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Civil procedure reform: new rules on provisional execution of judgments

Nicolas Contis

Talel Aronowicz

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Introduction

In France, provisional execution allows a judgment to be executed before it acquires the status of *res judicata* (ie, all ordinary recourses have expired). Until recently, provisional execution could generally be invoked only if the requiring party submitted a request to this effect and the judge expressly granted such request.

This practice has changed following the major reform of French civil procedure, which has amended, among many other procedural rules, those concerning the provisional execution of judgments.

Specifically, Decree 2019-1333 of 11 December 2019 reforming French civil procedure has reversed the above rule. As of 1 January 2020, first-instance judgments are, in principle, automatically assigned provisional execution. However, there are some exceptions to this new principle, in which case parties must still ask a judge to grant provisional execution.

Automatic provisional execution

Before Decree 2019-1333 entered into force, parties requiring provisional execution had to request it from a judge. Judges would decide whether it was appropriate to grant provisional execution in respect of the judgment in question and were under no obligation to do so. Provisional execution had to be expressly included in a judgment; otherwise, enforcement agents could not make the necessary arrangements. However, a few judicial acts were automatically granted provisional execution by law, such as summary procedures (Article 489 of the Code of Civil Procedure (pre-reform)).

This rule was reversed on the entry into force of Decree 2019-1333 on 11 December 2019. Now, the new Article 514 of the Code of Civil Procedure states that the "decisions of first instance [jurisdictions] shall be automatically provisionally executed unless the law or the decision issued

provides otherwise". Thus, parties are no longer required to expressly request provisional execution in most cases. Further, all previous provisions which automatically assigned provisional execution to specific judgments have been deleted, as they are no longer relevant.

Remaining exceptions

Although first-instance judgments are now automatically assigned provisional execution, some exceptions remain.

The Code of Civil Procedure sets out some decisions which are not automatically granted provisional execution, such as those concerning the nationality of physical persons (Article 1045) and requests to correct or annul entries in the civil registry (Article 1054-1).

If provisional execution is not automatically assigned to a judgment, the parties can ask the judge to grant it, unless this is forbidden by law. In essence, the same rules that applied before the reform apply in these cases.

Further, according to the new Article 514-1 of the Code of Civil Procedure, judges can deprive a judgment of provisional execution if they believe that it is incompatible with the nature of the case at hand. Such a decision must be specially motivated. Notably, judges cannot deprive judgments of provisional exception where they concern:

- summary procedures;
- provisionary measures for the conduct of proceedings;
- conservatory measures; or
- the issuance of provisions to a creditor (where the judge acts as a pre-trial judge).

On appeal, parties may request that the first president of the Appellate Court stop the provisional execution of a judgment. Although this was possible before the reform, the conditions have changed. Now, Article 514-3 of the Code of Civil Procedure provides that such a decision will be rendered only if:

- there are serious grounds to request the annulment or reformation of the judgment; and
- no manifestly excessive consequences are foreseen.

Notably, Article 514-3 has introduced a new limit – namely, if a party has made no observation regarding provisional execution before the lower judge, its request to stop the provisional execution of the judgment will be admissible only if the manifestly excessive consequences were revealed after the first-instance judgment was rendered.

Comment

This reform has not been met with enthusiasm by the National Bar Counsel, which has filed an action against it. Further, many practitioners have questioned the decision to automatically assign provisional execution, since the National Bar Counsel estimates that only around 20% of first-instance judgments remain intact during appeals.

Automatically assigning provisional execution to first-instance judgments would not only institutionalise the risk of provisionally executed decisions that have a high probability of being amended, but also increase the number of cases before the first president of the Appellate Court.

Further, when a winning party provisionally executes a judgment, it does so at its own risk and peril. If the judgment is amended during an appeal, such party may be ordered to correct the unbalance created from the provisional execution and sentenced to pay indemnities to the other party in some cases.

The hearing before the National Bar Counsel took place on 27 December 2019 and the order has yet to be rendered. It will be interesting to see the outcome of that case.

For further information on this topic please contact Nicolas Contis or Talel Aronowicz at Kalliopé by telephone (+33 1 44 70 64 70) or email (ncontis@kalliope-law.com or taronowicz@kalliope-law.com). The Kalliopé website can be accessed at www.kalliope-law.com.

Mahmoud Kreidié, trainee lawyer, assisted in the preparation of this article.