

French Supreme Court Breaks Land Taboo

On June 23rd, 2010, the French Supreme court for private and criminal matters (*Cour de cassation*) held that French courts had jurisdiction to determine the succession to a property situated in a foreign country.



The deceased person was a French national domiciled in Madrid. He owned two apartments, one in Spain and one in France, and monies on bank accounts. As his wife and his two children (one legitimate, one illegitimate) could not reach an agreement with respect to the succession, the wife sued the children before a French court. One of the children challenged the jurisdiction of the court on the ground that one of the properties was situated abroad.

The Court of appeal of Montpellier had retained jurisdiction over the Spanish immovable. Remarkably, the *Cour de cassation* dismissed the appeal lodged against this decision and held that French courts did have jurisdiction.

The *Cour de cassation* offered a most innovative reasoning to justify that outcome.

First, it underlined that French courts had jurisdiction to determine the succession to part of the estate of the deceased person. It had jurisdiction over the moveables because the plaintiff was a French national (Civil code, art. 14), and it had jurisdiction over the immovable situated in France because, well, it was situated in France.

But the best was still to come. The *Cour de cassation* ruled that, with regard to the Spanish immovable, Spanish **law** operated a *renvoi* to French **law**, and that such *renvoi* was **granting jurisdiction** to the French court to decide the entire dispute and determine the succession to the whole estate. The court held that jurisdiction was only granted “to the exception of legal and physical operations flowing from the *lex situs*”, but it did not find that such operations were involved in the case and thus ruled that French courts had jurisdiction over the Spanish immovable.

The most important part of the judgement reads:

Mais attendu qu'ayant retenu, par motifs adoptés, que les juridictions françaises étaient compétentes pour connaître partiellement des opérations de liquidation et partage de la succession, tant mobilière en vertu de l'article 14 du code civil, qu'immobilière en raison de la situation d'un immeuble en France, la cour d'appel, constatant que la loi espagnole applicable aux dites opérations relatives aux meubles et à l'immeuble situés en Espagne, renvoyait à la loi française, loi nationale du défunt, en a exactement déduit que les juridictions françaises étaient, par l'effet de ce renvoi, compétentes pour régler l'ensemble de la succession à l'exception des opérations juridiques et matérielles découlant de la loi réelle de situation de l'immeuble en Espagne.