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).

Vol. 3, Issue 1, Journal of Private International Law

The new issue of the **Journal of Private International Law, Volume 3, Issue 1 (April 2007)**, will be published shortly. The contents are (*click on the links below to view the abstract*):

Canada and the US Contemplate Changes to Foreign-Judgment Enforcement *by Vaughan Black (Professor, Dalhousie Law School, Halifax)*

The Rome I Proposal *by Ole Lando & Peter Arnt Nielson (Copenhagen Business School)*

Third-Country Mandatory Rules in the Law Applicable to Contractual Obligations: So Long, Farewell, Auf Wiedersehen, Adieu? *by Andrew Dickinson (Consultant, Clifford Chance LLP; Visiting Fellow in Private International Law, BIICL)*

Choice-of-Law Rules for Electronic Consumer Contracts: Replacement of The Rome Convention by the Rome I Regulation *by Lorna Gillies (Lecturer in Law, University of Leicester)*

Parties' Choice of Law in E-Consumer Contracts *by Zheng Tang (Lecturer in Law, University of Aberdeen)*

Choice of Law in Maritime Torts *by Martin P. George (PhD Candidate & Postgraduate Teaching Assistant, University of Birmingham)*

The European Convention on Human Rights and English Private International Law *by Ben Juratowitch (DPhil candidate, University of Oxford)*

Child Abduction: Convention "Rights of Custody" – Who Decides? An Anglo-Spanish Perspective *by Kisch Beevers (University of Sheffield) & Javier Peréz Milla (University of Zaragoza)*

Book Review: J. Meeusen, M. Pertegàs and G. Straetmans (eds) Enforcement of International Contracts in the European Union: Convergence and Divergence between Brussels I and Rome I *by Lorna Gillies (Lecturer in Law, University of Leicester)*

For those who haven't yet subscribed to the **Journal of Private International Law**, subscription information can be found **here**. In addition to the Journal itself, you will also receive online access to all of the articles (current subscribers will be able to download the articles linked to above straight away).

E-Business Group Website and the Cost of Rome I

The E-Business Regulatory Alliance has set up a Rome I E-business Group website to examine the e-business legal issues associated with the current EU proposal on a regulation on the law applicable to contractual obligations (Rome I). [See our posts on Rome I here.] William Roebuck, Legal Policy Director at the E-RA, states:

> *The Federation of Small Businesses has undertaken research work concerning the costs of the proposal, covering legal fees, translation fees and implementation fees. The total cost of entry per member state is 15,052.59 euros (excluding VAT) for a business to comply with its commitments under Rome I. This amounts to 242,756.00 euros (excluding VAT) for entry to the single market. These figures, together with staff costs will put a significant brake on cross border e-commerce, to the detriment of businesses and consumers.*
>
> *We are urging MEPs, the European Council and Member States to rethink this proposal in line with the Commission's better regulation and i2010 strategies.*

Their excellent website can be found here. *Many thanks to Will Roebuck for the info.*

Lecture on European Private Law at Southampton

On Tuesday 24 April 2007, the *Annual Bond Pearce Lecture in European Law* at the University of Southampton, School of Law, will be delivered by **Alexander Layton QC**, 20 Essex Street. Its title is:

> ***The Growth of European Private Law: Some Reflections on the 50th***

Anniversary of the Treaty of Rome.

Time and Venue: 5.45 pm; Main Lecture Theatre, Room 1027, Nightingale Building, Highfield Campus, Southampton (UK).

Please visit this Website for more details, or contact: Sotirios Santatzoglou, School of Law, Southampton University, Tel. 023 8059 5333.

Mixed Contracts, the Vienna Sales Convention and the Brussels Convention

Ulrich G Schroeter (University of Freiberg – Faculty of Law) has posted "**Vienna Sales Convention: Applicability to 'Mixed Contracts' and Interaction With the 1968 Brussels Convention**" on SSRN; it originally appeared in the *Vindobona Journal of International Commercial Law and Arbitration, Vol. 5, pp. 74-86, 2001*. The abstract reads:

> *The present article discussed various questions pertaining to the interpretation of Article 3(1) and (2) of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG), the provisions which deal which so-called 'mixed contracts', i.e. contracts that involve elements of a 'sale' proper alongside obligations to manufacture or produce goods or to supply labour or other services.*
>
> *In its second part, the paper elaborates on the interaction between the CISG's provisions defining the place of performance (Articles 31 and 57 CISG) on one hand and Article 5(1) of the Brussels Convention of 27 September 1968 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters and its successor, Article 5(1) of the EC Council Regulation 44/2001 of 22 December 2000 on the Recognition and Enforcement*

of Judgements in Civil and Commercial Matters on the other hand.

You can download the paper from **here**.

Conflict of Laws in Mexico

Jorge A. Vargas (*University of San Diego – School of Law*) has posted "**Conflict of Laws in Mexico as Governed By the Rules of the Federal Code of Civil Procedure**." Here's the abstract:

> *Since NAFTA entered into force in 1994, international litigation between the United States and Mexico has grown- and continues to grow-exponentially. In recent years, the application of foreign law in California and Texas has become equivalent to Mexican law, and soon other states will follow suit, including Arizona, New Mexico, Florida and Illinois.*
>
> *Prior to 1988, the Mexican legal system was not legally equipped to consider the application of foreign law in that country. In other words, until that year, only Mexican law was applied by Mexican judges in Mexican courts. At the same time, Mexico's legal system virtually lacked legal provision in its codes and statutes that allowed for the conduct of certain procedural acts requested by foreign judges (i.e., American judges) such as serving summons, taking evidence, recording depositions and enforcing judgments in that country. However, all of this changed in 1988 when President Miguel de la Madrid made the necessary legislative amendments both to the Federal Civil Code and to the Federal Code of Civil Procedure with the addition of Book Four titled: International Procedural Cooperation.*
>
> *This article discusses in detail the principles and rules governing the conduct of International Judicial Cooperation between Mexico and other countries, notably the United States, involving service of summons, taking of evidence, and enforcement of foreign judgments and arbitral awards by means of letters rogatory with the assistance of Mexico's Central Authority (i.e., Secretaría de*

Relaciones Exteriores (SRE) or Secretariat of Foreign Affairs) or that of the members of Mexico's consular service. These principles and rules are found in Articles 543-577 of Mexico's Federal Code of Civil Procedure.

Download the article from **here**.

Exclusive Jurisdiction, Cross-Border IP Infringement and the Brussels I Regulation

Paul Torremans (Nottingham University) has published "**Exclusive jurisdiction and cross-border IP (patent) infringement: suggestions for amendment of the Brussels I Regulation**" in the *European Intellectual Property Review* (E.I.P.R. 2007, 29(5), 195-203). Here's the abstract:

Calls for amendments to Council Regulation 44/2001 (the Brussels I Regulation) concerning cross-border patent infringement claims, in the light of European Court of Justice rulings on claims of invalidity raised in infringement proceedings, and the consolidation of claims against related defendants in more than one Member State. Suggests reform proposals to facilitate the effective enforcement of patents.

The ECJ ruling in question is, of course, *Gat v Luk*. The article is available to those with a subscription to the EIPR.

GEDIP: Working Sessions of the Sixteenth Annual Meeting (2006)

A very interesting **report of the working sessions of the 16th Annual meeting of the European Group for Private International Law (GEDIP-EGPIL)**, held in Coimbra on 22-24 September 2006, has been recently published on the new site of the Group. The summary (in French) has been compiled by *N. Ascensão Silva*, *R. Pereira Dias* and *G. Rocha Ribeiro* (University of Coimbra).

Here's a list of the matters discussed by the Group, as organized by the authors (in brackets the rapporteurs; *our translation and free adaptation from French*):

I. EC Private International Law and Third States:

1. The external competence question (*C. Kessedjan*);
2. The revision of the Lugano Convention (*A. Borrás*).

II. The Commission's "Rome III" Proposal and the Green Paper on matrimonial property regimes:

1. The Rome III Proposal (*A. Borrás*) [on the Green Paper on applicable law and jurisdiction in divorce matters, see also the report of *M. Struycken* presented at the 2005 meeting (Chania) of the Group and the draft articles on applicable law discussed at the 2003 meeting (Wien)];
2. The Green Paper on matrimonial property regimes (*K. Kreuzer*) (see also the Response of the EGPIL to the Green Paper, prepared after the meeting of Coimbra).

III. The "Rome I" Proposal [on the revision of the Rome Convention, see also a number of previous proposals and comments on the Group's site]:

1. Article 3(5) of the Rome I Proposal (Choice of the law of a Third State and mandatory rules of Community law) (*E. Jayme*);
2. The Report of the Financial Market Law Committee on «Rome I» Proposal («Legal assessment of the conversion of the Rome Convention to Community instrument and the provisions of the proposed Rome I Regulation») (*T. C. Hartley*).

IV. The mutual recognition method (*P. Lagarde*) (in particular, the ECJ cases *Standesamt Stadt Niebüll/Grunkin*, C-96/04 and C-353/06).

V. The codification of European Private International Law (*M. Fallon*).

VI. Current events:

1. Private international law and human rights – ECHR case *Eskinazi and Chelouche v. Turkey* (application no. 14600/05) (*P. Kinsch*);
2. New developments in EC secondary legislation (*E. Jayme* and *C. Kohler*);
3. New developments in the Hague Conference (*H. van Loon*);
4. Current status of EC projects in Private International Law matters (*M. Francisco Fonseca*).

The report is available here, along with the minutes of all the previous meetings of the Group, since 1991, and a number of related documents and proposals. Highly recommended.

Accession of the European Community to the Hague Conference on Private International Law

Since yesterday, 3 April 2007, the European Community is a formal member of the Hague Conference on Private International Law.

The accession of the European Community, which comes in addition to the individual membership of all 27 EU Member States, has been facilitated by amendments to the Statute of the Hague Conference entered into force on 1 January 2007 which made it possible for certain Regional Economic Integration Organisations – and thus the EC – to become a Member of the Hague Conference.

The deposit of the instrument of accession took place during a ceremony at the Academy of International Law in The Hague.

The significance of the accession has been emphasised by the German Minister of Justice, *Brigitte Zypries*, representing the Presidency of the Council of the European Union by stating:

> *International commercial relations are continually increasing. Europe´s citizens are becoming increasingly mobile as well; more and more people are living and working not only in other Member States but outside the EU as well. Given these developments, we need clear rules on how claims may be asserted beyond the borders of the European Union. Despite differing legal systems, our aim is to attain the greatest possible degree of legal certainty and transparency, for both private individuals and companies. With today´s accession to the Hague Conference, the European Community will be able to bring these interests of EU citizens directly into the negotiations on future Hague Conventions.*

as well as Vice-President *Franco Frattini*, Commissioner responsible for Freedom, Security and Justice who pointed out:

> *Our aim is to facilitate EU citizens' life setting clear rules as regards jurisdiction of the courts, applicable law and the recognition and enforcement of judgments not only within the EU territory, but also at international level. The accession of the European Community to the Hague Conference will allow for increased consistency as regards private international law, making life easier for those who decide to move and reside abroad.*

More information can be found on the website of the German EU Council Presidency, the website of the Hague Conference as well as the website of the European Union.

See also our older post on the EU Council decision on the accession to the Hague Conference which can be found here.