French Supreme Court Applies Blocking Statute

I should have reported much earlier this interesting case of the French Supreme Court for Private and Criminal Matters (*Cour de cassation*) which applied for the first time the French 1980 statute which criminalizes cooperation with U.S. discovery procedures. A lawyer was fined € 10,000 for seeking information for the purpose of Californian proceedings.

The French blocking statute is the amended version of a 1968 statute which, at the time, prohibited communication to "foreign authorities" of any document or information relating to carriage by sea if such communication would have been contrary to "the rules of international law or likely to hurt the sovereignty of the French state". In 1980, this provision (art. 1) was amended, and another one (art. 1bis) was added, which prohibits any person from seeking to obtain or communicating documents or information for the purpose of constituting evidence in foreign judicial or administrative proceedings. The new art. 1bis applies to documents or information of almost any kind (i.e. of economic, commercial, industrial, financial or technical kind). The statute imposes criminal penalties, which can go up to 6 months of prison, and a fine up to €18,000.

The first application of the law took place in the context of the Executive Life Insurance case. The lawyer was the counsel in France of the California insurance commissioner. In 1999, the California commissioner had initiated civil proceedings in Los Angeles against various French parties, including Crédit Lyonnais bank and insurance company MAAF. The central issue was the purchase of Californian Insurance company Executive life at the beginning of the 1990's. Californian authorities wondered whether MAAF had made this purchase in violation of California law. It was thus critical for the American proceedings to get information on the circumstances surrounding the purchase. The American party sought information both through rogatory commissions issued in accordance with the 1970 Hague Convention and through this lawyer, who decided to call directly a member of the board of MAAF in France.

According to the trial judges,the lawyer, Christopher X., talked to Jean-Claude X., who may well be Jean-Claude Lecarpentier, a top executive of MAAF. Christopher alleged that members of the board had made decisions at the time of the purchase of Executive life outside of regular meetings, and that there was a need to provide better information on what had actually happened to some of the members of the board. It seems that he hoped that Jean-Claude would answer that that was not the way things had happened, and would then give him hints on what the members knew and thought they were doing when they decided to purchase Executive Life.

Instead, Jean-Claude answered that he had never been in any board where decisions were made in the doorway. Jean-Claude then wrote to the French prosecutor about that conversation. Christopher was later charged with infringing the blocking statute and sentenced to pay a € 10,000 fine. In a judgment of 12 December 2007, the *Cour de cassation* rejected an appeal against the sentence.

Is this judgement a signal of the willingness of the French Supreme court to eventually apply the statute? This is unclear. From the French perspective, the Executive Life case is truly exceptional. It was widely perceived by French elites as an unacceptable pressure exercised by Californian authorities over French public entities and thus, eventually, over the French state. This might not be completely foreign to the solution adopted by the judgement.