

# First civil chamber : exequatur of an American court decision

02/12/2020



**Exequatur of an American court decision: compliance test with international public order and Article 6§1 ECHR.**

Ruling no 747 of 2 December 2020 (18-20.691) – Cour de cassation (Court of cassation) - First Civil Chamber -  
ECLI:FR:CCASS:2020:C100747

**Dismissal**

Only the french version is authentic

*Appellant(s) : Mr Q... E...-Z...*

*Respondent(s) : Ms J... I... and others ;*

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## **Facts and Procedure**

1. According to the ruling under appeal (Paris, 3 April 2018), Mr E...-Z..., a French citizen, and Ms I..., a Russian and American citizen, were married in Paris on 28 May 1991, under the principle of separate property during marriage, according to the marriage contract signed before a notary on 21 May. They made their residence in the United States, where their two children were born.

2. Ms I..., on 8 November 2001, requested a divorce before the Supreme Court of the State of New York. By a Decision and Order of 28 June 2002, Judge Lobis dismissed Mr E...-Z...’s application to have the French marriage contract declared valid and enforceable and set aside the application of that contract. Judge Goodman then issued a Trial Decision on 3 October 2003, followed by a Judgment of Divorce on 9 January 2004, which granted a divorce against the husband, giving custody of the minor children to the mother, with access and accommodation rights to the father, specifying that the mother should consult the father on all significant decisions concerning the children, but that she would have the final say, set the terms and conditions for the father’s contribution to the children’s support and education, granted the wife a monthly maintenance allowance for seven years, and ruled on the liquidation of the spouses’ property interests. On the latter point, the judgement was partially reversed by a decision of the New York State Court of Appeal on 3 May 2005, which stated, among other things, that the entire balance of the proceeds from the sale of the New York apartment should go to Mr E...-Z....

3. By act of 9 February 2005, Ms I... referred to the tribunal de grande instance of Paris (Paris Tribunal of First Instance) for the exequatur of the United States decisions of 3 October 2003 and 9 January 2004 for their maintenance allowance provisions alone. By way of counterclaim, Mr E...-Z... requested that the judgement of 28 June 2002 be declared unenforceable in France.

## **Reviewing pleas**

### **On the fourth and fifth parts of the second plea, appended hereafter**

4. Pursuant to Article 1014, Section 2, of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on these objections, which are clearly not of a nature to lead to the quashing of the ruling.

### **On the first plea**

#### **Statement of plea**

5. Mr E...-Z... objects to the ruling declaring the 28 June 2002 decision of Judge Lobis, and, consequently, those of Judge Goodman relating to the liquidation of the property interests, then, as enforceable, whereas :

“1°/ A foreign judgement cannot be declared enforceable in France if it is not in accordance with French international public policy. This is so if the procedure followed abroad violates the requirements of Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the requirement of impartiality of the judge. In the case at hand, it was argued that the lack of impartiality of Judge Goodman characterised a violation of Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and thus a violation of international public policy justifying the refusal of exequatur for the decisions the judge had rendered. The cour d'appel (Court of Appeal) judged this plea irrelevant, based on the judgements for which exequatur was sought having been appealed - and (for the most part) upheld. In so doing, it was inferred that judges other than Judge Goodman, whose bias was alleged, had been involved in the dispute, after having nevertheless noted that it was the decisions rendered by the latter that were presented for exequatur, and that without noting the impartiality of Judge Goodman. As such, the cour d'appel (Court of Appeal) deprived its decision of a legal basis with regard to Article 509 of the Civil Procedure Code, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the principles governing private international law ;

2°/ A foreign judgement cannot be declared enforceable in France if it does not comply with French international public policy. This is so if the procedure followed abroad violates the requirements of Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the requirement of impartiality of the judge. In the case at hand, it was argued that the lack of impartiality of Judge Goodman characterised a violation of Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and thus a violation of international public policy justifying the refusal of exequatur for the decisions the judge had rendered. The cour d'appel (Court of Appeal), in judging this plea irrelevant, based on the judgements for which exequatur was sought having been appealed - and (for the most part) upheld - it was inferred that judges other than Judge Goodman, whose bias was alleged, had been involved in the dispute. The cour d'appel (Court of Appeal) furthermore granted exequatur in France to decisions that it itself noted had been partially reversed in the United States. As such, the cour d'appel (Court of Appeal) violated Article 509 of the Civil Procedure Code and the principles governing private international law ;

3°/ A foreign judgement cannot be declared enforceable in France if it does not comply with French international public policy. This is the case if the procedure followed abroad violates the requirements of Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the requirement of the judge's impartiality. Mr Q... E... argued, with supporting evidence, that Judge Goodman's lack of impartiality was due to the judge's attitude at the 6 March hearing, the refusal to hear his witnesses, the refusal to produce his exhibits, the refusal to accept his offers of evidence and, finally, the refusal to allow the marriage contract to be entered into the proceedings. The cour d'appel (Court of Appeal), by merely ruling that the judgements for which exequatur was sought had been appealed and essentially confirmed, without investigating whether there was a lack of impartiality on the part of Judge Goodman, deprived its decision of a legal basis with regard to Article 509 of the Civil Procedure Code, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the principles governing private international law.”

## Court's response

6. Pursuant to Article 509 of the Civil Procedure Code, in order to grant exequatur, outside of any international convention, the French judge must verify the international legality of the foreign decision by ensuring that it meets the conditions of indirect jurisdiction of the foreign judge based on the connection of the dispute to the foreign court receiving the referral, compliance of substance and procedure with international public policy, and the absence of fraud.

7. Under the terms of Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, every individual is entitled to a fair and public hearing within a reasonable time frame by an independent and impartial tribunal established by law, in the determination of any dispute concerning their civil rights and obligations or of the merits of any criminal charge against them.

8. The ruling notes, firstly, on previously established grounds from the cour d'appel (Court of Appeal) and the tribunal de grande instance (Tribunal of First Instance), that after Judge Lobis had rejected Mr E...-Z...'s request for the application of the French marriage contract, Judge Goodman pronounced the divorce of the spouses and ruled on its consequences as regards both the liquidation of their property interests and their common children. It then noted that Judge Goodman's decision was appealed and upheld in all its provisions except those relating to the distribution of the balance of the proceeds from the sale of the New York apartment. It adds that Mr E...-Z...'s allegation that the appeal would not cure the procedural errors, in the absence of transfer of jurisdiction, is not justified and is contradicted by the partial reversal of the decision referred and the rejection of the wife's claim in respect of her participation in the planning and decoration of the family home. It also noted that Judge Goodman's decisions, accused of bias, relating to the division of property between the spouses and the maintenance allowance due to the wife and for the support and education of the children were not based on general considerations relating to the gender of the parties or their nationality, but on criteria specific to the case relating in particular to the family's lifestyle during the marriage, the professional choices made jointly, the perspectives of each spouse in this area, the financial situations of the parties and the needs of the children. Finally, it noted that Judge Goodman's observations made regarding the husband and his father's lack of credibility could not characterise a lack of impartiality, even though these criticisms were limited to some of their assertions, in particular those relating to the ownership of the New York apartment, which were deemed contradictory with other elements taken from the case file.

9. From these findings and statements, it emerged, first, that Judge Goodman's assessment of Mr E...-Z...'s assertions did not reveal any hostile bias. Second, the actions taken were based on objective evidence drawn from the personal circumstances of the parties. Lastly, that Mr E...-Z...'s exercise of his discretion in the matter as to his use of the remedies available against these decisions had enabled him to have his case heard before another court whose impartiality was not disputed. This made it possible to rule out any infringement of his rights. The cour d'appel (Court of Appeal) did not need to carry out an investigation that had been rendered irrelevant, accurately inferred that there had been no violation of international public policy of procedure.

10. The plea is therefore unfounded.

## On the first three parts of the second plea

### Statement of plea

11. Mr E...-Z... makes the same objection to the ruling, whereas :

1°/ A foreign judgement which sets aside, without any reason, a French authentic instrument, received by a French public official in the name of the French Republic, is necessarily contrary to French international public policy, once the position of the French legal system, as embodied in the authentic instrument, has been a basis of planning for the future for the parties, a basis which is perfectly legitimate since the authentic instrument is valid in France. The cour d'appel (Court of Appeal) violated Article 509 of the Civil Procedure Code and the principles governing private international law by declaring the American judgement of 28 June 2002 as enforceable in France, which had peremptorily set aside a French authentic instrument on the grounds that "without the required formal statement, which is missing in the case of the agreement between the parties, the marriage contract was necessarily invalid", and thus violated French international public policy ;

2°/ Even supposing that the marriage contract entered into under the principle of separate property during marriage by French authentic act, received by a French public official in the name of the French Republic, can be unjustifiably set aside by a foreign judgement, the latter must at least take it into account as a simple element of evaluation of the "equitable" distribution made by it at the time of liquidating the matrimonial regime of the spouses. The cour d'appel (Court of Appeal) violated Article 509 of the Civil Procedure Code and the principles governing private international law by

declaring the American judgement of 28 June 2002 as enforceable in France, which set aside the marriage contract concluded before a French public official on 21 May 1991, by which the spouses expressly adopted the principle of separate property during marriage, without even taking it into account as a simple element of evaluation of the “equitable” distribution made by said marriage contract ;

3°/ The freedom of spouses to choose the law applicable to their matrimonial regime, and therefore their matrimonial regime, is a component of French international public policy by guaranteeing legal security and respect for the legitimate expectations of the spouses. In this case, instead of liquidating the spouses’ property interests in accordance with the French law on the principle of separate property during marriage chosen by the spouses, the American judges purely and simply refused to take into consideration the marriage contract and the common will of the spouses thus expressed, and liquidated their pecuniary interests in accordance with the provisions of the law of the State of New York. The cour d’appel (Court of Appeal) violated Article 509 of the Civil Procedure Code and the principles governing private international law by declaring the U.S. judgement dated 28 June 2002 and the subsequent decisions of 3 October 2003 and 9 January 2004 relating to the liquidation of rights, as enforceable in France, even though these U.S. decisions violated the principle of free choice by the spouses of their matrimonial regime, a component of French international public policy.”

## **Court’s response**

12. A decision rendered by a foreign court which, by application of its national law, refuses to give effect to a marriage contract received in France, is not in itself contrary to substantive French international public policy and can only be set aside if it enshrines in a concrete manner, in the case at hand, a situation that is incompatible with the principles of French law that are considered to be essential.

13. The ruling points out, first of all, that the dispute relates essentially to the United States where the spouses immediately established themselves and did not cease to reside, where their children were born, where the husband obtained degrees and developed various professional activities and where the couple’s real estate assets were located on the day of the filing for divorce. This excludes the fact that the spouses’ marriage contract, which is not comparable to a judgement, was received in France prior to their union, which took place there, and that the husband is of French nationality. The ruling then states that, in order to distribute the joint property in a proportion of 75% to the wife and 25% to the husband, the American judge who carried out the liquidation of the property interests of the spouses took into account the income and expenses of the parties, the consequences of the common choices made during the marriage, as well as the constant elements of the lifestyle of the spouses. This consideration was carried out according to the principle of “equitable distribution” in accordance with the matrimonial regime in force in the State of New York. The ruling adds, finally, that in support of the assertion of the allegedly confiscatory nature of the distribution carried out, Mr E...-Z... did not communicate any element allowing to assess the disproportionate nature of the effect of the decisions rendered in relation to the reality of his financial and property situation.

14. From these findings and statements, it follows that the dispute was essentially related to the United States, and that the foreign decision, in applying lex fori for the liquidation of the spouses’ property rights, had not in practice established a situation incompatible with the essential principles of French law, the cour d’appel (Court of Appeal) rightly deduced, ruling out any irreconcilability, that neither the principle of freedom of matrimonial agreements, of public policy in domestic law, nor the objectives of legal certainty and predictability invoked could prevent the recognition in France of American decisions.

15. The plea is therefore unfounded.

## **On the third plea**

## Statement of plea

16. Mr E...-Z... makes the same objection to the ruling, whereas :

“1°/ The principle of equality of parents in the exercise of parental authority is a matter of French international public policy, so that a foreign divorce judgement which nullifies the joint exercise of parental authority by giving a mother the right to make all decisions concerning the children alone, without any justification other than poor mutual relations between the parents, violates the essential principle of French law based on the equality of parents in the exercise of parental authority. The cour d'appel (Court of Appeal) violated Article 509 of the Civil Procedure Code and the principles governing private international law by declaring the provisions of the American judgements of 3 October 2003 and 9 January 2004 as enforceable in France, after having found that, with regard to the modalities of exercising parental authority, these judgements provided that the final decision would belong to the mother, which is nothing other than to note that, in law and in fact, in case of disagreement, the father is deprived of all parental authority, without any other justification than the poor mutual relations between the parents ;

2°/ The principle of non-review of foreign judgements does not prohibit the control of international public policy. It was argued before the court that the American judgements of 3 October 2003 and 9 January 2004 violated international public policy since they violated the principle of equality of parents in the exercise of parental authority. The cour d'appel (Court of Appeal) dismissed this plea based on reasoning that it was not the responsibility of the exequatur judge to review the foreign decision or to assess its merits. As such, the Court, in refusing to consider whether or not the American judgements of 3 October 2003 and 9 January 2004 provided that the final decision should be left to the mother in questions of exercise of parental authority, without any justification other than the poor mutual relations between the parents, would violate the principle of equality of parents in the exercise of parental authority. The cour d'appel (Court of Appeal) refused to exercise the control of conformity of the foreign judgement with international public policy and, therefore, deprived its decision of legal basis with regard to Article 509 of the Civil Procedure Code and the principles governing private international law.”

## Court's response

17. While the principle of equality of parents in the exercise of parental authority is a matter of French international public policy, the fact that a foreign decision reserves the right to make certain decisions concerning the children to one of the parents alone cannot constitute a ground for non-recognition unless it runs counter in a concrete manner to the essential principles of French law.

18. The ruling notes, first of all, that the American decision organising the father's rights of access and accommodation, taking into account the father's geographical remoteness and in accordance with the agreement of the parties, provides him with regular meetings with his children during the school year and vacations. Then, with regard to the modalities of exercising parental authority, it notes that the American judgements which, based on the recommendations of an expert psychiatrist, reserve the final decision to the mother, in case of disagreement, on the one hand, are an indication of the poor relations between the parents who, during the divorce procedure, did not manage to discuss the questions of education, and on the other hand, the interest for the children in avoiding constant conflicts concerning their life. It adds, finally, that these judgements recall the duty to consult the father, take his preferences and concerns into account, and try to include him in significant events in the children's lives.

19. From these findings and statements, the cour d'appel (Court of Appeal), which pointed out that the measures relating to the children had been decided by reference to their best interests and that the rights of the father were not violated, the latter having, in any case, to be consulted before any decision, held exactly that the American decisions, in the absence of any violation of international public order, should be recognised in the French legal system.

20. The plea is therefore unfounded.

**ON THESE GROUNDS, the Court :**

DISMISSES the appeal ;

**President : Ms Batut**

**Reporting judge r : Mr Acquaviva**

**Advocate-General : Mr Poirret, First Advocate-General**

**Lawyer(s) : SCP Ortscheidt – SCP Alain Bénabent**

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International

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