French Court Denies Recognition to American Surrogacy Judgement

On 26 February 2009, the Paris Court of Appeal denied recognition to a couple of American judgments which had sanctioned a surrogacy. The Court held that it was contrary to French international public order.



In this case, a French couple had found a surrogate mother in Minnesota who had accepted to carry their child. After Ben was born, the parties had obtained on 4 June 2001 two judgments from a Minnesota court, the first finding that that the child had been abandonned by the American surrogate mother, the second ruling that he was adopted by the French couple. A birth certificate had then been delivered by the relevant Minnesota authorities.

When the couple came back to France, they tried to have the child registered as theirs on the relevant French registry. The French public prosecutor initiated proceedings to have this registration cancelled.

Both the French first instance court and the Paris Court of Appeal ruled against the couple. The debate focused on whether the American judgments could be recognised in France (it does not seem that the issue of whether the birth certificate could be recognised was raised). The Paris Court of appeal noticed that there were no international convention between the U.S. and France on the recognition of foreign judgments, and that it followed that the French common law of judgments as laid down by the *Cour de cassation* in *Avianca* applied.

The Court only explored whether one of the conditions was fulfilled, namely whether the foreign judgments comported with French international public order. It simply held that it did not, as the Civil code provide that surrogacy is forbidden in France (Article 16-7 of the Civil Code), and that the rule is mandatory (*d'ordre public*: see Article 16-9 of the Civil Code). In truth, the Code certainly provides that the rule is mandatory in France, but it does not say whether the rule is also internationally mandatory. The Court rejected arguments to the effect that Article

8 ECHR or the superior interest of the child commanded a different outcome.

I had reported earlier about another judgment of the same Paris Court of Appeal (indeed, the same division of the court, which is specialized in private international law matters) which had accepted to recognize a Californian judgment. This decision had been overruled by the *Cour de cassation*, but on an issue of French civil procedure which was unrelated.