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The adaptability of Article 1519 bis et sqq. of the Italian Civil Code on Service Contracts

The European Legal Forum (E) 1-2004, 31 - 37

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The adaptability of Article 1519 bis et sqq. of the Italian Civil Code on Service Contracts

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Introduction

The Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, was implemented into national law, by a, “decreto legislativo” No. 24 of February 2002, as a regulation in the Italian Civil Code, Article 1519 bis et sqq of the Italian Civil Code. This Directive aims at readdressing the adverse effects of the free movement of goods, (and therewith also the implementation of the internal market) as well as the distortions caused by competition due to the dramatic differences between national regulations. Furthermore, consumer protection will be improved, by the indispensable minimum level of guaranteed consumer protection, which will be inherent when goods delivered to the consumer turn out to be not in conformity with the contract. The UN Convention on Contracts for the International Sale of Goods (CISG), served as a model for some of the points in Directive 1999/44/EC, (especially regarding the rules on lack of conformity of goods with the contract).

The Italian legislature decided to implement the Directive, by integrating it into the existing Civil Code, rather than to pass a new special Act there for. The likely reason for this was probably the consideration that, since the new regulations deal with the delivery of consumer goods, they would regulate the greater part of sales and other contracts, which are treated in the equally in Article 1519 bis. In addition, the fact that, the consumer goods that fall under this regulation are (only) movable property was a decisive factor for placing these norms in a separate paragraph incorporated in the section on the sale of movable property.

The object of this new regulation according to Article 1(1) of the Directive, is outlined in general terms in Article 1519 bis, („This section regulates certain aspects of contracts of sale and guarantees concerning consumer goods.”). This sentence does not seem to have any regulative power: The only meaning that one could ascribe to this comment is the confirmation that the sale of consumer goods and associated guarantees is not conclusively regulated in these sections; (which was not in doubt). Since this is a rather more descriptive than regulative set of norms, and if one is allowed the use of a fashionable term, it can be described as an example of a “post-modern” piece of legislation. It can also be seen as an example of the superficiality and lack of accurateness with which the texts of today’s legislation are as a rule formulated.

The contract types that are regulated by the Directive are also the subject matter of other directives and thus also the topic of other already implemented national legislative measures. These are specifically: Directive 85/577/EC7, Directive 93/13/EC6 and Directive 97/7/EC2. Where the delivery of goods is financed by consumer credit, the provisions of Directive 87/102/EC, (and the later amendments thereto) in the field of consumer credit also find application. The implemented national provisions of this Directive are now included in Article 121 to 126 t.u. of the Italian legislation governing...
I. Guarantees against lack of conformity with the contract and service contracts, which are aimed at the manufacture of goods

1. Equal treatment of Sale and Service Contracts

The question of the applicability of the new Article 1515 bis et seq. of the Italian Civil Code, to service contracts, has in my opinion not yet been sufficiently researched, although it is of practical relevance. A service contract according to Article 2222 of the Italian Civil Code, comes into being „when a person becomes obligated, in return for a consideration, to carry out a task or service mainly through his or her own effort, without being subordinate to the principal“.

One could assume that this is a topic that could be exhausted very quickly. In view of the wording of Article 1519 bis one could presume that since there the two types of contract are treated equally, that the new provisions are certainly also applicable to service contracts. Doing this, would be neglecting another possible interpretation, which is likewise deductible from the wording of Article 1519 bis of the Italian Civil Code. According to this interpretation, sales contracts, contracts of exchange, contracts of delivery and contracts of delivery by instalments, as well as service contracts are generally to be treated in the same way as all other contracts that aim likewise at “the supply of consumer goods to be manufactured or produced”. One can gather, from this last phrase referring to the contract types, to which the listed varieties should apparently belong, that the equal treatment of sales and service contracts according to Article 1519 bis, does not in reality apply to all service contracts. Rather, what one should understand by service contracts, according to Article 1519 bis of the Italian Civil Code, is only those which are aimed directly at the “supply of goods to be manufactured or produced.” Those contracts that have as subject the rendering of a service, would be excluded.

2. Placing sales and service contracts on an equal footing – The contract based on the supply of “manufactured” goods

To be precise, one would have to say that that the equal treatment of sales and service contracts, in Article 1519 bis, can only apply to those contracts that are based on the supply of goods to be “manufactured” and not to those to be “manufactured or produced”. This is elaborated below:

The wording in the latter formulation – „supply of goods to be manufactured or produced“ – originates from Article 1 of Directive 1999/44/EC, and as a result hereof, Article 1519 bis of the Italian Civil Code was enacted. The Directive itself was in turn formulated according to the wording of Article 3(1) of the CISG, which in fact, treats sale contracts and contracts for the supply of goods to be manufactured or produced equally.

However, the difference between manufactured and produced goods in the CISG is based on the following notions: Manufactured goods are a result of human activity, (Machines, end products and such), while produced goods are a result of natural events and need only human intervention for their appropriation, (raw materials, agricultural products, etc.).

Due to the use of the same formulation, one could assume that the same interpretation could be applicable to this provision. Therewith, the above stated assertion is validated, when one bears in mind that in a service contract with the manufacture of goods as object, the good itself is a direct result of human activity. Each service contract which allows itself to be classified in the category of a contract to supply goods to be manufactured or produced, can strictly speaking only be allowed in to the category of contracts for the supply of goods to be manufactured, (and not to be produced).

3. The irrelevance of the subjective or objective value of the material provided by the manufacturer in relation to the activity

The new provision does not always apply to service contracts in which are aimed at the supply of goods to be manufactured. The applicability can be excluded if the material used is provided by the manufacturer. This is established according to Article 1519 ter, which states that “no lack of conformity will exist, where (...) this has been caused by materials provided by the consumer”. The wording and formulation of this provision is obviously unfortunate. Whether a lack of conformity exists is an objective fact: either there exists a lack of conformity with the contract or there does not. The wording would surely have been more appropriate had it been: a possible lack of conformity which is caused by the material provided by the consumer, does not give rise to claims against any guarantees.

Aside from this question, it should be stressed that the new provision for guarantees find no application when the object of a service contract is the manufacture of goods manufactured with material provided by the consumer and theses materials lack conformity with the contract. The manufacturer is therefore only liable for that lack of conformity that is caused...
by the material provided by him. When all the material is provided by him then he is always liable.\textsuperscript{15}

The result is that Article 1519 \textit{bis} regarding the equating of contracts of sale and service contracts, does not distinguish between the \textit{subjective} and the \textit{objective} value of the material provided in the manufacturing activity to be carried out.

The above conclusion is not only to be drawn from the silence of the legislation on the issue. One can also conclude that the objective importance of the material has no influence of any kind (in the manufacture), from the fact that no equivalent to Article 3(2) CISG was included in the Directive. According to that Article, the CISG does not apply to such contracts, „in which the preponderant part of the obligations of the party who provides the goods consists in the supply of labour or other services.”\textsuperscript{16}

As to the subjective value of the material, it must be pointed out, that this is surely the primary link for the applicability of another rule, namely: Article 2223 of the Italian Civil Code. According to it, the rules regarding contracts of sale also find application where the material is provided by the manufacturer, (assuming that the material was not of main importance to the contracting parties, since should that be the case, the rules regarding contracts of sale would be applicable.) In other words, the subjective value of the material according to Article 2223 of the Italian Civil Code, leads to the applicability of \textit{all} the rules governing contracts of sale. Should one therefore assume that the application of Article 1519 \textit{bis et sqq} of the Italian Civil Code, on service contracts depends on the subjective value of the material, then the following conclusion would be true: that the equal treatment of the contracts as in Article 1519 \textit{bis} is a fruitless exercise. It is obvious that such a conclusion would not be satisfactory. It would be rather more convincing to conclude from the silence of the above mentioned provision regarding possible limits to the equal treatment that, the equal treatment rule applies in all cases. There are therefore no conclusions to be drawn regarding the subjective or objective value of the material on the activity in question. The enacted provision thereby stands out due to a particularly strong consumer protection component. This in turn corresponds to the ratio that was the basis of the Directive: As one can read from the first paragraph of the preamble, it aims at “the achievement of a high level of consumer protection.” Therefore the conclusion is also in compliance with the \textit{ratio} that infuses the whole set of new provisions.

4. Conclusion: The competition between Article 1519 \textit{bis et sqq} and Article 2226 of the Italian Civil Code

Thus, in this connection it appears that an essential implication of Article 1519 \textit{bis}, is the expansion of the reach of Article 2223, even if only within the scope of the application of the provision referring to the guarantees for sale of consumer goods. According to Article 2223, the rules on sale contracts are also applicable to service contracts, if the material for manufacture is provided by the manufacturer: Article 1519 leads therewith, to the application of the rules on guarantees also in those cases where the parties, at the time of conclusion of the contract did not consider the material as the main object of the contract. The \textit{subjective} value of the material, which was according to Article 2223 of the Italian Civil Code, the general condition for the application of the contract of sale rules, becomes meaningless.

In those cases where according to Article 2233, the rules on contracts of sale do not apply to a service contract, the provisions on guarantees enter into conflict with those of Article 2226, which regulates the claims of the customer in the cases of defective service. I spoke of a conflict, since because it is also possible to assume that the claims under Article 2226 could be \textit{added} to those which are listed under Article 1519 \textit{bis et sqq}. This results from Article 1519 nonies of the Italian Civil Code, which also allows a deviation from the new regulations, if other provisions accord consumer protection. Although in reality it is doubtful whether this conflict is to be recognised, since its articulation even if accepted is not clear.\textsuperscript{17}

II. Guarantees against lack of conformity and Contracts to Repair, in light of the equal treatment rule

1. Service Contracts and Contracts for service where a good is also sold

I have until now been discussing contracts of service of which the manufacture of a good is the object, and I stated when and under which conditions the new provisions on guarantees would find application on these contracts.

The new provisions, as mentioned, are not applicable to service contracts: The equation with contracts of sales cannot therefore be applicable and there are also no other equivalent provisions to Article 2223 of the Italian Civil Code, which could otherwise impose the equating of service and sales contracts.

It appears that a unique contract for the carrying out of a service, may consists of a “manufacture” of a good, and a transfer of one or several goods. One can for example consider the case of an auto mechanic, or the task of the handyman having to repair a household good: In both cases the main object of the contract will the carrying out of a repair. On the other hand the consumer in the contract is also receiving transfer of ownership, from the repair person, of the parts necessary to carry out the repair. In regard to the transfer of these parts, the mechanic and the handyman find themselves in the position of a seller, and this part of the contract can be defined as the sale of a consumer good. This is because, each single part is in itself a consumer good. According to Article 1519 \textit{bis} of the Italian Civil Code and Article 1(2)(b) of the

\textsuperscript{15} See Zaccaria and De Cristofaro (supra note 13), p. 54.

\textsuperscript{16} On the contrary Mannino seems to interpret Article 3(2) CISG in a way only reached by the equal treatment of contracts for the sale of consumer goods and service contracts when the consumer did not provide most of the material; Mannino, Commentario alla disciplina della vendita dei beni di consumo, Padua (I), 2003, p. 29 f.

\textsuperscript{17} See Zaccaria and De Cristofaro (supra note 13), pp. 150 and 147.

\textsuperscript{18} See supra, chapter one.
Sale of Consumer Goods Directive, every tangible movable item is a consumer good, although the term „consumer“ does not limit in any way the applicability of the new provision. This is due to the fact that in the proposal to this directive of 1996, the term “consumer good” was further defined as: a product intended for consumption or use. This was not passed over into the final Directive. Therefore one can finally conclude that every tangible movable item is a consumer good, as long as it is purchased by a consumer.

Do now, taking into account what has been said before, the new provisions find application in a “contract to repair” with the auto mechanic and the handyman mentioned before? Or does the transfer of the parts somehow attach to and follow the rendering of the service, in such a way as to exclude the application of the provision on consumer goods?

Does the answer to this question depend on the value the party place on the replacement of the parts in relation to the rendering of the service as a whole? Put differently, would it affect the outcome whether the mechanic for example replaces the alternator of a car, worth Euro 500, and spends only 20 minutes on it or whether he spends five hours installing a rubber seal worth 50 cents.

Or can the answer be, regardless of the worth of the replaced part, be rather dependant on the perceptions of the contracting parties? Can the answer therefore depend on whether the parties entered into a service or a sale contract? If this were the case, one could build the following scenario: If one were to contract a motor electrician to replace a car battery that has become unusable, here the rules regarding contracts of sale would be applicable. If one however were to inform the motor electrician that the car does not start, and give him the task of not only determining what the reason is, but also of replacing any parts that may be necessary, whereupon he then replaces the battery, so the rules on contract of sale would not be applicable.

I will attempt to find plausible answers to these questions.

2. The necessity to distinguish, within the scope of the activity, between the accessory and independent supply of goods

It could occur in some cases, that the purchase of goods, in relation to the activity that is being carried out, takes on a purely subordinate role: Cases could occur where contracts that are clearly to be classified as service contracts, consist of transfer of property of a single part.

One could take the above example, where the mechanic in 5 hours, replaces a piece of rubber which is worth 50 cents. In such cases, where the concluded contract falls under a specific category, such secondary duties, that do not affect the classification of the contract, should not only be seen as accessory, they should rather be completely absorbed by the contract.

In all other cases, where the transfer of the good does not take on a purely accessory role in the contract to repair, either the rules governing contracts of sale, or those governing contracts of service, or still possible is a combination of the two, will be applicable to that contract. This is determined depending on which view one takes regarding the co-called "complex contract", under which contracts to repair fall.

3. „Complex Contracts“

What one would understand under the term „complex contract“, is the "combination of effects of various types of contracts in light of their content as a whole". They differ in nature from mixed contracts, in that they „result in the joining of various clauses which stem from parts of various different types of contracts“: A mixed contract would for example be the sale of a good for consideration less than its value: The contract would consist of a sale and a donation. In the case mentioned here, the contract to repair, in which two types of contracts, namely sale and service, appear together in their entirety, would constitute a so-called „mixed contracts“.

Which provision is then applicable to a “complex contract”? One opinion is that the contract type be „determined by the predominant contractual obligation which characterises the contract“, of which the rules will then always apply to both complex and mixed contracts. However, on which grounds would one establish which are the principal contractual obligations?

In this regard various views have already been expressed: The emphasis of the various individual components of the contract (in our case this would necessitate the determination of whether the donation or the doing are predominant); Analysis of the intention of the parties; identification of the actual goals, determination of the object of the business undertaking, with the use of economic factors to determine the worth of the services rendered under each contract type and to compare them with each other; the comparison of the contract types concerned in respect to their “weight” and determining whether any has the capacity of “overwhelming” the other contract types.

The complexity of this situation is caused by the fact that in attempting to determine, in a "complex contract", which type of contract is predominant, one finds oneself inescapably faced with the problem, inherent in the difficulty of estab-

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19 Hereafter the new legal provisions could not have been applied if a consumer received transfer of raw materials.
20 See Zaccaria and De Cristofaro (supra note 13), pp. 17f.
21 This being, according to Article 1519 bis (2) lit. a, Italian Civil Code, from "any natural person who [...] acts for a purpose that can not be classified within his professional and commercial activity". Similarly, De Novo, in AA. VV., L’acquisto di beni di consumo, Mailand (I), 2002, p. 17.
22 See Zaccaria, (supra note 13), p. 17f.
23 Editor’s note: the terms “complex” and “mixed contracts” have been translated directly from the Italian legal terms used.
25 See Sacco und De Novo (supra note 22), p. 428 f.
26 See Sacco und De Novo (supra note 22), p. 429.
lishing the „causa“ of the transaction. When establishing the criteria for the determination of the “predominant” contract type, the same difficulties are reflected – maybe even multiplied – when trying to establish the „causa“ of the transaction. Also in this regard, it has always been disputed whether this is to be an interpretation in an objective or subjective way or even whether both ways of interpretation have to be combined.28

The theory to which I have been referring, according to which the rules of that type of contract, which dominates the characteristic performance, are to be applied to the “complex contract”, is generally defined as the “Absorption Theory”. The opposing theory to this is known as the “Combination Theory.” According to which each separate element of the contract which can be related to a specific type of contract, will be regulated by the rules relating to that type of contract. Clearly there is also a middle ground view. One could call it the “weak Absorption Theory”. According to this theory, one should try to harmonise both types of contract that make up the whole, as far as the separate applicable rules are compatible with the main contract type. The view has also been expressed that the problem with contracts of contrasting elements from different types of contracts, is to be solved instead by an analogous interpretation which is generally used when a contract cannot be classified.29

4. Applicability of Article 1519 bis et sqq on Contracts for Repair, taken from the solution found for the problem of “complex contracts”

This subject is fascinating and the solution to the problem seems to depend on the way one chooses to solve it. If one were for example to choose the last mentioned theory, the analogous interpretation, there would be no particular difficulties in applying the provisions regarding guarantees also to the transfer of goods in contracts to repair. Should one instead choose to defend the absorption theory, the provisions regarding guarantees only find application in the specific case where the characteristic performance of a contract of sale is predominant over that of a service contract.

Even though one can in fact dispute, whether the contract to repair should be regulated by the rules of sale or service contracts, it can however be stated that at least with regard to the application of the provisions of Article 1519 bis et sqq, the solution must always be the same, this being that these rules must be applied: This is no surprise, as practice as well as jurisprudence have shown that “the elements differing from the principal scheme are in conflict and rebellious compared with the rules of the governing contract”.10

With regard to the conclusion above, the following thought is now sufficient: I have already proven that the rules on sale of consumer goods must apply equally where no sale contract exists, but rather where a service contract, which is directed at the manufacture of a good, has been concluded. This is true already in the case where only one part of the necessary material for manufacture of the goods is provided by the manufacturer, and is independent of whether this part is economically predominant to the contract, be it subjectively or objectively. This aside, the rule is particularly applicable when not only one part – be it as small as it may – of the material necessary for the manufacture has been provided, but the whole of the material is provided, as for example in the case of the “contract to repair”. Also this is to be assessed independently of the subjective or objective importance which the provided material takes in the general economic overview of the contract. This being, as has been stated above, the application of guarantees on the service contracts, which have as their subject the manufacture of a good with material that at least has been partly provided by the manufacturer.31

If this was so, however, one would arrive at the rather strange conclusion that the consumer on the other hand can surely invoke the guarantee against a third party, even when buying the same parts on the instruction of the mechanic, directly from the supplier.

If one puts this interpretation together with the above thoughts, the result would be a system of rules which protect the consumer even more than shown until now. Insofar as this should come as a surprise, one can easily show that this result corresponds exactly with the ratio on which the Directive, and therefore also the new provisions, are based. The basic idea being in fact to create an extremely high level of consumer protection.

Another conclusion would only be valid if: the fact that Article 1519 bis et sqq treats sale contracts and contracts of service equally, which are directed at the supply of goods that are manufactured, receive special significance; and if one were for this reason, to exclude the view defended here, that this article does apply to “complex contracts”, which near by a activity concern the provision of goods (contracts which obviously are not directed at the supply of goods to be manufactured). From this could be concluded that the rules regarding contracts of sale would only apply to these contracts if, with regard to “complex contracts”, you arrive at the result that the law of sale contracts is to be applied – at least with regard to the part of the contractual relationship which concerns the transfer of property.

One would just as well arrive at the same result if one followed the theory put forward by the analogous interpretation – therefore the above conclusion would remain the same. If instead one followed the absorption theory, and as a result concentrate on the type of contract of the predominant performance, one would arrive at another result: In this case the conclusion would be that a consumer who purchases goods by means of a “contract to repair” cannot rely on the guarantee, as only the service contract rules would be applicable. Apart from the fact that this argument is based on the equal treat-

29 For a discussion about the different opinions see as example Bianca (supra note 22), p. 478 ff.; Cattandella, I contratti parte generale, 2nd ed., Turin (f), 2000, pp. 173 ff.
30 Sacco and De Nova (supra note 22), p. 430.
31 See supra, chapter 3.
ment of sale and service contracts directed at the manufacturing of goods in Article 1519 bis of the Italian Civil Code, it is not the only argument upon which one can rely to prove that the above considerations are true: A further proof can be observed, as I will show, in the provisions of Article 1519 ter (5) of the Italian Civil Code. As soon as this further step is taken, the above expressed concern, regarding the “scope” of the service contract will be seen as unnecessary.

III. Guarantee for lack of Conformity, Service Contract and Contract to Repair in light of the provision of Article 1519 ter (5) on Sale Contracts which includes the installation of a good

1. Applicability of the rules of “Contracts of Sale including an installation” to all transfers of property including the installation of goods and therefore also to “Contracts to Repair”

Article 1519 ter (5) of the Italian Civil Code, regulates the case of a contract of sale, which includes the installation of the good sold. In this connection the rules for the guarantee apply also to such defects which are not inherent in the sold good itself, but arise from the action of the installation. The reason therefore is obvious, a high level of consumer protection is to be ensured.

But which types of contract does Article 1519 ter (5) regarding sale contracts with installation apply to? At least those sale contracts, where installation can be qualified as accessory in relation to the transfer of property, can be qualified as such.

However when the ratio of this provision, is to secure a high level of consumer protection, the same ratio also demands that, the term “contract of sale including installation of the good” is to be understood in the larger sense. This, to include the meaning where the installation is accessory to the contract of sale. The installation is for example not only accessory when the parties attribute a special importance to it or where it has a high importance when considered in an objective way. Considering the risk that an installation can provoke a lack of conformity, a special need exists for a high level of consumer protection. Therefore the application of Article 1519 ter (5) is to be extended also to include the case in which the installation within a contract of sale does not only result as a accessory service, but where there is a case of a “complex contract”, which has as its subject also the transfer of property like the performance of a service: the installation.

It has to be stressed that that consumer protection becomes all the more important, where the installation takes on a greater importance in the contract. Therewith, one can conclude that the term “sale contract including an installation”, in the sense of Article 1519 ter (5) is in reality to be generally understood as a “contract including the duty to transfer property and the duty of installation”. For this Article to be applicable, it is not dependent on which subjective or objective import-

2. Sales Contracts combined with a Performance of Installation, which consist of the Installation of sold Goods, applicable independently the fact that Rules governing Sales or Service Contracts apply

Obviously, in those cases where the installation is not only accessory, the contract will be a “complex contract”, and it would then be arguable whether the rules regarding sales or service contracts apply. However, even when one (depending on which of the above mentioned theories for the interpretation of “complex contracts” one applies), came to the conclusion that rules regarding contracts of service apply, this does not exclude the applicability of Article 1519 ter (5) of the Italian Civil Code: To conclude that this provision is applicable to “complex contracts” and thereby also to cases where installation takes place, would be induced by the interpretation of Article 1519 ter (5), which is independent of which rules (of sale or service contracts) apply to the contractual relationship.

Irrespective of whether rules of sale or service contracts apply, one must conclude that the party who supplies the good, is liable for the non-conformity of the goods arising from the installation. This result is not surprising: as already mentioned, the elements differing from the principal scheme are “in conflict and rebellious” compared with the rules of the governing contract.

3. The condition to the applicability of the rules governing guarantee in sales contracts, which include the installation of a sold good and the consequent confirmation of the applicability of the provisions regarding guarantees on contracts to repair

I have already stated — and herewith I want to come to my final point — the contracting party who delivers a good is also liable for the non-conformity of the good, which arises from the installation: also because Article 1519 ter (5), which provides for the extension of the application of the provisions governing guarantees in such cases, which would otherwise not be applicable, evidently presupposes that the provisions regarding guarantees already apply to such contracts. Since Article 1519 ter (5) applies in all cases of delivery in which the installation of the goods is part of the service rendered (notwithstanding the financial weight of the installation in the

\[32\] See Luminoso, La compravendita, 3rd ed., Turin (I), 2003, p. 320.

\[33\] See supra, chapter 8.
contract taken as whole), then one must conclude that in every case provisions governing guarantees against non-conformity of goods, which do not arise from the installation, are to be applied.

Provisions regarding guarantees apply also without a doubt in the case, which is relevant here, where a mechanic, who has been charged with the repair of a car, replaces some part of it. In this case we are also dealing with the combination of a transfer of property and the installation of a sold part.

IV. Conclusion

Liability of the party carrying out the repair, for non-conformity of the replaced parts: Final Consideration

With respect to the provisions applicable to the services rendered by the mechanic, we have come to the conclusion that rules governing guarantees always apply. We have already come to the same conclusion by treating equally service contracts, which consist of the manufacture of goods out of materials provided by the manufacturer, and sale contracts according to Article 1519 bis of the Italian Civil Code. The fact that we came to the same result, although we followed a different approach to that of Article 1519 bis, clearly shows that the above mentioned approach is tenable.

Of these last assertions, one can in conclusion add another, which I have already mentioned and which I would like to further deepen.

As stated, Article 1519 ter (S) applies in every case, where together with a transfer of a good, an installation takes place, and this applies notwithstanding the economic value of the installed part in the contract as a whole. This applies also to the contracts consisting of a repair. From this follows that our mechanic is not only liable according to the provisions governing guarantees, for the conformity of the replaced parts, which he has transferred to the consumer during the carrying out of the repair. In fact he is also liable according to the new provisions for all non-conformities, which do not lie in these parts themselves, but which are caused by their installation.

INTERNATIONAL AND EUROPEAN PROCEDURAL LAW

EuGH 5 February 2004 – C-18/02 – Danmarks Rederiforening, acting on behalf of DFDS Torline A/S v LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation – Brussels Convention – Article 5(3) – Jurisdiction in matters relating to tort, delict or quasi-delict – Place where the harmful event occurred – Measure taken by a trade union in a Contracting State against the owner of a ship registered in another Contracting State

1. a) Article 5(3) must be interpreted as meaning that a case concerning the legality of industrial action, in respect of which exclusive jurisdiction belongs, in accordance with the law of the Contracting State concerned, to a court other than the court which has jurisdiction to try the claims for compensation for the damage caused by that industrial action, falls within the definition of tort, delict or quasi-delict.

b) For the application of Article 5(3) of the Brussels Convention to a situation such as that in the dispute in the main proceedings, it is sufficient that that industrial action is a necessary precondition of sympathy action which may result in harm.

c) The application of Article 5(3) of the Brussels Convention is not affected by the fact that the implementation of industrial action was suspended by the party giving notice pending a ruling on its legality.

2. In circumstances such as those in the main proceedings, Article 5(3) must be interpreted as meaning that the damage resulting from industrial action taken by a trade union in a Contracting State to which a ship registered in another Contracting State sails can be regarded as having occurred in the flag State, with the result that the shipowner can bring an action for damages against that trade union in the flag State.

Facts: Danmarks Rederiforening is a Danish Association of Shipping Companies. It is acting on behalf of DFDS Torline A/S (hereinafter DFDS), a ship-owner, against the Swedish Congress of Trade Unions LO Landsorganisationen i Sverige, acting on behalf of SEKO, Sjöfolk Facket för Service och Kommunikation (SEKO), a trade union. The dispute in the main proceedings concerns the legality of a notice of industrial action given by SEKO against DFDS, with the object of securing a collective agreement for Polish crew of the cargo ship Tor Caledonia owned by DFDS,