French Case on Foreign Mandatory Rules

There are very few cases ruling on the application of foreign internationally mandatory rules (*lois de police*). Readers of this blog should therefore be interested by this recent decision of the French *Cour de cassation* discussing the application of a mandatory law of Ghana to a contract governed by French law.

A French company had sold frozen meat (beef) to a buyer based in Ghana. The goods were carried to Ghana by sea, but they could not be delivered because Ghana had passed a law providing for an embargo of French beef. The goods had thus to be repatriated to Le Havre, France. The seller sued various parties involved in the carriage for breach of contract.

In the French proceedings, nobody disputed that the law governing the contract of carriage was French law. But the carrier argued that the contract was void for illegality because it violated the embargo law of Ghana. More specifically, the carrier argued that the contract was void pursuant to one of the provisions of the French Civil code avoiding contracts for illegality, namely Article 1133 which provides that contracts with an illegal *cause* are void. In other words, the carrier argued that the contract was void pursuant to French law, but as the consequence of the existence of the foreign embargo law. This did not convince the Court of appeal of Angers which ruled that the law of Ghana did not govern the contract, that it had thus no authority over the parties, and that the argument that the contract was void, as a matter of French law but because of the law of Ghana, had to be dismissed.

In a decision of March 16th, 2010, the *Cour de cassation* ~~affirmed~~ reversed the decision of the Court of appeal. It held that the Court of appeal should have explored whether the law of Ghana was a mandatory rule in the meaning of Article 7.1 of the 1980 Rome Convention on the Law Applicable to Contractual Obligations, and should thus, as such, have produced effect in France.

The *Cour de cassation* referred explicitly to the first sentence of Article 7.1, which provides

> *When applying under this Convention the law of a country, effect may be given*

> *to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract.*

It then ruled that the Court of appeal should have explored whether "effect should have been given" to the foreign law pursuant to Article 7.1. The words "giving effect" were probably chosen with care. The preparatory report written by one of the members of the *Cour de cassation* makes clear that the *Cour de cassation* was well aware of the fact that the issue in the case might not have been to actually *apply* foreign law, but rather to take into consideration its existence and impact on the contract for the purpose of applying French law. It seems indeed that the carrier had not argued that the embargo law governed the issue of the validity of the contract, but rather that it should be taken into consideration for the purpose of applying French law to that issue.

Finally, it does not seem that the argument that foreign law might have been taken into consideration for the purpose of assessing whether the *performance* of the contract was possible was made before any of the courts.

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