

# French Court Rules Foreign Freezing Orders have Res Judicata

In a judgment of March 8<sup>th</sup>, 2011, the French Supreme Court for private and criminal matters (*Cour de cassation*) confirmed that a Greek order refusing to authorize the pre-award attachment of a ship in Athens was to be recognized in France. As a consequence, the French court could not try again the dispute and authorize to attach the same ship in France a year later.

We had already reported on the decision of the Court of appeal of Rouen which had denied the application of the (alleged) creditor on the ground that a Greek court had already done so. The *Cour de cassation* dismissed an appeal against this decision.

## **Background**

It should be underlined that freezing attachments are carried out in two stages both in France and, I understand, in Greece. First, a court authorizes an enforcement authority to carry out the attachment. Then, the said authority does. The issue in this case was whether the decision on whether to authorize to carry out the attachment issued in Greece had res judicata effect in France.

## **Territoriality Principle Irrelevant**

The first argument put before the Court by the appellant was that freezing attachments belong to enforcement, and are thus unable to produce extra-territorial effect. The Greek order, it was argued, might not be recognized in France, since it could not possibly purport to produce effect outside of Greece.

The *Cour de cassation* answered to this argument by saying that Article 33 of the Brussels I Regulation demanded that the Greek order be recognized. The Court thus ruled that the Court of appeal was right to consider that the foreign order could produce effect extra-territorially. In passing, the Court explained that the Court of appeal had rightly refused to review the foreign order on the merits.

## ***Res judicata***

The appellant then raised a variety of arguments against the foreign order having *res judicata* in France. One of them was that, as the foreign court had applied the *lex fori*, the triple identity rule was not satisfied, since a French court would apply a different law. Another was that, as the ship had moved, there was a new fact which justified a new decision.

The *Cour de cassation* answered to these two arguments as follows. First, it ruled that there indeed was a triple identity between the two cases, and that the Court of appeal had verified that it was asked to rule on a point which had already been settled by the foreign order. Secondly, it had not been argued before the Court of appeal that there was any new fact which would justify not taking into consideration the foreign order.

*Many thanks to Sebastien Lootgieter for the tip-off.*