

French Supreme Court Denies Effect to Foreign Surrogacies On the Ground of Fraude a la Loi

On 19 March 2014, the French Supreme Court for civil and criminal matters (*Cour de cassation*) ruled that an Indian surrogacy would be denied effect in France on the ground that it aimed at strategically avoiding the application of French law (*fraude à la loi*), which forbids surrogacy.

A French male had entered into a surrogacy agreement with an Indian woman in Mumbai. After a child was born, the man attempted to register the child as his (and hers) on French status registries. A French prosecutor challenged the registration. A court of appeal rejected the challenge on the grounds that it was not alleged that the applicant was not the father, and that the birth certificate was legal.

The *Cour de cassation* allowed the appeal of the French prosecution service and ruled that the behaviour of the French national and resident aimed at avoiding the application of French law. The Court held:

Attendu qu'en l'état du droit positif, est justifié le refus de transcription d'un acte de naissance fait en pays étranger et rédigé dans les formes usitées dans ce pays lorsque la naissance est l'aboutissement, en fraude à la loi française, d'un processus d'ensemble comportant une convention de gestation pour le compte d'autrui, convention qui, fût-elle licite à l'étranger, est nulle d'une nullité d'ordre public selon les termes des deux premiers textes susvisés

In 2011, the *Cour de cassation* had denied effect to foreign surrogacies on the ground that they violated public policy. Since September 2013, the Court has founded its rulings on the strategic behaviour doctrine.