Article 15 of the Civil Code is No Longer a Bar to the Recognition of Foreign Judgments in France

On May 23rd, 2006, The French supreme court for civil, commercial and criminal matters (*Cour de cassation*) held in the *Prieur* decision that article 15 of the Civil Code is no bar any more to the recognition or enforcement of foreign judgments in France and overruled an 80 year old interpretation of this provision.

Article 15 of the Civil Code provides that French citizens may be sued before French courts. This provision obviously gives jurisdiction to French Courts over French defendants. But the provision was also construed by the *Cour de cassation* as a defence against the recognition of foreign judgments delivered against French defendants. From the French perspective, the jurisdiction of French Courts over French defendants was thus exclusive. This priviledge could be waived by the French defendant, for instance by agreeing to a jurisdiction clause, or by defending on the merits before the foreign court without challenging its jurisdiction. But when it had not been waived, it was a fortress that could not be defeated. It applied in all almost fields (contract, torts, family law, etc…), except in immovable or enforcement matters. But its scope was shrinking as European conventions and many bilateral treaties excluded its application.

In *Prieur*, the *Cour de cassation* held that article 15 could not be used any more to determine whether the foreign court lacked jurisdiction from the French perspective and thus made its judgment unenforceable in France. In that case, a French citizen born and living in Switzerland had married in

Switzerland a woman who was also born and lived there. In 1996, a Swiss court annulled the marriage, and the wife then sought a declaration of enforceability of the judgment in France. The husband challenged the jurisdiction of the Swiss court in the French enforcement proceedings on the sole ground of his citizenship. The court held that it was irrelevant, and that the foreign court having a significant link with the dispute, it had jurisdiction from the French perspective. The Swiss judgment was found enforceable in France.

It is no mystery in French circles that this change is due to a modification of the composition of the court. Several influential French writers have already written that they fully support the change (Bernard Audit in *Recueil Dalloz* 2006, p. 1846, Helene Gaudemet-Tallon in *Revue Critique de Droit International Privé* 2006, p. 871. Professor Courbe, however, wrote a critical commentary in *Les Petites Affiches*, 22 Sept. 2006, p. 10). It is good news for plaintiffs suing French nationals in jurisdictions which have not concluded treaties with France such as, for instance, the United States. The debate in France is now whether the remaining conditions for the recognition of foreign judgments are sufficient to prevent the recognition of judgments that should not be recognised. The answer is probably yes, but one can wonder which condition could be an efficient bar to judgments made by foreign corrupt judiciaries. None of those remaining in France, it is submitted.