

Clarification of rules on fast-track appeal proceedings

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Introduction

Article 905 of the Code of Civil Procedure (CCP) provides for fast-track proceedings before the courts of appeal in urgent cases, cases that are ready to be tried and appeals of summary orders, among other cases.

In such proceedings, the CCP notably provides that the appellant must notify their declaration of appeal within 10 days of receipt of the notice of hearing from the court's registry (Article 905-1). Further, the appellant must file their submission within one month of receipt of the notice of hearing, failing which the declaration of appeal will be declared void (Article 905-2).

On 22 October 2020 the Court of Cassation specified the rules which apply in cases where the appellant notifies their declaration of appeal and their submission before receiving the notice of hearing.

Facts

In the case at hand, the judge of expedited matters had pronounced the termination of a lease and ordered the tenant's eviction. The tenant appealed such a summary decision under the fast-track proceedings provided for in Article 905 of the CCP. Before receiving the notice of hearing from the Nimes Court of Appeal, the appellant notified his declaration of appeal and submission to the other party. Consequently, the appellant did not reiterate such notification after receiving the notice of hearing.

Court of appeal decision

In such unusual circumstances, the Nimes Court of Appeal declared that the appeal was void since the appellant had failed to notify his declaration of appeal within 10 days of receipt of the notice of hearing and his submission within one month of receipt of the notice of hearing.

Court of Cassation decision

The Court of Cassation overturned the Nimes Court of Appeal's decision.

The Court of Cassation pointed out that, pursuant to Article 905-1 of the CPP and Article 6(1) of the European Convention on Human Rights, the appellant's failure to notify the respondent's lawyer of the declaration of appeal within 10 days of receipt of the notice of hearing did not render the appeal void. Further, in this case, the appellant had already notified the declaration of appeal to the respondent – albeit before receiving the notice of hearing. Hence, the appellant did not need to renew his notification.

More importantly, the Court of Cassation clarified the rules relating to the time limits for parties' submissions.

Two questions arose in this respect:

- If the appellant anticipates such notification, do they have to notify their submission again once they have received the notice of hearing?
- What is the starting point of the deadline for the respondent to submit their response?

Regarding the first question, the Court of Cassation stated that the appellant need not notify their submission

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again.

Regarding the second question, the Court of Cassation stated that the respondent must respond within one month of the notification of the appellant's submission, regardless of whether the submission was notified before the notice of hearing.

Comment

The starting point of the deadline for a respondent to file their submission is important as the timeframe differs depending on whether the procedure is 'ordinary' (where the respondent has three months from the notification of the appellant's submissions to file their submission) or 'fast' (where the respondent has one month from receiving the notice of hearing to do so). Hence, in consideration of the Supreme Court decision outlined above, when the procedure is brought under Article 905 of the CCP and when the appellant has filed their submission before receiving the notice of hearing from the court, the respondent must anticipate such notice and file their response within one month of the notification of the appellant's submission, no matter how late the notice of hearing is sent by the court of appeal's registry.

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