claim, the ruling stated that compensation for the anxiety-related damage suffered by workers exposed to asbestos is covered by a specific scheme which is only available to employees who work or have worked in one of their employer's facilities on the list of facilities giving entitlement to the ACAATA mentioned in Article 41 of the Act of 23 December 1998, and noted that the ALFI company facilities where the employee had worked were not included on this list.

17. It follows that, although the cour d'appel (*Court of Appeal*) of reference complied with the doctrine of the ruling that referred the case to it, the ruling must be set aside.

ON THESE GROUNDS, the Court :

SETS ASIDE, in all its provisions, the ruling rendered on 5 July 2018, between the parties, by the cour d'appel (*Court of Appeal) of Paris*;

Returns the case and the parties to the status existing prior to this ruling and refers them to the cour d'appel (*Court of Appeal*) of Paris otherwise composed;

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President: Mrs Arens
Reporting Judge: Mr Ponsot, assisted by Ms Safatian, auditor at the SDER