Article 14 Code Civil Comports with the French Constitution

In a judgment of February 29th, 2012, the French supreme court for civil and commercial matters (*Cour de cassation*) held that Article 14 of the French Civil Code raises no serious constitutional issue, and thus that the question would not be referred to the French Constitutional Council.

France only introduced recently a proper judicial review mechanism. The new mechanism, however, does not enable parties to petition directly the French constitutional court. Instead, parties arguing that a given statute is unconstitutional must obtain leave of the *Cour de cassation* to do so.

Article 14 of the Civil Code grants jurisdiction to French court on the sole ground that the plaintiff is a French national. This is widely regarded as an exorbitant head of jurisdiction, except in family matters.

In this case, it was argued that Article 14 violated the principle of equality before the law, and the right to a fair trial. The *Cour de cassation* rules that no such argument could seriously be made for a series of reasons which all amount to one single argument: the scope of Article 14 is not so wide, and some disputes do not fall within it.

Reasons of the Court

Article 14 neither bars recognition of foreign judgments, nor excludes lis pendens

Although this reason is the last given by the court, it is useful to begin with it. It is true that it used to be the case that Article 14 would not only grant jurisdiction to French courts on the sole ground that a party was a French national, but also bar recognition of foreign judgments. The rule was abandonned by the court in the *Prieur* case, and it is widely believed that an important incentive for the *Prieur* courtwas the fear that the European Court of Human Rights would find that the rule was contrary to Article 6.

Now, the only question is whether retaining jurisdiction on the sole ground of the nationality of the parties is acceptable.

Article 14 does not grant exclusive, but rather subsidiary jurisdiction to French courts, and is optional for the parties.

That Article 14 granted exclusive jurisdiction meant that it was a bar to the recognition of foreign judgments. It is not anymore. Today, it is a subsidiary ground of jurisdiction, which means that it only applies when French courts do not have otherwise jurisdiction over a given dispute. Of course, in such cases, the jurisdiction of French courts does not raise any issue, since there is another connecting factor designating France. The problem with Article 14 is precisely when Article 14 is the only ground for jurisdiction.

Article 14 is optional "for the parties". This statement seems to stem out of a misunderstanding. The French beneficiary from Article 14 may waive his right (see below). But no foreign party was ever asked to agree with jurisdiction arising out of Article 14. As the Court ruled as recently as in 2009, Article 14 is optional *for French plaintiffs*, not "for the parties"! And this is the right to a fair trial of non French parties which is at stake!

French nationals can waive their right to benefit from it

They certainly can, but we are (and foreign defendants are) really concerned with cases where they have not.

Article 14 does not apply when an international treaty governs the international jurisdiction of French courts

Again, who will ever complain in cases where Article 14 does not apply?

Question

It would be interesting to know whether famous American and German cases on the constitutionality of jurisdictional rules were brought to the attention of the *Cour de cassation.*

Many thanks to Patrick Kinsch for the tip-off.