

Validity of a will drafted in a language that the testator does not understand (Ruling n°23-18.823)

17/01/2025



The Court's jurisprudence evolves: from now on, if a will is drawn up by a notary in a language not understood by the testator, but with the help of an interpreter, this document may remain valid as an international will, under certain conditions.

Text of the decision

Only the French version is authentic

FRENCH REPUBLIC

ON BEHALD OF THE FRENCH PEOPLE

M. [N] [E], residing at [Address 3] (Mexico), has lodged an appeal against the judgment rendered on 21 March 2023 by the *cour d'appel* (Court of Appeal) of Lyon (1st Civil Chamber B) in the dispute opposing him:

1°/ to M. [C] [W], domiciled [Address 2],

2°/ to Geonot Notarial Office (NGO), a private limited liability company with its registered office at [Address 2],

3°/ to Ms. [U] [V], wife [X], domiciled [Address 4],

4°/ to Mrs. [O] [V] wife [R], domiciled [Address 1],

5°/ to Ms. [A] [V], wife [Y], domiciled [Address 5] (Italy),

defendants in the quashing.

M. [N] [E] has filed an appeal against the ruling of the *cour d'appel* (Court of Appeal) of Grenoble, dated 16 June 2020.

This judgment was partially annulled on 2 March 2022 by the first civil chamber of the *Cour de cassation* (Court of Cassation).

The case and the parties were referred to the *cour d'appel* (Court of Appeal) of Lyon, which, having been seized of the same case, ruled on 21 March 2023.

Having filed an appeal against the decision of the *cour d'appel* (Court of Appeal) of Lyon, the first president of the *Cour de cassation* (Court of Cassation) referred the case and the parties to the plenary assembly by order of 12 July 2024.

The applicant in the appeal relies, before the plenary assembly, on a single ground of quashing set out in a brief filed at the registry of the *Cour de cassation* (Court of Cassation) by SCP Jean-Philippe Caston, counsel for Mr. [N] [E].

A defence brief to the appeal was filed at the registry of the *Cour de cassation* (Court of Cassation) by SCP Boré, Salve de Bruneton and Mégret, lawyer of M. [C] [W] and the company Office Notarial Geonot.

The written report of Ms. Dard, counsel, and the written opinion of Mr. Poirret, first advocate-general, were made available to the parties.

On the report of Ms Dard, judge, assisted by Ms Sciore, judge auditor in the Documentation, Studies and Reports Department, the observations of the SCP Jean-Philippe Caston, SCP Boré, Salve de Bruneton et Mégret, and the advisory opinion of Mr Poirret, first advocate-general, to which the parties, having been invited to do so, did not wish to reply, after deliberations in the public hearing of 13 December 2024 in the presence of Mr Soulard, First President, Mr. Sommer, Ms Teiller, Messrs. Bonnal, Vigneau, Ms Martinel, presidents, Ms Duval-Arnould, elder judge, Ms Dard, reporting judge, Mr Huglo, Ms de la Lance, Ms Durin-Karsenty, Mr Ponsot, elder judges, Ms Auroy, Ms Proust, elder judges, Ms Piazza, Ms Lapasset, Ms Guillou, Ms Douxami, Mr Pety, judges, M. Poirret, first advocate-general, et Ms Mégnien, functional-expert registrar,

The *Cour de cassation* (Court of cassation), sitting in plenary assembly, composed of the First President, the presidents, the chambers elders and judges above-mentioned, after deliberation thereof in accordance with the law, has delivered this ruling.

Facts and procedure

According to the ruling under appeal (Lyon, 21 March 2023), rendered after quashing (1st Civ., 2 March 2022, appeal no 20-21.068, published), and the evidence submitted, [I] [L], of Italian nationality, died on 28 February 2015 leaving as heirs her four children, Ms [U], [O] and Ms [A] [V] and Mr [T] [Y], as well as a grandson, Mr [N] [E], representing his mother, who predeceased her on 22 February 1994, and in accordance with a will received, in French, on 17 April 2002, by Mr [W], notary (the notary), in the presence of two witnesses and with the assistance of an interpreter in Italian, instituting her three daughters as legatees of the disposable portion of her estate.

Mr [E] has brought an action against his aunts, seeking the annulment of the will.

The latter have called in forced intervention the notary and the professional civil society [W]-[M]-[K], whose rights have been transferred to the company Office Notarial Geonot.

Reviewing of plea

Statement of plea

Mr. [E] objects to the ruling for holding that the will received on 17 April 2002 by Mr [W] is valid and for rejecting his claims, arguing that: *"while an international will may be written in any language to facilitate the expression of the testator's intent, it may not be written in a language that the testator does not understand, even with the assistance of an interpreter; by ruling otherwise, the cour d'appel (Court of Appeal) violated Articles 3§3 and 4§1 of the Uniform Law on the Form of an International Will annexed to the Washington Convention of 26 October 1973, as well as Article V.1 of said Convention."*

Court's response

In view of Articles 3§3 and 4§1 of the Uniform Law on the Form of an International Will (the Convention) and Article V.1 thereof :

According to the first of these provisions, the international will may be written in any language, either handwritten or by other means.

Under the terms of the second, the testator declares, in the presence of two witnesses and an authorized person empowered to act in this capacity, that the document constitutes their will and that they are aware of its contents.

The third provision states : *"the requirements for acting as a witness to an international will shall be governed by the law under which the authorized person was designated. The same applies to interpreters who may be called upon to assist."*

These provisions allow for two different interpretations regarding whether, in the context of an international will, a testator's lack of knowledge of the language chosen for the will may be remedied through the use of an interpreter.

The first interpretation takes into consideration that the Uniform Law, which the contracting States are solely obligated to incorporate into their domestic law, does not expressly provide for the use of an interpreter.

This is the interpretation adopted by the *Cour de cassation* (Court of Cassation) in its aforementioned ruling of 2 March 2022, which held that, while an international will may be written in any language to facilitate the expression of the testator's intent, it may not be written in a language that the testator does not understand, even with the assistance of an interpreter.

This position, endorsed by part of the doctrine, aligns with a jurisprudential current which, in interpreting formal rules in light of their purpose, in this case, to promote testamentary freedom and respect for the testator's wishes while ensuring the authenticity of their intent—makes the validity of the will contingent on the testator's ability to personally verify its contents (1st Civil Chamber, 9 June 2021, appeal no. 19-21.770, published; 1st Civil Chamber, 12 October 2022, appeal no. 21-11.408, published).

The second interpretation derives from Article V.1 of the Convention the possibility of using an interpreter, under the conditions required by the law under which the authorized person was designated.

This interpretation guarantees the legal certainty of wills received in the international form by a person authorized by the law of another contracting State, in the presence of such an interpreter. It also ensures, in a context of increased mobility and internationalized estates, a harmonized application of international will rules among the States that have ratified the Convention.

This second interpretation must now be adopted, and it must be held that the Uniform Law enables for a will to be written in a language that the testator does not understand, provided that, in such a case, the testator is assisted by an interpreter meeting the requirements set forth by the law under which the authorized person was designated.

However, neither the Convention nor the Uniform Law imposes an obligation on contracting States to introduce in their legislation provisions relating to the conditions for the intervention of an interpreter.

Thus, the law No. 94-337 of 29 April 1994, which designates notaries as a person authorized to execute international wills within the territory of the French Republic, and, with respect to French nationals abroad, French diplomatic and consular agents, does not contain such provisions.

The silence of this law must be interpreted as not allowing in itself the use of an interpreter.

Indeed, an international will shares with an authentic will the characteristic that the notary, or the French diplomatic or consular agent authorized to receive it, guarantees compliance with the prescribed formalities. However, under the legal provisions applicable at the time of the adoption of this law, it was held that an authentic will executed through an interpreter was null and void (1st Civil Chamber, 18 December 1956, Bull. I, No. 469; 1st Civil Chamber, 15 June 1961, Bull. No. 317).

Since then, however, the Law No. 2015-177 of 16 February 2015, on the Modernization and Simplification of Law and Procedures in the fields of Justice and Internal Affairs, amended Article 972 paragraph 4 of the Civil Code, and has relaxed the formalism required for authentic wills. It now allows, when the testator cannot express themselves in the French language, for the dictation and reading of the will to be carried out by an interpreter. However, this is subject to

the condition that the interpreter is chosen by the testator from the national list of judicial experts maintained by the *Cour de cassation* (Court of Cassation) or from the list of judicial experts maintained by each *cour d'appel* (Court of Appeal), so that only an authentic will drawn up with the assistance of such an expert, after the entry into force of this text on 18 February 2015, could, by equivalence of conditions, be declared valid as an international will.

In validating the will of 17 April 2002 as an international will, after noting that [I] [L] had dictated it in the presence of an interpreter in Italian, a language not understood by the notary or the two witnesses, the ruling held that, in the absence, at that time, of any provision in domestic law allowing for the intervention of an interpreter, the lack of certification of the interpreter assisting [I] [L] did not affect the validity of the will ; and although the will did not contain the formal mention required under Article 4§1 of the Uniform Law, it specified that it had been typed by the notary using a word processor, as dictated by the testatrix and the interpreter ; furthermore, it highlighted that the notary subsequently read the will to them, and they declared they understood it and confirmed that it expressed the testatrix's wishes, all in the simultaneous and uninterrupted presence of the witnesses, which ensures that [I] [L] had indeed confirmed that the document was her will and that she was aware of its contents.

In so ruling, however, when at the date of the disputed will, no legal provision allowed for an interpreter to assist a testator who did not understand the language of the will, either in the context of an international will or an authentic will, the *cour d'appel* (Court of Appeal) violated the aforementioned legal provisions.

ON THESE GROUNDS, the Court :

QUASHES AND SETS ASIDE all provisions of the ruling rendered on 21 March 2023 between the parties, of the *cour d'appel* (Court of Appeal) of Lyons ;

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) ;

Orders Mr [W], the Geonot Notarial Office and Ms [U], Ms [O] and Ms [A] [V] to pay the costs ;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claim made by Mr [W] and the Geonot Notarial Office and orders them to pay Mr [E] the sum of 3000 euros ;

States that, upon the diligence of the Prosecutor-General at the *Cour de cassation* (Court of Cassation), the present ruling be transmitted for transcription in the margin or following the quashed judgement ;

THUS done and adjudged by the *Cour de cassation* (Court of cassation), sitting in plenary assembly, and pronounced on the seventeenth day of the month of January of the year two thousand and twenty-five by making the ruling available at the registry of the Court, with prior notification to the parties in accordance with the provisions of the second paragraph of Article 450 of the Code of Civil Procedure.

Translated rulings