

Liberalization of Enforcement of US Judgments in France

In a previous post, I had reported that the French supreme court for private matters (*Cour de cassation*) overruled last year a century old precedent limiting the enforcement of foreign judgments against French nationals. In *Prieur*, the *Cour de cassation* held that Article 15 of the Civil Code should not be construed anymore as giving exclusive jurisdiction to French courts to decide disputes involving French nationals. As a consequence, foreign judgments made against French nationals should be enforced in they meet the other liberal standards of the French law of judgments (as further liberalized by the *Cour de cassation* in *Avianca*).

On May 22, 2007, the *Cour de cassation* confirmed its *Prieur* decision by applying it to a US judgment. The Superior Court of Alameda County, California, had ordered French company Fontaine Pajot to pay damages to two US nationals. The French company resisted enforcement of the Californian judgment in France on the ground that they had not waived their “jurisdictional privilege” (as Article 15 of the Civil code was sometimes known) to be tried by a French court. In other words, the French company was arguing that the foreign court lacked jurisdiction from the French perspective since one of the parties was French, and French courts had exclusive jurisdiction over disputes involving French nationals. The appeal is dismissed by the *Cour de cassation* on the ground that Article 15 only gives optional jurisdiction to French courts, and that it is now irrelevant to determine the jurisdiction of foreign courts, for the purpose of the enforcement of judgments in France.

Eventually, the *Cour de cassation* held that it was for the trial judges to determine whether there was a significant connection between the foreign court and the dispute, and thus jurisdiction of the foreign court.

For those of you who read French, I quote the important part of the decision (it is also available on legifrance.gouv.fr, but I have been unable to make a link to the decision):

Vu l'article 15 du Code civil; attendu que ce texte ne consacre qu'une

compétence facultative de la juridiction française, impropre à exclure la compétence indirecte d'un tribunal étranger, des lors que le litige se rattache de manière caractérisée à l'Etat dont la juridiction est saisie, et que le choix de la juridiction n'est pas frauduleux.

Two conclusions can be drawn from this case. First and most importantly, *Prieur* is confirmed. Second, denial of enforcement of US judgments will require the identification of a specific issue with the foreign judgment, such as a violation of French public policy for judgments awarding punitive damages. Finally, the new paradigm is doing fine when coping with decisions from jurisdictions where the judiciary is not notoriously corrupt, but a time will come when that will not be the case.