

**French Court of Cassation, First Civil Chamber, Société Pirelli & C. v. Société Licensing Projects, no. 11-27770, 28 March 2013**

Member State

 France

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Topic

Rule of law – the right to a fair trial/access to justice

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Deciding Court Original Language

La Cour de Cassation, Cass. Civ. 1

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Deciding Court English translation

French Court of Cassation, First Civil Chamber

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Registration N

11-27770

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Date Decision

28 March 2013, *Société Pirelli & C. v. Société Licensing Projects*

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ECLI (if available)

FR:CCASS:2013:C100392

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National Follow Up Of (when relevant)

The judgment of the Versailles Court of Appeal

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## EU legal sources and CJEU jurisprudence

N/A

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## ECtHR Jurisprudence

N/A

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## Subject Matter

A right to access to justice and the principle of equal treatment under Article 6 of the ECHR.

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## Legal issue(s)

A right to a fair trial/access to justice

The Paris Court of Appeal, whose decision of 17 November 2011 was attacked before the French Court of Cassation and was faced with the question of whether the arbitral award issued by arbitrators who followed the ICC Court's decision to withdraw the counterclaims of the defendant, who failed to pay the advance payment on costs pursuant to the applicable ICC rules due to its insolvency should be annulled for violating the right to access to justice. In the arbitration in question, the defendant was not allowed to present their counterclaims due to the lack of payment but the ICC Court noticed that it was not prevented from doing so in future proceedings.

*Société Licensing Projects* started annulment proceedings before the Paris Court of Appeal claiming that the award violated its right to access to justice and the principle of equal treatment under Article 6 of the ECHR.

The Paris Court of Appeal annulled the award.

*Société Pirelli* appealed this judgment to the French Court of Cassation.

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## Request for expedited/PPU procedures

N/A

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## Interim Relief

1. Indicate if the national court/applicant asked the CJEU/ECtHR for interim relief and a short summary of the reasons put forward
  2. Indicate if the CJEU/ECtHR granted the interim relief
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## National Law Sources

Article 1134 of the French Civil Code, articles 1442, 1508 and 1520 (1520 4° et 5°) of the French Civil Procedure Code.

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## Facts of the case

The Italian company *Société Pirelli* started arbitration against a Spanish company called *Société Licensing Projects* (LP) to recover debts. LP had undergone insolvency proceedings and was placed in liquidation. It still submitted counterclaims at the start of arbitration but it failed to issue the advance payment of costs in accordance with the ICC arbitration rules applicable to arbitration. Consequently, the ICC informed the parties and the tribunal that the counterclaims shall be deemed withdrawn. The French court of appeal, which heard the case, annulled the arbitral award in question based on the argument that it violated access to justice. The French Court of Cassation reversed the ruling.

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## Reasoning (role of the Charter or other EU, ECHR related legal basis)

“The Court confirmed that access to justice through arbitration is governed by the same principles as apply in cases concerning access to court proceedings as set out in Article 6 of the European Convention on Human Rights.”

That being said, in the case in question the Court of Cassation held that the withdrawal of counterclaims could have been regarded as a violation of access to justice only if such counterclaims were “inseparable” from the main claim. The relationship between the main claim and counterclaims in this case was not tested by the Paris Court of Appeal which is why the judgment of this Court was quashed and the case was referred to the Versailles Court of Appeal.

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## Relation of the case to the EU Charter

N/A

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## Relation between the EU Charter and ECHR

N/A

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Use of Judicial Interaction technique(s)

N/A

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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

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Impact on Legislation / Policy

The right to a fair trial and arbitration.

This case demonstrates that some national jurisdictions require arbitration to correspond to the fundamental rules of judicial systems, including the right to access to justice. This case also opened up a debate regarding the autonomy of arbitration vis-à-vis the principles underlying public justice systems. The Court of Cassation limited the consequences of the Paris Court of Appeal's judgment for the autonomy of arbitration through which parties to arbitration agreement consent to rules that will govern their (future) arbitration proceedings, including the rule on the withdrawal of counterclaims in cases of the lack of payment of the advance of costs by one of the parties.

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Notes on the national implementation of the preliminary ruling by the referring court

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

N/A

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(Link to) full text

<https://www.legifrance.gouv.fr/juri/id/JURITEXT000027251564/> (in French)

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