First Issue of 2007's Journal du Droit International

The last issue of the French *Journal du Droit International* was released a few weeks ago. It contains two articles, written in French, which deal with conflict issues.

The first is authored by Belgian Professor Nicolas Angelet and Belgian Attorney Alexandra Weerts. Its title is "*Les immunités des organisations internationales face à l'article 6 de la Convention européenne des droits de l'homme – La jurisprudence strasbourgeoise et sa prise en compte par les juridictions nationales*" (International Organisations Immunities and Article 6 of the European Convention on Human Rights – Strasbourg Case Law and How it is Taken into Account by National Courts).

The English abstract reads:

> *Many authors, as well as a number of domestic court decisions, consider that the jurisdictional immunity of international organisations is compatible with article 6 ECHR upon the condition that an alternative means, or even an alternative remedy before a fair and impartial tribunal within the meaning of article 6, is available to individuals to protect their rights. When this requirement is not met, immunity is sometimes denied in favour of the right of access to court. Yet, in its Waite and Kennedy and Beer and Regan judgements of 18 February 1999 the European Court did not refer to a remedy but rather to a reasonable alternative means, and described it as a material factor but not as a prerequisite for the observance of article 6. The subsequent case law of the European Court confirms this approach and identifies a series of other criteria relevant for the aprpeciation of the proportionality of a restriction imposed on the right to access to court. As for the consequences of a possible conflict, the incompatibility between an international immunity and the right to access to court does not allow to set immunity aside. Rather, domestic courts face a conflict between contradictory international obligations, unsolved by international law. Insofar as the courts cannot require the executive branch to make a political choice of which obligation to comply with to the detriment of the other, litigants may seek to bring the forum State in the proceedings to*

make it face responsability for the conflict. Above all, domestic courts should seek to prevent the conflict between international obligations, by adopting the balanced approach of the European Court, rather than turning the existence of an alternative remedy into a prerequisite for the observance of article 6.

The second article is authored by Etienne Cornut, who lectures in the French University of New Caledonia. Its title is "*Forum shopping et abus du choix du for en droit international privé*" (Forum Shopping and Abuse of the Choice of Venue in International Private Law).

The English abstract reads:

In spite of the harmonization of the rules dealing with conflicts of laws and conflicts of jurisdictions, especially at EU level, forum shopping endures, and this convergence of standards is not a remedy by itself, but can only alleviate the problem without eradicating it. The fight against forum shopping malus can only be considered on a case by case basis, but to that end the only exceptions are not sufficient. International private law has developed several instruments to close these loopholes, yet they all focus on the concept of fraud: fraud to the law, fraud to the sentence, fraud to the jurisdiction. In international private law, the sanction by exception of evasion of law arises when the creation or the alteration of an international situation, though objectively actual, does not fit the real intention of the subject, when it is not subjectively actual. Then, when the subject can enjoy the option of international competency, most often he is already in an existing international situation. He has not devised or altered the situation which enables him to exert a choice. Hence, the theory of fraud cannot apply, since it does not make it possible to approach the situations resulting from a pre-existing international situation. Nevertheless, exercising an option of competence, though legal and non fraudulent, can be reprimanded. In that case, the exception of abuse of rights, despite its traditional antinomy with private international private law, should lead to questioning an abusive choice of jurisdiction.

To my knowledge, these articles cannot be downloaded.

ICLQ Articles on Harding v Wealands and the Law of Domicile

There are two short articles in the private international law current developments section of the new issue of the *International & Comaparative Law Quarterly (2007, Volume 56, Number 2).*

Charles Dougherty and Lucy Wyles (2 Temple Gardens) have written a casenote on the decision of the House of Lords in ***Harding v Wealands*** [2006] UKHL 32 (see all of our relevant posts here.) Here's the introduction:

> *In Harding v Wealands1 the House of Lords had to consider the vexed question of where the dividing line between substance and procedure should lie in private international law. The specific issue before their Lordships was whether matters relating to the assessment of damages in tort should be treated as matters of substance, and thus be for the applicable law, or whether they should be treated as matters of procedure, and therefore be left for the law of the forum. The decision of the House of Lords has resolved this difficult question in favour of a procedural characterization. The result of the House of Lords decision is that in all such cases, regardless of the foreign law element, the assessment of damages will be conducted in accordance with English (Northern Irish or Scottish) law, as the law of the forum. Nonetheless, some reservations do exist as to the justification for the decision and as to how likely it is to remain the last word on the subject.*
>
> *In addition, the decision of the Court of Appeal remains of some importance in relation to the determination of the law applicable to a foreign tort. In the light of their decision on the difference between substance and procedure, the House of Lords found it unnecessary to interfere with the decision of the Court of Appeal in this regard.*

There is also a piece on **Regression and Reform in the Law of Domicile** by Peter McEleavy. Here's a taster:

> *In the United Kingdom the law pertaining to domicile has the rather dubious distinction that, although subjected to concerted criticism from commentators and law reformers alike for over half a century, it has largely remained unchanged. Common law jurisdictions around the world have succeeded in passing legislation which, to varying degrees, has modernized the concept, yet in Britain a series of initiatives have either failed to complete the legislative process or not even made it to Parliament.3 The reason in each instance was less the substance of the proposals, but rather political expediency in the face of pressure from the overseas business community resident in the United Kingdom, who feared extended fiscal liability if the connecting factors were attributed with a less legalistic interpretation.*
>
> *The consequence is that 19th and early 20th century values continue to apply, but they do so in a world where, inter alia, individual mobility is taken for granted, migration has reached unprecedented levels6 and there is a greater awareness of and respect for other legal traditions. Trends in case law appear to suggest new approaches have emerged but have failed to take hold. To a certain degree this is not surprising as domicile, like habitual residence, applies in a variety of distinctive areas and is therefore prey to contrasting policy considerations,10 with result selection long regarded as playing an implicit role in many cases.11 However, in contrast to habitual residence domicile faces the added burden, at least formally, of remaining a unitary concept with a single meaning whatever the area of law in which it might apply.*

Links to both pieces, and the rest of the issue, can be found on the ICLQ homepage (for those with online access.)

Jersey's New Private International Law Rules for Trusts

Professor Jonathan Harris has written an article in the *Jersey Law Review* entitled, "**Jersey's new private international law rules for trusts – a**

retrograde step?" (Jersey L.R. 2007, 11(1), 9-19). Here's the abstract:

> *Discusses amendments made by the Trusts (Amendment No.4) (Jersey) Law 2006 to the Trusts (Jersey) Law 1984. Criticises difficulties with the amendments on the scope of application of matters which are to be determined exclusively by the law of Jersey and the non recognition of foreign judgments.*

In the same issue, Daniel Hochberg defends the amendments with a rejoinder to Professor Harris' article: "**Jersey's new private international law rules for trusts – a response**." (Jersey L.R. 2007, 11(1), 20-27).

Access to the *Jersey L.R.* is for those with a subscription.

The Meaning of Maintenance in the Brussels I Regulation

James Bernard Moore v Kim Marie Moore [2007] EWCA Civ 361 (handed down on 20 April 2007).

A former husband's application to the Spanish court was an application for the division of the wealth or assets to which the former married couple had a claim and was not related to maintenance within the meaning of Regulation 44/2001 Art.5(2).

The appellant husband (H) appealed against a decision giving his former wife (W) leave to apply for orders for financial relief pursuant to the Matrimonial and Family Proceedings Act 1984 Part III. H and W had separated after being married for the last five years of a relationship lasting over 15 years. They had three children. They had emigrated to Spain for tax reasons. H had filed for divorce in Spain. He had offered to pay W £6 million in addition to such properties as were registered in her name. W issued a divorce petition in England, which was stayed in accordance with the provisions of Council Regulation 1347/2000. H then applied for the Spanish court to deal with the financial aspects of the divorce but

on the basis that English law applied.

The Spanish court declined to deal with the financial claims and H appealed against that decision. Meanwhile W had obtained leave under s.13 of the 1984 Act to apply for financial relief after an overseas divorce. H applied to set aside that leave. The judge confirmed the leave obtained by W, holding that H's application in Spain was not a claim for maintenance within Regulation 44/2001 Art.5(2) and that there was a close connection with England, which made England the appropriate venue. H submitted that (1) the judge had been wrong to hold that his application to the Spanish court was not to be characterised as relating to maintenance within Regulation 44/2001 Art.5(2); (2) the judge should have stayed the English proceedings as related proceedings under Regulation 44/2001 Art.27 or Art.28 on the basis that H's Spanish proceedings remained on foot; (3) leave should not have been granted under s.13 of the Act.

The Court of Appeal (Thorpe LJ, Lawrence Collins LJ, Munby J) held that:

- Whether an application was to be regarded as a matter relating to maintenance depended not on Spanish law, nor on English law, but on the autonomous concept of Community law derived from the judgments of the European Court of Justice, *De Cavel v De Cavel* (143/78) (1979) ECR 1055, *De Cavel v De Cavel* (120/79) (1980) ECR 731 and *Van den Boogaard v Laumen* (C220/95) (1997) QB 759 applied. On that basis H's application was plainly not related to maintenance, but was an application for the division of the wealth or assets to which the couple had a claim. The essential object of H's application was to achieve sharing of the property on his terms rather than an order based on financial needs, *Miller v Miller* (2006) UKHL 24, (2006) 2 AC 618 considered. Consequently the application was not a matter relating to maintenance for the purposes of Regulation 44/2001 Art.5(2).
- Since H's application was not a matter relating to maintenance within Regulation 44/2001 Art.5(2), there was no basis for the application of Art.27 or 28 even if those proceedings were still pending, and it was not necessary to decide whether Art.27 applied where the court first seised had declared that it was without jurisdiction but an appeal was pending.
- The judge had been entitled to find that the connection with England was overwhelming for the purposes of s.13 and s.16 of the 1984 Act and that W had established a substantial ground for making her application. There

was no error in the judge's approach or conclusion.

Source: Lawtel.

The Concept of Enforceability

Notionally, what is enforceability? When the forum declares a foreign judgement enforceable, what does it mean? Does it mean that the foreign judgement actually enters in the legal system of the forum as such, and remains a foreign judgement? Or does it mean that a judgement of the forum carrying the substance of the foreign judgement is produced, and will be the only one existing in the legal system of the forum?

The distinction can be important for some of the effects of judgements, which could differ in the foreign legal system and in the forum. For instance, judgements could become time barred more quickly in some legal orders. Also, there could be special rules about the interests of judgement debts. The issue can thus arise of whether the foreign rule or the rule of the forum applies.

One example of such rule is article 1153-1 of the French Civil Code, which provides that judgement debts automatically attract a higher interest rate. Is this provision applicable to foreign judgements? If so, when does the interest start?

On March 6, 2007, the French supreme court for private matters (*Cour de cassation*) held in *Delsey* that the provision applies to foreign judgements declared enforceable in France, and that the interest begins to accrue from the date of the declaration of enforceability (*exequatur*). In an earlier 2004 case on the enforcement of arbitral awards in France, the *Cour de cassation* had already held that the provision applies to the arbitral awards declared enforceable in France "as the law of the enforcement proceedings".

The *Cour de cassation* did not provide much information on the facts of the *Delsey* case, but it seems that a Saudi agent of the French company *Delsey* had sued its principal in Saudi Arabia and obtained a judgement awarding Euros 807,121 as

compensation for the termination of the contract. The agent then sought to enforce the Saudi judgement in France and obtained a declaration of enforceability providing that interests had accrued pursuant to article 1153-1 since when the Saudi judgement was made. Delsey appealed before the Cour de cassation arguing that the starting point of the interest was the date of the French declaration of enforceability and not the date of the making of the Saudi judgement. The appeal was allowed.

Delsey lays down the above mentioned rules, but does not explain them, in accordance with the French judicial practice. The case could be considered as an indication that the *Cour de cassation* subscribes to the theory that it is the declaration of enforceability of the forum which is enforced locally, and that this is the reason why the rules of the forum govern.

The Results of the JHA Council Session on Rome III, Maintenance and Rome I

Following swiftly on from our post on the JHA Council Session taking place today and tomorrow (19 – 20 April 2007), the Council have issued a **Press Release** with the main results of the council after today's deliberations. Here are their conclusions:

On **Rome III** (**Jurisdiction and applicable law in matrimonial matters**: see the related section of our site), they stated:

> *The Council discussed certain important issues of this proposal, in particular the rules regarding the choice of court by the parties, the choice of applicable law, the rules applicable in the absence of choice of law, the respect for the laws and traditions in the area of family law and the question of multiple nationality.*

> *A very large majority of delegations agreed on the guidelines proposed by the Presidency according to which the Regulation should contain a rule on a limited choice of court for divorce and legal separation by the spouses and on conflict-of-law rules. On this regard, the Regulation should contain, firstly, a rule giving spouses a limited possibility of choice of law for divorce and legal separation and, secondly, a rule applicable in the absence of choice. The Council took note of the position of two delegations that recalled that, in the absence of choice of law by the parties, the court seized should apply lex fori. However, such delegations underlined that they are prepared to continue the negotiations on this instrument. The Council recognised that the draft Regulation should not imply modifications of the substantive family law of the Member States with respect to divorce or legal separation. One delegation underlined however that the respect of the national legal order should not jeopardise the coherent application of Community law.*

They "gave mandate" to continue work on Rome III subject to guidelines on the *"choice of court by the parties (Article 3a)", the "choice of the applicable law by the parties (Article 20a)", the "rules applicable in the absence of choice of law (Article 20b)", the "respect for the laws and traditions of the Member State in the area of family law" and "multiple nationality".* See pages 10 – 15 of the Press Release for the full discussion of those points.

On **Jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations** (see our related posts here and here),

The Member States confirmed their "shared will" to successfully complete the project. The Council also endorsed

> *abolition of the exequatur procedure for all maintenanceobligation decisions covered by the Regulation, on the basis of the introduction of certain common procedural rules, accompanied by harmonisation of conflict-of-laws rules.*

as well as agreeing to,

> *…the principle of introducing a system for effective practical cooperation between central authorities in maintenance obligation matters, the details of*

which will still have to be worked out.

For bilateral agreements by Member States with non-Member States, the

…Presidency suggests that Member State s may retain such agreements in line with the system set out in Article 307 of the Treaty and following the precedent in this area of Regulation (EC) No 44/2001 (Brussels I). It is therefore clear that such agreements should not compromise the system established by the proposed Regulation.

Rome I on the Law Applicable to Contractual Obligations (see the related section of our site). The Council discussed several key provisions:

(a) Principle of choice of law by the parties to the contract (Article 3)

As in the Rome Convention, the basic rule for the law applicable to a contract is the choice of the law of a country by the parties. This rule respects party autonomy and is particularly appropriate in the area of contractual obligations which are created and governed by the parties to the contract (Article 3). However, where all other elements relevant to the situation are located in a country otherthan the country whose law has been chosen, the choice of law does not allow parties to avoid the application of provisions of the law of that country which cannot be derogated from by agreement (Article 3(4)). Concerning rules of Community law which cannot be derogated from by agreement, the Commission proposed that those rules should prevail wherever they would be applicable to the case. However, since the majority of delegations took the view that it would be appropriate to treat rules of national law and of Community law which cannot be derogated from by agreement on an equal footing, as in the Council Common position on the Rome II-Regulation, the Council agreed to follow this approach.

(b) Law applicable in the absence of choice (Article 4)

In the absence of a choice of law by the parties, Article 4 provides essentially for two connecting factors: the habitual residence of the party who is required to effect the characteristic performance, if such performance can be determined (Article 4(1) and (2)), or otherwise the closest connection of the

contract with a specific country (Article 4(4)). Delegations agreed that in order to achieve more legal certainty, some of the most typical contracts should be explicitly mentioned in Article 4(1). Where the contract does not fall under Article 4(1), in particular if it does not fall within the scope of one of the typical contracts listed in that paragraph, the court has to apply Article 4(2). Member States also recognised the need for an "escape clause" allowing for flexibility where the connecting factors in Article 4(1) or (2) would exceptionally lead to an unsatisfactory result because it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country (see Article 4(3)). The Council confirmed the structure and the content of Article 4 as set out in the Addendum, with the exception Article 4(1)(j1) which still needs to be further discussed by the Committee on Civil Law Matters (Rome I).

(c) Individual employment contracts (Article 6)

Delegations agreed that, as in the Rome Convention, a special rule should provide for the appropriate connecting factors concerning individual contracts of employment in the absence of a choice of law. However, where a choice of law is made by the parties, the employee should not lose the protection given to him by the rules of the law of the country whose law would have been applicable in the absence of the choice and which cannot be derogated from by agreement.

The Council also agreed on the text of a number of other provisions (Articles 1 and 2, deletion of Article 7, Articles 9, 10, 14, 15, 16, 17, 19, 20 and 21).

See pages 25 – 26 of the Press Release for some general remarks on a **future common frame of reference for European contract law**. View the full Press Release **here**.

Justice and Home Affairs Council Session in Luxembourg (19-20 April 2007)

On 19 and 20 April the JHA Council will hold its 2794th session in Luxembourg, under the German Presidency. On the agenda for the "Justice" issues, scheduled for Thursday 19th, there are a number of points dealing with cooperation in civil law matters, both under the "A" items (on which the Council decides without discussion, since an agreement has previously been found in the Committee of Permanent Representatives – COREPER) and under the "B" items (that are actively debated in the Council: see the agenda for the meeting).

As regards the "A" points, two important deliberations will take place on private international law issues (see the list of public deliberations released by the Press Office of the Council):

- Amended proposal for a Regulation of the European Parliament and of the Council on the **service** in the Member States **of judicial and extrajudicial documents** in civil or commercial matters, amending Council Regulation (EC) No 1348/2000: the amended proposal adapts the original Commission proposal to the general agreement of the Council and to the opinion of the European Parliament in a codified version;
- Proposal for a Regulation of the European Parliament and the Council on the law applicable to non-contractual obligations (**Rome II**): **Non-approval of the European Parliament's amendment** (see the related section of our site).

As regards the "B" items, the first three points deal with cooperation in civil matters (Rome I, Rome III and the Regulation on maintenance obligations); in addition, as a last point the Council will discuss further proceedings of the works on a Common Frame of Reference for European contract law.

Here's an excerpt of the Background Note prepared by the Press Service of the Council: for each draft instrument we have added the latest available Council public document.

Rome III (Jurisdiction and applicable law in matrimonial matters: see the related section of our site)

> *At the informal meeting in January 2007 in Dresden, ministers underlined the importance of family law issues for the creation of a true area of justice, as there are more and more families where the spouses come from different countries.*
>
> *Some progress has been achieved since then on this proposal in the sense that a common understanding on a number of important questions is emerging among a majority of Member States. Some delegations have doubts about the added value of this proposal, but the Presidency believes that it is important to continue the discussions in order to find a solution acceptable to all delegations.*
>
> *The Council will discuss a number of issues with a view to clarifying certain elements of this file and to finding a solution acceptable to all delegations. In particular, the Council will discuss the question of the choice of court by the parties and the choice of applicable law.*

Latest available document of the Council: doc. n. 5274/07 of 12 January 2007 (text of the Regulation as drafted by the Presidency on the basis of the meetings of the Committee on Civil Law Matters (Rome III) and the comments made by Member States delegations).

Jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (see our related posts here and here)

> *The Council is expected to agree on some political guidelines on issues of particular importance for the continuation of the work on this draft regulation. […]*
>
> *[T]he shared will to move forward in such an important area as maintenance obligations was highlighted at the informal meeting of Justice and Home Affairs Ministers in Dresden on 15 and 16 January 2007.*
>
> *The Council should focus its discussion on:*

- *the abolition of the exequatur procedure for all maintenance obligation decisions covered by the Regulation, which would reduce the costs involved in enforcement of maintenance decisions and improve the position of creditors by speeding up enforcement of decisions and making them more easily portable within the European Union;*
- *the introduction of a system of cooperation between central authorities in order to facilitate application of the Regulation;*
- *making it clear in a recital that the Regulation applies only in situations having cross-border implications and hence an international aspect, and*
- *the conditions on which Member State may retain or conclude agreements with third countries in this particular area.*

Latest available document of the Council: doc. n. 16830/06 of 20 December 2006 (available in German: text of the Regulation as drafted by the Finnish and German Presidency on the basis of the meetings of the Committee on Civil Law Matters (Maintenance Obligations) and the comments made by Member States delegations).

Rome I (see the related section of our site)

> *[…] Although most of the text is agreed by all delegations, there are some elements on which there is still not yet unanimity. With this aim, the Council is expected to examine a compromise package submitted by the Presidency.*
>
> *The following questions will be particularly examined: the principle of choice of law by the parties to the contact, the law applicable in the absence of choice and individual employment contracts.*

Latest available document of the Council: doc. n. 6935/07 of 2 March 2007 (French or German text of the Regulation as drafted by the Presidency on the basis of the meetings of the Committee on Civil Law Matters (Rome I) and the comments made by Member States delegations).

European Contract Law

The Council is invited to decide that a Council position on a common frame of reference for European contract law, in particular as regards its purpose, content and scope, is developed and defined. […]

In 2006 the European Parliament expressed its views in two Resolutions. The Commission has announced that it will submit a second Progress Report on European Contract Law and the Acquis Review. The Research Network will produce a draft by the end of 2007. In view of the importance of the project the Presidency considers that it would be appropriate for the Council to develop and define its own position. In this context, the Presidency suggests that the Council identifies the issues that require careful examination and proposes a method of work within the Council preparatory bodies.

(Many thanks to Martin George, for his collaboration in hunting down some of the documents referred to above)

German Casenote on ECJ Lechouritou Judgment

A very interesting article commenting the recent ECJ *Lechouritou* case (C-292/05, judgment of 15 February 2007) has been published in the latest issue of the German Law Journal, an online review in English devoted to developments in German, European and international jurisprudence.

The casenote has been written by *Veronika Gaertner* (University of Heidelberg), editor of conflictoflaws.net for Germany, who has extensively reported on the case for our site (see her posts on the opinion of AG Ruiz-Jarabo Colomer and on the judgment of the Court).

An abstract of the article (**"The Brussels Convention and Reparations – Remarks on the Judgment of the European Court of Justice in Lechouritou and others v. the State of the Federal Republic of Germany"**) has been kindly provided by the author:

> *The article analyses the judgment of the European Court of Justice in the case Lechouritou and others v. the State of the Federal Republic of Germany. In this judgment the Court had held that an action aimed at the payment of*

compensation for acts perpetrated by armed forces in the course of warfare does not constitute a civil matter in terms of the Brussels Convention.

The case note first classifies the judgment in the previous case law of the Court on the concept of civil matters in terms of the Brussels Regime. Hereby, the relevant rulings are examined in view of the criteria developed by the Court for defining the term of "civil and commercial matters" – in particular in distinction to public matters. In this regard, it is argued that the Court followed its previous rulings by basing its argumentation on the question whether the acts constituting the origin of the action for damages result from the exercise of public powers.

In the second part the case note addresses – in reference to objections raised by the plaintiffs – the question whether the qualification of the acts perpetrated by German armed forces as acta iure imperii excluded from the scope of the Brussels Convention can be agreed with. Here, the focus is on the question whether the term of act iure imperii could be regarded as limited to lawful acts, as partly argued with regard to the law of State immunity. This restriction of acta iure imperii to lawful acts is, however, rejected and consequently the assessment of the Court to regard the action of the plaintiffs as excluded from the scope of the Convention is agreed with.

In addition to a thorough analysis of previous ECJ rulings on the matter, the article contains numerous references to national and international Courts' case law regarding the classification of military acts as the emanation of State authority and the restriction of State immunity in relation to wrongful acts, even if the author points out the different rationales underlying these restrictions in the field of State immunity (with the goal of an improved protection of human rights) and the exclusion of *acta iure imperii* from the scope of the European procedural law instruments.

The distinction between the two levels (public international law on one side, European uniform rules on jurisdiction on the other) is clearly underlined in the final remarks of the casenote:

[A]s the Court of Justice has explained in its ruling, the Brussels Convention, as a measure facilitating the internal market by the mutual recognition and enforcement of judgments in civil and commercial matters, is not the right

> *instrument for the assertion of compensation claims based on acts perpetrated by armed forces in the course of warfare. The consequences of war and occupation can […] only be dealt with at a public law level.*

The article is available here (also in downloadable .pdf version). Highly recommended.

New Conditions for Recognition of Judgements in France

On February 20, 2007, the French supreme court for private matters (*Cour de cassation*) held in *Avianca* that foreign judgements which had applied another law than the one that a French court would have applied could be recognised or enforced in France.

The case overrules a forty year old precedent, the famous *Munzer* decision, which had laid down the modern conditions for the enforcement and the recognition of judgements in France. In *Munzer* (1964), the Cour de cassation had ruled that five conditions, which were soon to be reduced to four (in the *Bachir* case in 1967), had to be fulfilled. First, the foreign court had to have jurisdiction from the French perspective. Second, the foreign court had to have applied the law that the French choice of law rule designated. Third, the foreign judgement should not be contrary to public policy. Fourth, the foreign judgement should not have been obtained for the sole purpose of avoiding the application of the applicable law (*Fraude à la loi*).

In *Avianca*, the Cour de cassation holds that there are now three conditions only for the recognition of foreign judgements, and that the application of the law designated by the French choice of law rule is not one anymore. The three conditions which remain unchanged are the jurisdiction of the foreign court, the compatibility with French public policy, and the absence of *fraude à la loi*.

The *Cour de cassation* does not give much details on the facts of case. I understand, and am happy to be corrected, that American companies (North American Air Service and Avianca) and Columbian companies (Avianca, Helicopteros Nacionales de Columbia and Aeronautico de Medellin Consolida) had sued a former director of one of the Columbian companies before a federal court in Washington D.C. On August 27, 1993, the U.S. Court ordered the former director to pay 3.9 millions dollars, plus interest. The former director moved to France, where the plaintiffs sought to enforce the judgement. The director argued against the enforcement because the U.S. Court had applied U.S. law to the issue of the liability of a director, when the French choice of law rule provides that the law of the company governs. The Cour de cassation rules that the law applied by the foreign court is irrelevant.

Avianca makes it clear that the new conditions are only relevant absent any treaty regulating the recognition of foreign judgements. European regulations and conventions are obviously such treaties.

The evolution had long been advocated by the majority of French writers. To many, it seemed weird to accept in principle the recognition of foreign judgements while making it a condition that they would have ruled exactly like a French court. Also, it seemed that the main purpose of the condition was to avoid *fraude à la loi*, which has always been a separate and autonomous condition.

First Issue 2007 of "Rivista di Diritto Internazionale Privato e Processuale"

The first issue for 2007 of *Rivista di Diritto internazionale privato e processuale* (*RDIPP*, published by CEDAM, Padova), one of Italy's leading journals in private international law, has been recently released. It provides quarterly a complete coverage of the different sectors of conflict of laws and

jurisdictions, with articles, comments, legal texts and cases by Italian, foreign and EC Courts. All the articles in this issue are in Italian, and unfortunately just an English translation of the titles is available, but no abstract. Here's the list:

ARTICLES

- *F. Mosconi* (University of Pavia), The protection of the Internal Order of the Forum: Balancing Italian Law, International Conventions and EC Regulations (La difesa dell'armonia interna dell'ordinamento del foro tra legge italiana, convenzioni internazionali e regolamenti comunitari);
- *S.M. Carbone* (University of Genoa), Lex mercatus and lex societatis vis-à-vis Principles of Private International Law and Financial Markets Rules (Lex mercatus e lex societatis tra principi di diritto internazionale privato e disciplina dei mercati finanziari);
- *F. Salerno* (University of Ferrara), EC Jurisdiction Criteria in Matrimonial Matters (I criteri di giurisdizione comunitari in materia matrimoniale).

COMMENTS

- *C. Amalfitano* (University of Milan), The European Arrest Warrant, the Italian Corte di Cassazione and the Protection of Fundamental Human Rights (Mandato d'arresto europeo, Corte di Cassazione e tutela dei diritti fondamentali dell'individuo);
- *A. Atteritano*, The Jurisdiction of National Courts to Enforce Foreign Arbitration Awards under the 1958 New York Convention (La «jurisdiction» del giudice statale nei procedimenti di «enforcement» dei lodi arbitrali stranieri disciplinati dalla Convenzione di New York del 1958).

The *RDIPP* is not available online (for subscription information, refer to the publisher's website, CEDAM).

An archive of the TOCs since 1998 is available on the ESSPER website (an online project for indexing articles of Italian journals and working papers in law and other social sciences, headed by the library of LIUC University of Castellanza).