Flashairlines and Judicial Cooperation

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The *Flashairlines* ruling of the Court of Appeals is a prime example of cross-border cooperation between courts and as such deserves to be commended. I will not comment on the holding of the Court as to the existence of jurisdiction or the possibility for claimants to obtain a declaration to the effect that the court which they seized does not have jurisdiction – both matters falling under French law – save in order to underline that the ruling is an important one for the future development of declaratory relief in Europe. The striking feature of the opinion is my view the spirit of cooperation which permeates the whole ruling. The Court indeed reviewed its jurisdiction with full knowledge of the special context in which the dispute developed. In contrast to normal practice, where, even in the context of concurrent proceedings, a court is reluctant to involve itself with what is going on before the other court, the Court of Appeal fully considered what was at stake in the 'twin' proceedings pending in California. In fact, the Court of Appeal considered expressly that it has been « *invited* » to rule on its jurisdiction by the court in California. That the Court of Appeal would read an invitation in the latter court's ruling could in fact nicely be squared with the doctrine of comity whose operation has until now been limited to the relations between courts of English speaking countries.

Such close cooperation and openness on the part of the Court of Appeal is even more striking since, as is widely known, the doctrine of *forum non conveniens* is unknown and even foreign to the European continental thinking on jurisdiction. It is a testimony to the openness of the Court of Appeal that the

court was willing to rule on its jurisdiction knowing that the only purpose of the exercise was (most likely) to comfort the jurisdiction of a United States court. In fact, even in specific circumstances where European regulations allow for such cooperation between courts of various countries – one thinks of the mechanism put in place by Article 15 of the Brussels IIbis Regulation – one has hardly witnessed enthusiastic reactions to the possibility of cross border judicial dialogue.

The readers of this blog will not have forgotten about the defunct Hague Judgments Convention. This ambitious scheme which attempted to replicate on a global scale the success of the 1968 Brussels Convention, provided a watered down version of the *forum non conveniens* doctrine. It is striking to note that the *modus operandi* adopted by the courts in California and France in the *Flashairlines* dispute comes very close to the one envisaged by the drafters of the late Convention: one court comes to the conclusion that another one is better placed and stays proceedings to allow the other one to determine whether to take up the case. Of how judicial practice on the two sides of the Atlantic has caught up with the idea of a 'silent dialogue' between courts which seemed unrealistic only a couple of years ago…

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