

Conseil d'Etat, 24 juin 2021, Fonderie & Mezzi

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In view of the following procedure:

The Académie de France in Rome asked the administrative court of Paris to enjoin the company Mezzi et Fonderia to vacate the premises it occupies within the Villa Medici, to evacuate all equipment and to restore the premises to their original state within a period of two months under a penalty of 150 euros per day of delay, to enjoin this company to produce the accounting documents allowing the determination of the turnover achieved and to condemn the company to the payment of an amount for the occupation of the public domain, together with interest at the legal rate. By judgment no. 1715661 of 7 February 2019, the Paris Administrative Court ordered the company Mezzi et Fonderia to vacate the public domain premises it occupies within the Villa Medici and to remove all stored equipment within two months, subject to a fine of 150 euros per day of delay. It also ordered Mezzi et Fonderia to pay the Académie de France in Rome the sum of 84,850 euros with interest at the legal rate from 4 October 2017.

Mezzi et Fonderia asked the Paris Administrative Court to annul the decision of 9 February 2017 by which the Académie de France in Rome terminated the concession contract signed on 15 October 2015 for the operation of the Villa Medici cafeteria and catering service and to order the resumption of contractual relations. By judgment no. 1810293 of 7 February 2019, the Paris Administrative Court rejected this request.

By judgment nos. 19PA01312, 19PA01313, 19PA01314 of 23 January 2020, the Paris Administrative Court of Appeal dismissed the appeals lodged by the company Mezzi et Fonderia against these judgments.

By a summary appeal, a supplementary memorandum and a new memorandum, registered on 27 January, 24 August and 30 December 2020, at the Secretariat of the Litigation Division of the Council of State, the company Mezzi et Fonderia asks the Council of State:

1°) to annul this judgment;

2°) settling the case on the merits, to allow its appeals;

3°) in the alternative, to stay the proceedings and to refer a question to the Court of Justice of the European Union for a preliminary ruling

4°) to charge the State the sum of 6,000 euros under Article L. 761-1 of the Code of Administrative Justice.

Having regard to the other documents in the file;

Having regard to :

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I);
- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- the General Code of Public Property;
- the Code of Administrative Justice;

Having heard in public session:

- the report of Mr. François-René Burnod, auditor,
- the conclusions of Mr. Romain Victor, public rapporteur;

The floor having been given, after the conclusions, to SCP Célice, Texidor, Perier, lawyer for the company Mezzi et Fonderia and to SARL Meier-Bourdeau, Lecuyer et associés, lawyer for the Académie de France in Rome;

Considering the following:

1. It is clear from the documents in the file submitted to the judge on the merits that the Académie de France in Rome, a public administrative establishment of the State, concluded a concession contract for the cafeteria and catering service of the Villa Medici in Rome with the company Mezzi et Fonderia on 15 October 2015 for a period of eight years. Following an inspection and control visit on 12 November 2016, the Académie de France in Rome sent the company a formal notice on 15 November 2016 to regularise its situation within 15 days. Considering the company's responses insufficient, the Académie de France in Rome decided to terminate the concession contract on 9 February 2017. On 20 February 2017, Mezzi et Fonderia brought an action before the Italian courts, but the Italian Supreme Court of Cassation, in a ruling dated 17 April 2018, declined jurisdiction in favour of the French courts. In two judgments of 7 February 2019, the Paris Administrative Court, on the one hand, rejected the company's request for the annulment of this termination decision and the resumption of contractual relations and, on the other hand, ordered the company to vacate the public property it occupies within the Villa Medici and ordered it to pay the Académie de France in Rome the sum of 84,850 euros. Mezzi et Fonderia is appealing to the Court of Cassation against the judgment of 23 January 2020 by which the Paris Administrative Court of Appeal rejected its appeals against these judgments.

On the judgment insofar as it rules on the jurisdiction of the administrative court:

2. It follows from the general code of the property of the public persons, and in particular from chapter I of the title II of the book II of its first part, from the section 1 of the chapter II of the title I of the book III of its second part, from the subsection 5 of the section 1 of the chapter Ier of the title II of the book II of its third part and from the chapter II of the title I of the book Ier of its fourth part, that enter in its field of application as well the goods located on the territory of the Republic as those located abroad. Thus, real estate belonging to one of the public persons mentioned in Article L.1 of this code and which meets the criteria for belonging to

the public domain, now set out in Article L.2111-1 of this code, constitute dependencies of its public domain, even though they are located abroad. Prior to the entry into force of the General Code of the Property of Public Persons on 1 July 2006, the inclusion of a property in the public domain was, unless the property was directly assigned to public use, subject to the double condition that the property was assigned to the public service and specially developed for the public service for which it was intended. In the absence of any provision to this effect, the entry into force of this code could not, by itself, have the effect of leading to the declassification of property that previously belonged to the public domain and which, since 1 July 2006, no longer fulfilled the conditions now laid down by Article L. 2111-1.

3. It follows that the court did not err in law in holding, after having noted on the uncontested grounds of its judgment that the Villa Médicis was, prior to 1 July 2006, assigned to a cultural public service and specially fitted out for that purpose, that it had to be regarded as a dependency of the public domain of the State.

4. Under the terms of Article L. 2331-1 of the General Code of the Property of Public Persons, "Disputes relating to: 1° Authorisations or contracts involving occupation of the public domain, whatever their form or name, granted or concluded by public persons or their concessionaires; (...)" are brought before the administrative court. The jurisdiction thus conferred on the administrative judge, without it being possible to derogate from it by contract, extends to disputes relating to contracts involving occupation of parts of the French public domain located on the territory of a State other than France, even if the parties to the contract have agreed that it is governed by the law of that State. In this case, the administrative judge applies the foreign law for which the parties have opted, subject to the rules of public order provided for by the general code of the property of public persons in order to guarantee the protection and integrity of the public domain.

5. It follows that the court did not err in law either in holding, after noting that the contract in question stipulated that any dispute relating to 'its interpretation, validity or termination' would be subject to 'the exclusive jurisdiction of the courts of Paris', that the dispute to which the termination of this contract gave rise, which involved the occupation of the public domain dependence that the Villa Médicis constitutes, fell within the jurisdiction of the administrative courts pursuant to the above-mentioned provisions of Article L. 2331-1 of the General Code of the Property of

Public Persons, even though the real estate in question is located in Italy and the contract expressly stipulates that it is governed by Italian law. If the Court also noted that these provisions were in the nature of a mandatory rule of French public law having the character of a police law, this reason is of an overabundant nature, so that the applicant company cannot usefully argue that it is vitiated by an error of law.

On the judgment in so far as it rules on the claims for the resumption of contractual relations :

6. It is clear from the judgment under appeal that, in order to reject the company's conclusions seeking the annulment of the decision to terminate the agreement and the resumption of contractual relations, the administrative court of appeal based itself, after having noted that the company had seriously failed to fulfil its contractual obligations, on the fact that the measure to terminate the agreement was not vitiated by any defects relating to its regularity or by any defects relating to its validity.

7. In considering, firstly, that the company had not attested to the regularity of the payment of social security contributions due by it for the benefit of its employees for the period between June and November 2016 by merely producing a "single document" drawn up after the inspection of 12 November 2016, which had revealed the presence of an employee without an employment contract, employees present who were contracted out later and trainees without an agreement and without pay slips, a number which was irregular in relation to the number of employees, secondly, that the stipulations of the contract required the mastery of the French language by all the staff, and thirdly, that it did not result from the investigation that the Académie de France in Rome had not respected the principle of exclusive recourse to its services for events organised by the Académie, given the conditions to which the contract subjected the applicant, the Court made a sovereign assessment of the facts and documents in the file submitted to it, free from any distortion.

8. The company could not, moreover, usefully maintain that the Court had disregarded its duty by not investigating, in the absence of any argument to that effect raised before it, whether the decision to terminate the contract had been taken in disregard of the rules of Italian law to which the contract is subject.

9. Finally, having regard to the ground on which the Court relied, namely that there were no defects in the decision to terminate, the company cannot usefully maintain that it disregarded the duty of the contract judge by failing to draw the necessary conclusions from the defects vitiating the legality or validity of that decision.

10. It follows from the foregoing, without there being any need to refer a question to the Court of Justice of the European Union for a preliminary ruling, that Mezzi & Fonderia is not entitled to seek the annulment of the judgment which it is challenging.

11. In the circumstances of the case, the company Mezzi et Fonderia should be required to pay the sum of EUR 3 000 to the Académie de France in Rome under the provisions of Article L. 761-1 of the Code of Administrative Justice. These same provisions prevent the Académie de France in Rome, which is not the losing party in the present proceedings, from being charged with a sum in this respect.

DECIDE :

Article 1: The appeal of the company Mezzi et Fonderia is rejected.

Article 2: The company Mezzi et Fonderia shall pay a sum of 3,000 euros to the Académie de France in Rome under article L. 761-1 of the administrative justice code.

Article 3: The present decision will be notified to the company Mezzi et Fonderia and to the Académie de France in Rome.

A copy will be sent to the Minister of Culture.