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International Litigation News

Newsletter of the International Bar Association Legal Practice Division

APRIL 2011

Further developments for qualification of foreign judgments for recognition and enforcement in France: the test for punitive damage awards[1]

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In an earlier contribution to the *International Litigation News* newsletter made in 2007,[2] we reported on a series of important new developments for the qualification of foreign judgments from non-treaty jurisdictions[3] for their recognition and enforcement (*exequatur*) in France. We explained that based on two recent decisions by the Cour de Cassation – the French Supreme Court on civil, commercial and criminal matters – *Prieur* and *Cornelissen*,[4] the 'five conditions' that had been the long-standing test stated back in 1964 in the *Munzer* decision[5] for *exequatur* in France had now been reduced to three:

> 'In order to grant exequatur where no international treaty applies, the French judge must be satisfied that three conditions are met, namely the indirect jurisdiction of the foreign court which issued the decision, based on the existence of connections between the dispute and the foreign court, compliance with international public policy rules covering both the substance of the decision and the procedure, and the absence of fraud.'[6]

Specifically, through these decisions that we reported, the test for *exequatur* had been significantly liberalised, first, as ruled in *Prieur*, by removing the protection, afforded earlier to French nationals, of an exclusive *in personam* jurisdiction of the French courts,[7] and second, as stated in *Cornelissen*,[8] by dropping the earlier requirement that the French judge deciding *exequatur* check the adequacy of the choice of substantive law made by the foreign court.

As a result, after *Prieur* and *Cornelissen*, defences against attempts to enforce foreign court decisions in France gradually switched from arguments on jurisdiction or the choice of the foreign law applied to the merits of the dispute, to considerations affecting French international public policy rules.[9] This new trend is best illustrated by the recent breakthrough concerning punitive damage awards being sought for enforcement by French courts, as this issue has finally just been clarified through a further important decision by the Cour de Cassation reached on 10 December 2010 (*Fountaine Pajot*).[10]

Opposing foreign punitive damage awards up to the December 2010 ruling in *Fountaine Pajot*

In the 2007 ruling in *Cornelissen*, which we had reported earlier, and which dealt with the attempted enforcement in France of a treble damage decision by a US federal court,[11] the defendant had not raised before the French judge the issue of the punitive nature of the damages awarded by the US District Court, but instead sought to oppose the *exequatur* on other grounds (lack of jurisdiction *in personam* and inadequate choice of the substantive law). These grounds ultimately failed, by reason of the case law reversals carried out by the rulings in *Prieur* and in *Cornelissen* by the Cour de Cassation,[12] and, accordingly, *Cornelissen* may well have been the first case of a US court decision granting treble damages that found its way through enforcement in France, although in this case punitive damages had not been discussed in the French courts.

Likewise, in the long struggle that led to the decision by the Cour de Cassation of 1 December 2010 in *Fountaine Pajot*, which ended up denying *exequatur* to a punitive damage award by another US court,[13] the defendant who opposed the award by the US court and challenged its attempted enforcement in France had first, just as

in *Cornelissen*, restricted the argument to the issue of jurisdiction, and grounded its objection to *exequatur* on the jurisdictional privilege of French nationals (Article 15 of the Civil Code): the Court of Appeals,[14] in a first decision handed down in 2005, denied *exequatur* on that ground, but this decision was quashed by the Cour de Cassation in 2007[15] based on the ruling it had handed down the year before in *Prieur*,[16] namely that Article 15 of the Civil Code provided an optional rule only and could not serve to block the enforcement of foreign court decisions.

On remand, the same Court of Appeals confirmed the denial of *exequatur*,[17] but on different grounds: this time, the Court of Appeals pointed at the punitive nature of the damages awarded by the California court, found to violate French international public policy. Given that compliance with French public policy is a test that governs the recognition and enforcement in France of all types of judicial decisions, the discussion that follows concerning punitive damages applies to all types of judicial decisions submitted for *exequatur* to the French courts: foreign judgments from non-treaty jurisdictions as well as those from treaty jurisdictions (whether multilateral treaties, such as, typically, the 1968 Brussels Convention and the 1988 Lugano Convention for decisions rendered in the EC member states and the then EFTA member countries, and more recently EC Regulation 44/2001[18], or bilateral treaties), or arbitral awards.

The original proceedings in *Fountaine Pajot* had been brought in court in California, pursuant to a forum selection clause in the contract,[19] by the purchasers of a yacht ordered through an agent from a French shipyard ('Fountaine Pajot'), and the purchasers complained of severe damage caused by a storm while the ship had been moored in France before sailing for delivery in Miami, which had been inadequately repaired and undisclosed to the plaintiffs. The total purchase price for the yacht was $826,009.00, but applying California law (the law designated in the contract), the California court handed down an aggregate award of $3,253,734.45, comprised of $1,391,650.12 compensatory damage for the retrofit work to be carried out on the yacht, $402,084.33 attorneys' fees and $1,460,000.00 punitive damages. The California court explained in its judgment that the defendant's conduct had to be punished through large financial penalties meant to deter the resumption of such conduct in the future, and noted that the $1,460,000.00 awarded as punitive damages corresponded to approximately 20% of the defendant's net assets.[20]

In its second decision on this case, dated 26 February 2009,[21] the Poitiers Court of Appeals denied *exequatur* by finding that the punitive damage award was contrary to French international public policy, citing a number of reasons which appeared to have applied cumulatively. The court first mentions the general rule whereby the purpose of the law governing civil liability is to restore the status prior to the damage and reinstate the injured party in its earlier condition as if the tort or breach of contract had not occurred. This first rationale disallows punitive damages altogether, as the court further explains that, accordingly, the amount of the award may not be affected by the nature of the tort or contractual breach that created the damage or by the financial condition of the defendant. The court then pursues by finding that the amount awarded was 'manifestly disproportionate because it was largely in excess, first of the sale price, and second, of the compensatory damages that covered compensation for the aggregate damage sustained.' This was found to create unjust enrichment for the plaintiffs and accordingly to violate 'the general rule requiring that offenses and penalties be proportionate, warranted by Article 8 of the French Declaration of Human Rights.'

Revisiting the case, in its second ruling on *Fountaine Pajot* handed down on 1 December 2010[22] the Cour de Cassation upheld this second decision by the Poitiers Court of Appeals, and accordingly denied *exequatur* by ruling that: 'although punitive damages are not, per se, a violation of public policy, such is not the case where the amount awarded is disproportionate in regard to the actual damage sustained and the debtor's breach of his obligations under the contract'.

The Cour de Cassation further stated that: 'the decision [by the Court of Appeals] had noted that the foreign judgment had granted to the purchasers, on top of the reimbursement of the acquisition price for the yacht, and the cost of the repairs, compensation very much in excess of that amount.'

And that on the basis of the foregoing: 'the Court of Appeals was entitled to reach the finding that the amount of damages awarded was manifestly disproportionate in regard to the actual damage sustained and the debtor's breach of his obligations under the contract,

such that the foreign judgment could not be recognised in France.'

In short, in its 1 December 2010 ruling in *Fountaine Pajot*, the Cour de Cassation broke new ground by acknowledging that foreign awards for punitive damages could be recognised and enforced in France, while at the same time setting as a condition that the amount awarded not be found disproportionate.

Foreign punitive damage awards are now eligible for exequatur in France

Although being a landmark decision for the treatment of foreign awards of punitive damages in French courts, *Fountaine Pajot* will not be remembered as the first punitive damage award enforced in France, since, as discussed above, a treble damage award had already been granted *exequatur* four years ago in *Cornelissen*, and in any event *exequatur* is denied in *Fountaine Pajot*, as the Poitiers Court of Appeals, upheld by the Cour de Cassation, set conditions which the Poitiers court found the California court judgment failed to satisfy. Nevertheless, this is the first time a French court mentions a foreign punitive damage award as being potentially admissible for recognition and enforcement in France.

In this regard, the Cour de Cassation overturned the Poitiers Court of Appeals because the first legal ground spelled out in the decision by the Court of Appeals is the general rule whereby damages are only compensatory by nature and should cover all the losses that have actually been sustained, but no more. This reasoning excludes the very concept of punitive damages. Also, the appellate judges erred in this respect in that this rule, known in French law as the full compensation rule,[23] is indeed applied by the French judiciary as a public policy rule, but only in domestic matters.[24] In contrast, French courts reject that rule in international situations,[25] which illustrates the difference between domestic public policy and international public policy, international public policy being a much narrower concept. Clearly, when reviewing foreign judgments submitted for *exequatur* in France, courts must apply the international and not the domestic public policy test.

Also, in the same vein, the French Cour de Cassation had over the recent years began clearing ground towards recognising foreign punitive damage awards, by characterising foreign penalty awards as being of a civil rather than a criminal nature, even where these were being issued in the context of foreign court orders which carried also criminal penalties if not being complied with (penalties for contempt of court). See the 30 June 2004 decision in *Stolzenberg*,[26]concerning a Mareva injunction issued by an English judge, and the 28 January 2009 decision in *Blech v Loewenson*,[27] where a New York federal judge required enforcement on real property in France, of an award for daily fines levied by reason of the defendant's failure to comply with an injunction order issued in the context of civil proceedings instituted by the SEC. Central to the decision, although not expressly mentioned by the Cour de Cassation in its rulings, is that the punitive damages or the penalties are paid to the plaintiff and not into a government account.[28]

Proportionality

At the same time as it paved the way for the recognition and enforcement of punitive damages awards in France, the Cour de Cassation in *Fountaine Pajot* denied *exequatur* by approving the restriction found by the appellate judges, namely that the magnitude of the award violated the proportionality rule. Specifically, the court ruled that 'although punitive damages are not, per se, a violation of public policy, such is not the case where the amount awarded is disproportionate in regard to the actual damage sustained and the debtor's breach of his obligations under the contract.'

Accordingly, proportionality is now branded as a French international public policy standard when reviewing foreign court damage awards, as in *Fountaine Pajot*, or foreign court penalty orders, as in *Blech v Loewenson*.[29] This is not surprising given the longstanding resistance that French courts, as well as several other continental European judicial systems, have opposed the common law practice of awarding punitive damages.[30] But this creates issues about the authority of the French judges in charge of *exequatur* proceedings, when reviewing foreign punitive damage awards, and whether we can think of any guidelines to allow for some predictability as to the outcome of their review of foreign court awards carrying punitive damages.

Various authors[31] have raised concerns relating to the procedure in the French courts for *exequatur*, by noting that the simplified accelerated procedures made available to facilitate and expedite the recognition and enforcement of foreign judgments from treaty

jurisdictions[32] or arbitration awards,[33] which are *ex parte* applications, are not compatible with the exercise which will now be expected from the *exequatur* judge when he or she is submitted punitive damage awards.[34] However, we observe that the procedure for *exequatur* of judgments from non-treaty jurisdictions, such as, noticeably, the United States, provides even at this early stage for contradictory proceedings,[35] and, likewise, appellate proceedings dealing with the *exequatur* of judgments from whether a non-treaty or a treaty jurisdiction[36] or of arbitral awards,[37] are also a contradictory process.

The other and in our view more serious objection towards the requirement that the *exequatur* judge conduct a proportionality assessment of the punitive damage award, derives from the restriction put to his authority, since he is not allowed to revise on the merits the decision submitted for *exequatur*. This restriction applies to arbitration awards[38] and foreign judgments as well, whether from treaty jurisdictions[39] or from non-treaty jurisdictions.[40] Exactly when scrutinising the merits of a foreign decision turns into revising the decision, which is prohibited from the *exequatur* judge, is at best uncertain.[41] Indeed, as this concept was developed by the Cour de Cassation, revising a decision on the merits does not mean re-writing the decision, and denying *exequatur* because the rationale expressed in the foreign judgment lacks supporting evidence has been recently found unacceptable because this meant the *exequatur* judge had engaged in a prohibited revision of the foreign decision on the merits (see the 14 January 2009 decision in *Agrogabon*).[42]

By such standard as in *Agrogabon*, reviewing foreign punitive damage awards on proportionality could be bordering on the unauthorised revision of the decision on the merits. At the same time, proportionality is being imposed by the Cour de Cassation and it is the same Cour de Cassation that controls lower court judges when granting or denying *exequatur*: it is accordingly unlikely that when confronted with punitive damage awards, French *exequatur* judges feel stymied by the prospect that their action be found inappropriate.

That being so, we still lack clues as to the application by French judges, in practice, of the proportionality rule to punitive damage awards. The ruling by the Cour de Cassation in *Fountaine Pajot* requires that 'the amount awarded [be not found] disproportionate in regard to the actual damage sustained and the debtor's breach of his obligations under the contract', which prompts two comments on our side.

First, although the Poitiers Court of Appeals had found that the amount awarded was 'manifestly disproportionate', the Cour de Cassation did not repeat the word 'manifestly' in its own ruling. It suffices for *exequatur* to be denied that the amount be found 'disproportionate'.

Secondly, the Cour de Cassation identified the terms of the comparison as being both 'the actual damage sustained and the debtor's breach of his obligations under the contract': other considerations, such as the defendant's net assets (as a reminder, the Superior Court of California in *Fountaine Pajot* had noted that the $1,460,000.00 awarded as punitive damages corresponded to approximately 20% of the defendant's net assets)[43] will not be allowed as references for the French judge's assessment of the amount awarded. However, we have no further indication in terms of quantum of what might be considered disproportionate. The Poitiers Court of Appeals in *Fountaine Pajot* found the amount awarded 'manifestly disproportionate because it was largely in excess, first of the sale price, and second, of the compensatory damages that covered compensation for the aggregate damage sustained'.[44] Reading between the lines, it would seem that the Poitiers court would not have objected if the punitive damages had been anywhere in between the price for the yacht and the amount awarded as compensatory damages, but at the same time, certain authors accurately observed that very few punitive awards will be enforced in France if for that sake the punitive amount should be less than the compensatory damage amount.[45]

We also point out that the Poitiers court has only compared the punitive damages to the compensatory damages, and made no reference to the defendant's conduct and the seriousness of the breach. However, it could be said that by failing to disclose the damage sustained by the yacht, the shipyard gravely endangered the plaintiff's lives. Moreover, a strict reading of the ruling by the Cour de Cassation makes it an obligation on the lower court judges to consider, in assessing proportionality, both the compensatory damages and the defendant's conduct, and not just either term to the exclusion of the other. The Cour de Cassation requires 'the amount awarded [not to be found] disproportionate in regard to the actual damage sustained and the debtor's breach of his obligations under the contract' (this is 'and' and not 'or').

Lastly, it would also seem from the foregoing comments that punitive damages calculated mechanically, such as treble damages, would not be granted *exequatur* in France. Actually, a treble damage award has indeed been recognised by the French courts. This was in *Cornelissen*, as discussed above, but the defendant had not raised that issue, and the Court of Appeals (Aix en Provence, 11 January 2005) failed to raise this *ex officio*, with the excuse that this was nearly six years in advance of the final ruling in *Fountaine Pajot*.

In short, we find that *Fountaine Pajot* did create a long-awaited opening towards the recognition and enforcement in France of punitive damage awards. At the same time, the proportionality test shows some measure of rigidity. This reflects the same attitude towards punitive damages as may be found in recent developments concerning changes that had been advocated to allow for punitive damages in French civil law: as reported in our earlier contribution to the *International Litigation News* newsletter,[46] the Government had commissioned an expert report (from Professor Catala) which discussed amending the Civil Code to allow for such types of award.[47] In the meantime, however, the Catala report has been set aside and gave way to a far more modest plan for reform,[48] which, in short, considers the introduction of punitive damages into the French legal system only where the misconduct is more profitable than the mere indemnification of damage,[49] and only in a restricted number of areas (competition law, environmental law and privacy law).

Notes

1 English translations provided in this article of excerpts from French statutes or court decisions are free translations aimed at conveying the legal meaning of the French text rather than a literal translation.

2 *International Litigation News*, September 2007, p 78.

3 There are a number of countries without treaties with France. These include nations with largely industrialised economies such as Brazil, India, Japan , Russia, and, noticeably, the United States and Canada.

4 Cass civ 1ère, 23 May 2006, *Prieur, RCDIP* 2006. 870 with comments by H Gaudemet-Tallon; *JDI* 2006. 1377, with comments by Ch Chalas; D 2006. chron p 1846, B Audit; *JCP* 2006. II 10134, with comments by P Callé; *Petites Affiches* 22 September 2006, p 10, with comments by P Courbe; *Gaz Pal* 2007, p 2052, with comments by M-L Niboyet; and Cass civ 1ère, 20 February 2007, *Cornelissen, D* 2007, p 1115, with comments by L d'Avout and S Bollée ('L'abandon du contrôle de la loi appliquée par les jugements étrangers'); *Gaz Pal* 2007, p 1880, with comments by F Guerchoun; *RCDIP* 2007. 420, with comments by B Ancel and H Muir Watt; and *Gaz Pal* 2007, p 1847, with further comments by M-L. Niboyet in 'L'abandon du contrôle de la compétence législative indirecte' *(*le "grand arrêt" Cornelissen du 20 Février 2007'*)*, *Gaz Pal* 2007, p 1387.

5 Cass civ 1ère, 7 January 1964, *Munzer, RCDIP* 1964. 344, with comments by H Batiffol; *JDI* 1964. 302, with comments by B Goldman; *JCP* 1964. II. 13590, with comments by B Ancel.

6 Cass civ 1ère, 20 February 2007, *Cornelissen*, (see footnote 4 above).

7 In *Prieur* (Cass civ 1ère, 23 May 2006, see footnote 4 above), the Cour de Cassation ruled that the privilege, granted to French nationals under Article 15 of the Civil Code, of being sued by foreign litigants in the French courts, was no longer an exclusive right but a mere option, and as a result would no more support denying *exequatur* in France to a foreign court decision implying a French defendant.

8 Cass civ 1ère, 20 February 2007, see footnote 4 above.

9 D'Avout and Bollée, in their comments under *Cornelissen*, *D* 2007 p 1118, suggested that the French judge could continue controlling the law applied by the foreign court by reinforcing certain public policy objections.

10 Cass civ 1ère, 1 December 2010, *Epoux Schlenzka v Fountaine Pajot, D* 2010, p 24, with comments by I Gallmeister; *JCP* 2011, G, no1440, with comments by J Juvénal ('Dommages-intérêts punitifs: comment apprécier la conformité à l'ordre public international'); *D* 2011, p 423, with comments by F-X Licari ('La compatibilité de principe des punitive damages avec l'ordre public international : une décision en trompe-l'oeil de la Cour de cassation ?'); N Meyer Fabre, 'Enforcement of US Punitive Damages Award in France: First Ruling Of The French Court Of Cassation In X v Fountaine Pajot, December 1, 2010', in Mealey's *International Arbitration Report*, January 2011.

11 These were treble damages awarded by the US District Court for the District of Columbia under the US 1970 so-called RICO Act (Racketeer Influenced and Corrupt Organizations Act).

12 In fact, the defendant had sought from the French courts that *exequatur* be denied to the US court decision, because the US District Court had applied US law (and the RICO Act) to the merits of the dispute rather than Colombian law, although the defendant had favoured Colombian law precisely because, unlike US law, Colombian law did not have a treble damage rule. Defendant's argument towards the application of Colombian law was that Colombian law was the law of the *situs* of the corporation which, under French conflict rules, should have governed claims bearing on a director's liability. However, as explained above, the Cour de Cassation in *Cornelissen* removed the requirement as to the adequacy, by French conflict rules, of the choice of substantive law carried out by the foreign court.

13 The Superior Court of California, County of Alameda, 26 February 2003.

14 Poitiers Court of Appeals, 28 June 2005, unpublished decision.

15 Cass civ 1ère, 22 May 2007, Bull Civ I no 196, p 173; mentioned by B Ancel and H Muir-Watt in *JDI* 2007. 960.

16 Cass civ 1ère, 23 May 2006, *Prieur*, see footnote 4 above; the ruling in *Prieur* was confirmed in several later decisions by the Cour de Cassation, including, aside from the first decision rendered in *Fountaine Pajot* (Cass civ 1ère, 22 May 2007, see footnote 15 above), *Schuman v Akner*, Cass Civ 1ère, 16 December 2009, *RCDIP* 2010.164 with comments by H Muir Watt.

17 Poitiers Court of Appeals, 26 February 2009, *JDI* 2010. 1230, with comments by F-X Licari.

18 Council Regulation (EC) No 44/2001, OJ 2001 L12/1. Denmark, however, chose not to participate in the adoption of the Regulation.

19 See the reasoning of the Poitiers Court of Appeals in its 26 February 2009 decision, on the subject of jurisdiction, *JDI* 2010.1231.

20 See excerpts from the judgment by the Superior Court of California, County of Alameda, of 26 February 2003, quoted by the Poitiers Court of Appeals in its decision of 26 February 2009, printed in *JDI* 2010. 1233.

21 Poitiers Court of Appeals, 26 February 2009, *JDI* 2010. 1230, with comments by F-X Licari.
22 Cass Civ 1ère, 1 December 2010, see footnote 10 above.
23 *Le principe de réparation intégrale.*
24 See the case law cited by F-X Licari in his comments to the 2009 decision by the Poitiers court in *Fountaine Pajot*, *JDI* 2010, §16 at page 1245, and the reference to an unpublished Versailles court decision of 10 September 2009 specifically ruling out punitive damages.
25 See decisions mentioned by F-X Licari in his comments to the 2009 decision by the Poitiers court in *Fountaine Pajot*, *JDI* 2010, §16 at page 1245. Admittedly, these decisions all deal with circumstances where the injured party is being awarded *less* than full coverage of his losses, but in such general terms that authors explain that the same solution would have applied, namely denying that this violated international public policy, had the plaintiff been granted *more* than required to compensate actual losses (as is the case when punitive damages are awarded).
26 Cass civ 1ère, 30 June 2004, *Stolzenberg*, *D* 2005, p 2743, with comments by N Bouche; *JCP* 2004, G, II 10198, with comments by J Sainte-Rose; *RCDIP* 2004. 815 with comments by H Muir Watt; *JDI* 2005, p 112, with comments by G Cuniberti.
27 Cass civ 1ère, 28 January 2009, *Blech v Loewenson*, Bull Civ I, no 15; *D* 2009, p 436, with comments by I Gallmeister; *D* 2009. 2384, with comments by S Bollée; *D* 2010. 1585 with comments by F Jault-Seseke; *JDI* 2009, 1237, with comments by F Marchadier; *JCP* 2009 G 10086, with comments by D Martel.
28 See F-X Licari, *D* 2011, p 425, and *JDI* 2010, p 1241–1242.
29 Cass civ 1ère, 28 January 2009, *Blech v Loewenson*, see footnote 27 above.
30 See the comparative law analysis provided by F-X. Licari in *JDI* 2010, p 1234, § 1.
31 J. Juvénal, 'Dommages-intérêts punitifs: comment apprécier la conformité à l'ordre public international?', *JCP* 2011, G, no 1440, p 259.
32 See articles 38 and 41 of Council Regulation (EC) No 44/2001, OJ 2001 L12/11, which would govern the '*exequatur*' in France of a punitive damage award from an English court. In any event, at the preliminary stage of the application for '*exequatur*' under the EC Regulation, the '*exequatur*' judge is expressly required (see article 41) not to conduct any review of the judgment 'under articles 34 and 35', meaning not to conduct any review of the judgment at such early stage from the standpoint of the 'public policy in the Member State in which recognition is sought'.
33 See article 1516, 2nd paragraph, of the French Civil Procedure Code as revised by the new French regulation on arbitration (décret 2011-48 of 13 January 2011).
34 J. Juvénal, 'Dommages-intérêts punitifs: comment apprécier la conformité à l'ordre public international?', *JCP* 2011, G, no 1440, p 259.
35 The request for '*exequatur*' under general French procedure for the treatment of foreign judgment is filed by way of an '*assignation*', ie, contradictory proceedings, rather than '*sur requête*', meaning an ex-parte application : see Huet, 'Effets en France des jugements étrangers subordonnés à leur régularité internationale', *Jurisclasseur Droit international*, Fasc 584-30, §42 ; illustratively, in the event that the French '*exequatur*' judge, acting under the general French procedure, should raise ex officio any objection to a requested '*exequatur*', he can not adjudicate the issue unless by calling all parties to a contradictory hearing: Huet, *Jurisclasseur Droit international*, Fasc. 584-41, §25.
36 See article 43.3 of Council Regulation (EC) No 44/2001, OJ 2001 L12/11.
37 See articles 1522, 1523 and 1525 of the French Civil Procedure Code as revised by the new French regulation on arbitration (décret 2011-48 of 13 January 2011).
38 'Clearly therefore, in the context of an action to set aside an award or to obtain its enforcement, the Court of Appeals cannot review the merits of the dispute' (Fouchard Gaillard Goldman on International Commercial Arbitration, Kluwer, §1603 [1999].
39 See article 36 of Council Regulation (EC) No 44/2001, OJ 2001 L12/10 (Under no circumstances may a foreign judgment be reviewed as to its substance).
40 This was the main contribution of the *Munzer* decision by the Cour de cassation: Cass civ 1ère, 7 January 1964, see footnote 5 above.
41 See F-X Licari, *D.* 2011, p. 426.
42 Cass, 1ère civ 14 January 209, *Société Agrogabon v Tek*, *RCDIP* 2009, 331, with comments by L d'Avout.
43 See excerpts from the judgment by the Superior Court of California, County of Alameda, of 26 February 2003, quoted by the Poitiers Court of Appeals in its decision of 26 February 2009, printed in *JDI* 2010. 1233.
44 Poitiers Court of Appeals, 26 February 2009, *JDI* 2010. 1233.
45 F-X Licari, supra at footnote 10, *D* 2011, p 426. In fact, the wording of the appellate decision is rather confusing and when the court states that the punitive amount awarded 'was largely in excess, first of the sale price, and second, of the compensatory damages that covered compensation for the aggregate damage sustained', it rather seems that what the judges had in mind was the sale price ($826,009.00, versus $1,460,000.00 punitive damages) and not the aggregate compensatory damage award granted by the California court (which was $1,391,650.12 retrofit work plus $402,084.33 attorney fees). As further explained by the Poitiers court (see *JDI* 2010, p 1233), the disproportion is created by the addition of the full compensatory damages covering the retrofit cost and the attorney fees, plus punitive damages largely in excess of the price of the ship, meaning that in that context, to qualify for enforcement in France, the punitive damages would have had to be even less than the price of the yacht.
46 See footnote 2 above, page 81.
47 See draft Article 1371 of the Civil Code in 22 September 2005, *Report by Professor Catala to the Minister of Justice.*
48 Senate Information Report no 558, 15 July 2009, regarding the modification of civil liability, by Senators A Anziani and L Béteille, p 85.
49 *Faute lucrative*, p 88 and seq of the Senate Information Report.