


French Court Rules Parallel Litigation in France Bars Recognition of Foreign Judgment

In a judgment of June 20th, 2012, the French supreme court for private and criminal matters (*Cour de cassation*) ruled that parallel litigation in France could be a ground for denying recognition to a foreign judgment. 

The case was concerned with an Algerian couple separating after 45 years of marriage. The couple had married in Algeria in 1962. They then moved to France where they were to spend 45 years and have 6 children. In June 2007, the husband left and went back to Algeria. Seven months later, in February 2008, the wife initiated proceedings in France seeking maintenance.

In April 2008, the husband sought divorce in Algeria and obtained it a month and a half later, in May 2008. He then relied on the Algerian judgment in France, claiming that it had *res judicata* and that the French proceedings should thus be terminated.

Fraude au jugement

The *Cour de cassation* denied recognition to the Algerian judgment on the ground that the wife had first sued in France, and that the husband had sued “in haste” for the purpose of defeating the French proceedings.

Algerian and Moroccan divorce orders are regularly denied recognition in France on the ground that they violate public policy (either because the wife is not informed of the proceedings, or because Islamic law is discriminatory against women). However, they are virtually never denied recognition on the ground of strategic behavior of the parties (*fraude*).

The theory is that *fraude* is a ground for denying recognition to foreign judgments. *Fraude* occurs when one party sues abroad for the **sole** purpose of avoiding French justice. French scholars have long wondered, however, whether *fraude* can be found in cases where the party allegedly frauding has a strong connection with the foreign court, which is another requirement for recognizing

foreign judgments under the French common law of judgments. This is because it seems hard to demonstrate that a party domiciled in a given country would petition his own courts for the sole reason of defeating French justice: he may just be suing at home because he lives there.

I had reported on a couple of judgments of the *Cour de cassation* ruling that American wives suing in the U.S. right after their French husband had initiated proceedings in France were not committing *fraude* as it seemed perfectly legitimate for them to sue at home. Much like the Algerian husband, they had first lived as a family in France, and had then left their husband and gone back home where they had been living for more than 6 months. This was enough to make it legitimate, from a French perspective, to sue at home.

These cases are hard to reconcile with the Algerian one. The Algerian husband had moved to Algeria seven months before his wife sued him before French courts.

Why was it illegitimate, then, for him to sue at home?

- Because he had not taken the kids with him?
- Because *fraude* can only be committed by males, and not by females?
- Because the law is different for Arabs and for Americans?