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1. *Genoa Pretore, order 28th June 1982* . . . . . 67

It is not manifestly unfounded the question of constitutional invalidity of Arts. 1 n. 2 and 2, second paragraph, of the Law dated 13th June 1912 n. 555, and of Art. 20, first paragraph of the Preliminary Provisions to

- the Civil Code, with reference to Art. 3 of the Constitution, in so far as they discriminate between the father and the mother.
2. *Council of State (6th Session), 4th February 1985 n. 43* . . . . . 353  
 Art. 17 of the Geneva Convention relating to the Statute of Refugees dated 28th July 1951 is to be considered a mere recommendation due to the reservation applied by the Italian Government to the said Convention.
3. *Court of Cassation, 26th February 1986 n. 1226* . . . . . 72  
 According to Art. 25 of the Preliminary Provisions to the Civil Code, a foreign law is not applicable to that part of a labour contract that is to be performed abroad, if the contract was stipulated in Italy, the contracting parties are of Italian nationality and have indicated Italian law as the law governing the contract and any controversy arising therefrom.
4. *Court of Cassation, 14th March 1986 n. 1725* . . . . . 157  
 Domestic provisions in contrast with EEC law cannot be applied by domestic judges and judgments rendered by the EEC Court of Justice are immediately effective within the territory of Member States. Therefore administrative orders issued in Italy, which are in contrast with Arts. 30-36 of the EEC Treaty, are illegitimate.
5. *Court of Cassation, 26th March 1986 n. 2144* . . . . . 157  
 The reimbursement of custom duties unduly paid on goods imported from GATT Member States is governed by Art. 19 of Decree dated 30th September 1982 n. 688 which applies as *ius superveniens* in all the claims in which the question of entitlement of the right to reimbursement is still to be settled.
6. *Court of Cassation, 26th March 1986 n. 2145* . . . . . 157  
 Art. 19 of the Decree dated 30th September 1982 n. 688, which provides the burden to prove that the tax duty has not been transferred to others in order to obtain the reimbursement of custom duties unduly paid, is contrary to EEC law and, therefore, is not applicable.
7. *Court of Cassation (plenary session), 4th April 1986 n. 2316* . . . . . 165  
 M.A.I. (Mediterranean Institute of Agronomics) is exempt from compulsory execution while exercising its institutional functions as C.I.H.E.A.M. (Centre International d'Hautes Etudes Agronomiques), in accordance with general principles of international law in force to which Italy complies to as per Art. 10 of the Constitution and in accordance with the reservation, formulated by the Italian Government to the Agreement dated 21st May 1962, which established C.I.H.E.A.M.
8. *Court of Cassation, 22nd April 1986 n. 2847* . . . . . 77  
 As per the Constitutional Court Ruling dated 2nd February 1978 n. 10 and per Law dated 6th February 1981 n. 42, the service of process abroad can be considered having taken place on the twentieth day following the day upon which the proceedings under Art. 142 of the Civil Procedure Code were accomplished, only in case of a substantial impediment of the serving of process in compliance with the terms set forth under the international conventions and under the Presidential Decree dated 5th January 1967 n. 200 governing consular powers, which implies reference to the time the papers are delivered to the addressee.

9. *Venice Court of Appeal, 31st May 1986* . . . . . 354  
 The filing of a case before a foreign judge lacking jurisdiction, pursuant to Art. 17 of the Brussels Convention dated 27th September 1968, does not prevent the expiration of the term, as per Art. 3 n. 6 of the Brussels Convention dated 25th August 1924 concerning bills of lading, for the filing of the suit before the Italian judge.
10. *Court of Cassation (plenary session), 4th June 1986 n. 3732* . . . . . 166  
 C.I.H.E.A.M. enjoys in Italy the same immunities that according to the international customary practice are recognized to foreign States. Therefore C.I.H.E.A.M. is exempt from Italian jurisdiction with regards to the request of repression of anti-trade union policy conducted by C.I.H.E.A.M.
11. *Court of Cassation (plenary session), 4th June 1986 n. 3733* . . . . . 166  
 C.I.H.E.A.M. is exempt from the jurisdiction of the Italian judge (according to general principles of international law and to the reservation to the Agreement dated 21st May 1962, establishing C.I.H.E.A.M. signed by the Italian Government) regarding a lawsuit brought by a dismissed employee contesting his dismissal even if the employment contract has been signed in Italy.
12. *Criminal Court of Cassation, 18th June 1986 n. 2266* . . . . . 508  
 The conditions for extradition have to be ascertained by the judge and cannot be delegated by him to a different authority.  
 An act of extradition cannot be conditioned to the guarantee provided by the requesting State that a penalty replacing death penalty shall be sentenced.  
 When during the proceedings motioned before the Court of Cassation, as per Art. 668 of the Criminal Procedure Code, the requesting State provides a documentation sufficient according to Art. 9 of the 1983 extradition Treaty signed between Italy and the United States of America to guarantee that no death penalty shall be carried out, the Court of Cassation has the authority to renew the merit of the extradition proceedings and possibly authorize the extradition.
13. *Court of Cassation, 3rd July 1986 n. 4370* . . . . . 84  
 The Juvenile Court is competent to enforce foreign judgments in Italy, rendered with regards to the adoption of minors in favour of Italian citizens as per Arts. 31 and 32 of the Law dated 4th May 1983 n. 184 on the adoption and foster placement of minors.  
 The competence of the Court of Appeal to enforce a foreign order of adoption is hereunder exceptionally derogated by the provisions above.  
 The Court of Appeal, and not the Juvenile Court, is competent to enforce in Italy a foreign order of adoption of Italian minors taken into custody by foreign citizens, or Italian citizens residing abroad.
14. *Naples Tribunal, 10th July 1986* . . . . . 356  
 The Italian judge is competent to hear a case of adoption filed by an American citizen in favour of an Italian child.  
 As per Art. 17, first paragraph of the Preliminary Provisions to the Civil Code, American and Italian laws are cumulatively hereon applicable.
15. *Court of Cassation (plenary session), 14th July 1986 n. 4547* . . . . . 170  
 Neither a general power of attorney nor a power of attorney legalized

abroad by a foreign Notary Public can be exhibited in a recourse motioned for a ruling of jurisdiction when the power of attorney is posterior to the service of the petition and is not certified.

16. *Court of Cassation (plenary session), 18th July 1986 n. 4636* . . . . . 87

When the validity of a jurisdiction clause forming part of a bill of lading has to be ascertained in a controversy arising between parties domiciled in Italy and in the Netherlands, the provisions set forth under Art. 17 of the 1968 Brussels Convention prevail on the provisions set forth under the applicable law, according to Arts. 25 and 26 of the Preliminary Provisions to the Civil Code, and according to Art. 10 of the Navigation Code. Contracting parties are considered the parties that have subsequently entered the contract and are therefore vested with the *legitimatō ad causam*.

The exclusive jurisdiction rule under Art. 17 of the 1968 Brussels Convention prevails over the general provisions as set forth under Arts. 2 and 5 n. 1 of the Convention.

Pursuant to Art. 18 of the 1968 Brussels Convention, any objection to the competence of the Italian judge motioned by a defendant at the first hearing of the case is not prejudiced by the circumstance that the defendant has at the same time argued on the merits for defensive purposes, or has submitted a counterclaim.

The endorsement by the shipper of a bill of lading bearing the signature of the carrier and incorporating a jurisdiction clause does not fulfill the requirement for the validity of a written clause set forth under Art. 17 of the 1968 Convention as interpreted by the EEC Court of Justice because it is only meant to transfer the rights arising from the contract to a third party.

The exhibition of the bill of lading before a different judge than the one indicated in it by the third party does not entail any consent given by the same third party to the jurisdiction clause inserted in that bill of lading.

17. *Court of Cassation (plenary session), 5th September 1986 n. 5426* . . . . . 94

According to Art. 29 of the Preliminary Provisions to the Civil Code, foreign refugees domiciled or resident in Italy are subject to the same rules applicable to Italian citizens.

Art. 12 of the Geneva Convention relating to the statute of refugees, dated 28th July 1951, sets forth a principle of private international law which differs from the principle stated under Art. 29 above for it provides as main connecting factor the domicile rather than the residence of the refugee, excluding consequently any relevance to nationality.

As per this provision, the principle according to which an Italian citizen's legal status is always subject to Italian law and cannot be affected by an order issued by a foreign authority applies to refugees domiciled or resident in Italy.

18. *Court of Cassation (plenary session), 5th September 1986 n. 5438* . . . . . 553

According to Art. 17 of the Brussels Convention dated 27th September 1968, an agreement conferring jurisdiction forming part of the general conditions of contract referred to in a written confirmation is not valid.

As per Art. 5 n. 1 of the 1968 Brussels Convention, the Italian judge competent to decide on the cancellation of a contract for non performance

of obligations due in Italy under Art. 1182 of the Civil Code, is also competent to decide on any other alleged breach under the same contract.

19. *Prato Tribunal, 24th September 1986 n. 631* . . . . . 172

As per Art. 5 n. 1 of the Brussels Convention dated 27th September 1968, the place where the contractual obligation in question is to be performed is determined with reference to the provisions of the law governing the contract.

The Italian judge lacks jurisdiction when the payment of the purchased goods, according to Belgian Law, has to take place at the debtor's abode in Belgium.

20. *Milan Court of Appeal, 17th October 1986* . . . . . 103

The Italian judge acts on his own motion when deciding on jurisdiction and connexity issues irrespective of plaintiff's requests.

As per Art. 4 of the Civil Procedure Code, the Italian judge is competent to hear a claim arising out of a currency purchase contract on foreign financial markets, if the petition regards the judicial liquidation of a company (« liquidazione coatta amministrativa ») or particular proceedings thereunder which, according to Art. 1182 of the Civil Code, take place at the creditor's domicile in Italy.

The reference made to a foreign Stock Exchange quotation of the purchased foreign currencies does not imply consent given by the parties to the application of the law of the country of that Foreign Stock Exchange, nor does it entail the existence of a customary practice based on the application of the said law to economic transactions contemplating the purchase of foreign currencies at the above Stock Exchange market.

The *lex fori* applies to bankruptcy proceedings and its effects.

A foreign currencies purchase contract is classified as Stock Exchange contract according to Art. 76 of the Italian Bankruptcy Act.

The cautionary attachment on the assets located in Italy of a Swiss defendant has to be convalidated when the order of the Italian judge will not be enforced in Switzerland pursuant to the bilateral Agreement dated 3rd January 1933 because the jurisdiction of the Italian judge has not been accepted and the Swiss defendant is not willing to perform his obligations spontaneously.

21. *Milan Criminal Pretore, 17th October 1986* . . . . . 774

As per Art. 152, second paragraph of the consolidated laws on public safety, the prefect of non-boundary provinces can oblige the foreigner to reach the border.

22. *Rome Court of Appeal, 28th October 1986* . . . . . III

A contract stipulated by a foreign and an Italian company in order to transfer the former company's capital stock to the latter company, and therefore provides a resident with the property of an asset located in Italy and owned by a non resident, is not in contrast with Italian public policy regulations of economical interest.

The request to obtain the transfer of an asset located in Italy and owned by an Anstalt to an Italian company authorized by the purchaser of the quotas of the Anstalt is legitimate for the purchaser of an Anstalt fully succeeds the « founder-seller » in the power of control over the company; the final judgment is only subject to monetary authorities permits.

As no legal personality can be recognized to an Anstalt in whose name

assets located in Italy are fictitiously registered, the nullity of the legal personality is cause of dissolution of the company. The said assets therefore have to be transferred to the rightful owner.

23. *Court of Cassation (plenary session) 29th October 1986 n. 6339* . . . 121
- As per the New York Convention dated 10th June 1958, the validity of an international arbitral clause is not affected when the subsequent appointment of the arbitral body and the venue of arbitration are provided for in accordance with international commercial usages.
- The derogation of the Italian jurisdiction that, therefore, takes place, has to be considered inclusive of the monitory proceedings due to the jurisdictional character of those proceedings.
24. *Court of Cassation (plenary session), 21st November 1986 n. 6836* . . . 125
- When the Court of Cassation in plenary session has already rendered a definitive judgment on the jurisdictional issue arisen in a controversy regarding a contract stipulated by foreign citizens, the jurisdiction issue cannot be questioned in any subsequent claim motioned on merits by one of the foreign parties of the judgment based on the non fulfilment of the condition of reciprocity invoked by the foreign plaintiff.
- Compensation for damages is due with reference to the place and the time of the wrongful behaviour as per Art. 4 n. 2 of the Civil Procedure Code.
25. *Court of Cassation (plenary session), 24th November 1986 n. 6888* . . . 131
- A ruling of jurisdiction cannot be motioned when a judgment definitively decides on a claim arising from a contract stipulated by an Italian and a foreign citizen, according to Art. 41, first paragraph of the Civil Procedure Code.
- The jurisdiction of the Italian judge cannot be questioned in any further claim, brought against the same foreigner and based on the mentioned contract.
26. *Court of Cassation, 1st December 1986 n. 7096* . . . 140
- In order to decide on the rightfulness of a dismissal of an employee occurred in Italy, attention should be brought to the number of employees of the whole corporate company altogether, and not only of the subsidiary in Italy which dismissed the worker.
27. *Constitutional Court, 23rd December 1986 n. 286* . . . 174
- According to Art. 11 of the Constitution, the question of constitutional validity of Arts. 1, 3, 7 of the Law dated 10th December 1975 n. 724, is not founded insofar as they impose the payment of an additional custom duty on tobacco imported from EEC Member States equal to the purchase tax on national tobacco.
28. *Court of Cassation (plenary session), 12th January 1987 n. 110* . . . 512
- The Italian judge is competent to hear a controversy arising out of an employment contract, subject by agreement to Italian law and containing a clause of choice of Italian jurisdiction, entered by an Italian citizen and a German public television network. By the means of the two referred clauses the German public television network has assumed the condition of a private enterprise with all the duties and rights thereunder applicable according to the general and special provisions of law in force in Italy.

29. *Court of Cassation (plenary session), 15th January 1987 n. 246* . . . . . 285
- According to Arts. 37 and 41 of the Civil Procedure Code, a ruling of jurisdiction can be requested by a foreign defendant who did not enter an appearance even if there is no evidence that the document instituting the proceedings has been regularly served because the request for a ruling of jurisdiction entails that the service has however fulfilled its functional scope within the proceedings.
- According to Art. 3 of the Brussels Convention dated 27th September 1968, the provisions set forth under the Arts. 2 and 4, n. 1 and 2 of the Civil Procedure Code, are not applicable to a French company, incorporated in France.
- Art. 5 n. 3 of the 1968 Brussels Convention is not applicable in a controversy relating to compensation for damages arising from a contractual relationship.
- Art. 5 n. 1 of the 1968 Brussels Convention is not applicable when according to the statement of complaints no contractual relationship has been established between the parties.
- According to Art. 6 of the Brussels Convention, judicial competence is modified for the same reasons of connexity as those provided by Art. 4 n. 3 of the Civil Procedure Code in accordance with Arts. 31-36 of the Civil Procedure Code.
- Under Art. 6 n. 2 of the said Convention the seller sued by the purchaser for faulty merchandise cannot summon before the Court his foreign supplier on the basis of a separate and distinct contractual relationship.
- In a bankruptcy proceedings in Italy a third party domiciled in France cannot be sued according to Art. 6 n. 1 of the Convention for the compensation of damages based on a contractual obligation with the bankrupt in course of an action for the proof against the estate. The proceedings for the proof of the assets and for the proof of a debt cannot exceed the contents indicated under the Italian Bankruptcy Act.
30. *Court of Cassation, 19th January 1987 n. 395* . . . . . 298
- Art. 798 of the Civil Procedure Code, which provides the review as to substance of a foreign judgment, is applicable under the proceedings for enforcement in Italy of an order rendered by an Austrian judge.
- The review as to substance is not expressly excluded by the Austrian-Italian Convention dated 16th November 1971, and cannot be considered governed by a rule of international law. Moreover, Art. 8 of the Convention refers to the application of the law of the State wherein enforcement of the foreign judgment is sought.
31. *Court of Cassation (plenary session), 19th January 1987 n. 408* . . . . . 136
- As per Art. 11 of the Law dated 15th December 1971 n. 122, a contract between the Ministry for Foreign Affairs and personnel hired for the performance of specific activities in developing countries is a private law contract and related claims fall within the competence of ordinary judges.
- The assessment of the subsistence allowance due shall depend, according to Ministry Decrees *ex* Arts. 21 and 24 of the above Law, on the previous working experience of the hired personnel.
32. *Lazio Regional Administrative Tribunal (1st Session), 20th January 1987* . . . . . 303
- Under Art. 6 of the EEC Directive n. 77/62 dated 21st December 1976, enforced in Italy by Law n. 113 dated 30th March 1981, public



administrative bodies, in certain cases, can call for tenders without applying the procedure set forth thereunder.

According to Directive n. 77/62, the amendment of a clause in order to assign the tender in case of a single offer is legitimate.

The resolution granting a bill of tender to a Spanish company (even if Spain was not at the time an EEC or GATT Member State) is ineffective when no proper explanation was given to the fact that the tender had been issued to companies not belonging to EEC Member States (Art. 17 of the mentioned Law).

33. *Court of Cassation (plenary session), 2nd February 1987 n. 930* . . . . . 308

The Italian judge is not competent to hear a claim on an employment contract of an employee of the Joint Nuclear Research Centre in Ispra, which, according to Art. 152 of the Euratom Treaty, has to be filed before the EEC Court of Justice.

34. *Court of Cassation, 5th February 1987 n. 1124* . . . . . 357

Negotiable instruments transferred by residents to non residents not provided with the required exchange control authorization give way by both parties who are thereunder liable to an infringement as per Art. 6 of the Law n. 476 dated 6th June 1956.

The infringement is subject to a monetary sanction applied even to the party who has willingly participated to the infringement.

The authorization by a resident to a non resident to conduct operations on the former's bank account in Italian Liras does not create such obligations between residents and non residents as constituting an infringement of exchange control regulations.

35. *Court of Cassation, 7th February 1987 n. 1324* . . . . . 140

In order to decide on the rightfulness of a dismissal of an employee occurred in Italy, attention should be brought not to the number of employees of the whole corporate company but of the subsidiary in Italy which dismissed the worker.

36. *Court of Cassation, 9th February 1987 n. 1335* . . . . . 174

In an international sales contract of movable goods, according to Art. 1510 of the Civil Code and to Art. 19 of the Hague Convention dated 1st July 1964 on the Uniform Law on International Sale of Goods, the carriage of the goods is separate from the sale. Therefore, the seller is not liable if the carrier fails to perform its obligations unless it is proved that the seller had not chosen the carrier in accordance with the terms of the contract.

37. *Court of Cassation, 12th February 1987 n. 1526* . . . . . 515

As to Arts. IV and V of the New York Convention on the Recognition and Enforcement of Arbitral Awards, dated 10th June 1958, the enforcement has to be denied when the requesting party does not exhibit, contemporaneously with the request, the necessary documents in order to motion the enforcement proceedings: i.e. the original or legalized copies of the arbitral award to be enforced and the written agreement incorporating the arbitral clause.

Only the judge on his own motion, for the purpose of opposing enforcement, and not the counterparty, is authorized to make exception as to

the non exhibition of the original of the certified copy of the arbitral award and of the written agreement.

38. *Rome Criminal Tribunal, order 18th February 1987* . . . . . 359
- The Secretary of State of a foreign country is exempt from criminal jurisdiction when performing his duties outside the territory of his country and when acting as a representative of his country.
- The immunity for acts accomplished during that period but outside his function ceases when the said duties and representation powers come to an end.
39. *Court of Cassation, 14th March 1987 n. 2658* . . . . . 776
- The use of the Italian language is not necessary for the effectiveness of legal transactions which are to produce their effects in Italy.
40. *Milan Court of Appeal, 20th March 1987* . . . . . 311
- The British judge is competent to decide on a petition for divorce filed by Italian spouses resident in Great Britain, if the parties' residence is real and not fictitious.
- A foreign judgment of divorce between Italian spouses is enforceable in Italy, even if the period of separation between the spouses has been inferior to the period indicated under Art. 3, second paragraph, lett. *b* of the Law dated 1st December 1970 n. 898 and the foreign judge has ascertained that during the said period an irretrievable breakdown of the marriage had taken place.
41. *Genoa Arbitral Award, 20th March 1987* . . . . . 703
- The tanker voyage charter party entered on an Asbatankvoy form consists in a full load carriage contract.
- The clause « English law to apply », typed on the second part of the Asbatankvoy form in addition to the printed clause indicating London as the seat for arbitration and settlement of common distress, indicates that the contract is intended by the parties as governed by English law, even if the parties, by means of a following agreement, modify the terms of the original convention by fixing Genoa as the seat of arbitration.
- The typed clause as to the application of English law prevails on the Paramount clause, printed on the second part of the Asbatankvoy form, that provides for the application to the bill of lading of the U.S. 1936 Carriage of Goods by Sea Act, except when another law, giving effect to the Brussels Convention dated 25th August 1924, is in force in the place where the bill of lading is issued.
42. *Court of Cassation, 26th March 1987 n. 2945* . . . . . 708
- As per Art. 13, second paragraph, lett. *a*) of the EEC Council Regulation n. 1408 dated 1971, an employee working in the territory of a Member State is subject to the law of that State even if he is resident within the territory of another EEC Member State or the employer or hiring company is domiciled or has its head office in the territory of another EEC Member State.
- The office authorized to erogate the compensation due to the worker in case of professional illness is the office located in the territory of the Member State where the worker has performed the activity which provoked the illness.

43. *Court of Cassation, 27th March 1987 n. 2981* . . . . . 519
- According to Art. 23, third paragraph of the Geneva Convention dated 19th May 1956 on the International Carriage of Goods by Road, Art. 2 of the Protocol signed in Geneva on 5th July 1978 and enforced under the Law dated 27th April 1982 n. 242 is applied as *ius superveniens* during a pending proceeding concerning the limitation of the carrier's liability. By the above the compensation due for the loss of the merchandise cannot exceed 8.33 units of account for every Kilogramme of gross weight.
44. *Court of Cassation, 28th March 1987 n. 3030* . . . . . 711
- The jurisdiction criteria set forth under the Brussel Convention dated 27th September 1968 are applicable to labour proceedings, even after the enactment of the new procedure provisions in Italy under the Law n. 533 dated 11th August 1973.
- The parties can agree to file the case before a judge different than the competent judge to hear the claim according to the domestic provisions of law when controversies arising from an employment contract are concerned as per Art. 17 of the Brussels Convention.
- The written form required under Art. 17, first paragraph of the Brussels Convention, does not require specific approval in writing as per Art. 1341 of the Civil Code.
- A review as to substance of the suit cannot take place when the foreign judgment is being enforced according to Art. 29 of the 1968 Brussels Convention.
45. *Court of Cassation, 30th March 1987 n. 3054* . . . . . 556
- The foreigner resident in Italy who has inherited and used a current account abroad is subject to the penalties set forth under the Law n. 476 dated 6th June 1956, applicable to ascertained infringements of foreign exchange control provisions.
46. *Court of Cassation, 1st April 1987 n. 3135* . . . . . 522
- The request for preliminary ruling on interpretation by the European Court of Justice set forth under Art. 177 of the EEC Treaty, which is mandatory for judges of the superior level of the proceedings and optional for the others, infers that the question of interpretation regards EEC provisions of law, that it is controversial and is relevant in order to define the proceedings *a quo*.
- When domestic and EEC provisions of law are in conflict, the EEC Court of Justice is not competent to decide through a preliminary ruling. The above issue lays within the competence of the domestic judge.
- Italian provisions of law on social security and welfare contributions applicable to Notary Publics (under the Law dated 16th February 1913 n. 89) were enacted prior to the entry into force of the EEC Treaty and therefore cannot introduce any « new restrictions » to the free circulation of services as prohibited under Art. 62 of the said Treaty.
47. *Court of Cassation, 3rd April 1987 n. 3221* . . . . . 714
- When the parties agree in writing that any controversy arising there-  
under shall be settled by arbitration, the Court of the State party to the  
New York Convention before which the claim is filed as per Art. II n. 3  
of the said Convention, has to provide for the remittance of the case  
before to the arbitral court upon request of one of the parties provided  
that the aforesaid agreement is not uneffective and inapplicable.

The above provision is directed to the judge of the State party to the Convention before whom one of the parties contests the jurisdiction of that judge according to the written agreement thereunder. The judge is authorized to reject the aforesaid objection when he ascertains the uneffectiveness of the agreement.

The principles set forth according to Arts. 91 and following of the Civil Procedure Code are not derogated under Art. III of the 1958 Convention providing that the burden of the expenses has to be borne by the party filing the request for the recognition and enforcement of the foreign arbitral award and referring to the provisions of national law relating to the enforcement of domestic arbitral awards. In this case the Court orders the losing party to bear the expenses of the proceedings.

In order to ascertain whether the arbitral award is contrary to public policy the *decisum* thereunder has to be taken into consideration, being therefore irrelevant the fact that the rendered award is affected by the fraudulent intent of one of the parties or by the mistake incurred into by one of the parties as resulting from the acts of the proceedings.

The right to be granted defence set forth under Art. 24 of the Constitution and under Art. V n. 1 lett. b) of the 1958 Convention has to be interpreted as the right to be granted professional and technical assistance during the trial, so that the congruity of the term for defence is ascertained taking into consideration the concrete circumstances of fact existing on the defendant and the fact that the procedural terms are suspended during the Summer holiday period.

48. *Constitutional Court, 15th April 1987 n. 128* . . . . . 483

The Section of Law dated 9th October 1974 n. 632 authorizing the ratification of the Treaty on extradition signed between Italy and the United States of America on 18th January 1973, is contrary to Arts. 31 and 27 of the Constitution and therefore illegitimate where extradition of minors aged over fourteen is allowed even when the latter is considered under U.S. law as an indicted adult.

49. *Pisa Pretore, 4th May 1987* . . . . . 721

The acquisition of the status of « civil element » under the NATO military corp implies, according to the London Convention dated 19th June 1951, that the so qualified person does not permanently reside in the hosting State and does not exercise a role directly connected to the performance of typical NATO duties.

The Italian judge is competent to hear a claim arising from an employment relationship established between the U.S. Government and an U.S. citizen permanently residing in Italy, hired for the maintenance of the sports equipment at the NATO base of Camp Darby in Pisa without being hired as a NATO member staff.

50. *Florence Tribunal, 7th May 1987* . . . . . 313

An agreement on jurisdiction incorporated in a contract and filed according to Art. 17 of the Brussels Convention dated 27th September 1968 is applicable to any dispute arising from the aboveof contract.

According to Art. 17 of the said Brussels Convention, an agreement on jurisdiction does not require any specific consent in writing when the contract does not embody general conditions of contract drafted by one of the parties.

Art. 6 n. 1 of the Convention is not applicable if a valid jurisdiction clause has been signed under Art. 17 of the Convention.

Any court other than the court first seized may stay its proceedings of its own motion in case of related actions, as per Art. 22 of the Convention. This entails a mandatory stay of proceedings, as to Art. 295 of the Civil Procedure Code.

Pursuant to Art. 22 of the Brussels Convention, the Italian judge competent to hear a claim on social security not governed by the hereof Convention as to Art. 1 n. 3 has to stay the proceedings in order to enable the foreign judge, competent under the jurisdiction clause duly entered into by the parties under Art. 17 of the Convention, to decide the preliminary issue concerning the employment contract.

51. *Criminal Court of Cassation, decree 11th May 1987 n. 1974* . . . . . 727

General principles of international law do not prescribe limitations on States as to the deportation of foreign citizens.

As per Art. 5 n. 4 and n. 1 of the European Convention on Human Rights signed in Rome on November 4th, 1950, a foreign citizen when arrested is entitled to claim a jurisdictional control on the lawfulness of his arrest and has the right to request that no contemptuous deportation take place or that his deportation does not give way to a « masked extradition ».

Italian law, granting the right of asylum under Art. 10 of the Constitution and the judicial protection in case of an administrative exclusion order is already close to the principles set forth under the Seventh Protocol to the European Convention on Human Rights, however not ratified by Italy.

52. *Milan Tribunal, 11th May 1987* . . . . . 149

When a judgment is to take place in the absence of the foreign defendant, the Italian judge, according to Art. 37, second paragraph of the Civil Procedure Code, must declare its lack of jurisdiction on his own notion.

Any controversy arising from a contract that, according to an interpretation based on *lex fori* of Art. 4 n. 2 of the Civil Procedure Code, was not stipulated in Italy or was not to be performed in Italy, cannot be brought before an Italian judge.

53. *Court of Cassation (plenary session), 14th May 1987 n. 4450* . . . . . 526

Art. 5 n. 1 of the Brussels Convention dated 27th September 1968 is not applicable to the ascertainment of the release of suretyship obligations.

According to Art. 6 n. 2 of the said Brussels Convention, the Italian judge is competent to decide on the ascertainment of the release of an insurance suretyship in favour of a German company when the main lawsuit has been motioned in Italy by the said company. Any subsequent development of the case is irrelevant.

54. *Constitutional Court, 21st May 1987 n. 192* . . . . . 175

The question of the constitutional validity of the Presidential Decree dated 10th September 1982 n. 915 on the application of EEC Directives by Italy and by the Regions for violation of respective legislative competences is manifestly unfounded.

55. *Constitutional Court, 25th May 1987 n. 189* . . . . . 557

Arts. 1 and 3 of the Law n. 1085 dated 24th June 1929 providing for a penalty to be erogated when foreign State flags are exposed without the

preliminary authorization of the local authority are constitutionally illegitimate in as much as they are contrary to Art. 3 of the Constitution.

56. *Court of Cassation, 26th May 1987 n. 4706* . . . . . 529

In order to obtain the recognition and enforcement of a foreign arbitral award, the exhibition of the original or of a duly certified copy of the arbitral clause is required pursuant to Art. IV of the New York Convention dated 10th June 1958.

In order to ascertain which conditions are required for the authenticity of the copy of the arbitral clause, the procedural law of the State where the request is made is applicable (Art. III of the New York Convention).

A photocopy of the arbitral clause without the required authentication certificate as per Art. 2715 of the Civil Code cannot be considered an authenticated copy.

The fact that the defendant has not contested the fidelity to the original of the exhibited copy as per Art. 2719 of the Civil Code is irrelevant because posterior to the request for the recognition of the award.

57. *Constitutional Court, 28th May 1987 n. 211* . . . . . 490

The issues of the constitutional validity of Art. 3 of the Presidential Decree dated 29th September 1973 n. 599 according to which ILOR taxation (local taxation) on royalties income is not due by foreign companies having a non stable organization in Italy is unfounded under Art. 76 of the Constitution, for as far as Art. 4 n. 2 of the delegated Law, October 9th, 1971, n. 825 on the taxation reform is concerned, only general criteria for taxation of income produced in Italy are indicated. The referred Art. 4 n. 2 does not, even implicitly, give an indication as to which incomes are to be included in such category.

Art. 3 of the Presidential Decree dated 29th September 1973 n. 599 is not contrary to Arts. 3 and 53 of the Constitution as the choice of the Italian legislator cannot be criticized for having not provided for ILOR taxation on royalties income produced in Italy for the benefit of foreign enterprises abroad under the consideration of encouraging foreign companies to do business in Italy and to promote the insufficient domestic market.

58. *Rome Tribunal, 30th May 1987* . . . . . 730

Because of the partial constitutional illegitimacy of Art. 18 of the Preliminary Provisions to the Civil Code, the divorce between a foreign citizen and an Italian national is to be governed under Art. 17 of the Preliminary Provisions.

Each spouse can invoke the dissolution of the marriage for reasons admitted under his/her national law, provided the relevant provisions are not contrary to public policy and taking into consideration that the two different national laws applied in accordance with Art. 17 of the Preliminary Provisions to the Civil Code have to be applied separately.

59. *Court of Cassation, 4th June 1987 n. 4888* . . . . . 734

A foreign judgment on divorce is not contrary to public policy and, therefore, is enforceable in Italy provided that the foreign judge founded his decision on a long-time separation and ascertained an irretrievable breakdown of the marriage even on basis of an informal interrogatory of the parties.

60. *Court of Cassation, 9th June 1987 n. 5026* . . . . . 534
- An exclusive supply contract in favour of a foreign company is necessarily subject to the preliminary authorization by the Ministry for Foreign Trade as per Art. 2 of the Decree n. 476 dated 6th June 1956.
- A foreign judgment rendered on a void contract from which a contractual obligation on an Italian citizen is derived cannot be enforced in Italy because contrary to public policy.
61. *Court of Cassation, 18th June 1987 n. 5357* . . . . . 320
- The mere filing of a case before a judge, included an incompetent judge, as per Art. 3 n. 6, fourth paragraph of the Brussels Convention dated 25th August 1924 on bills of lading, prevents the action from becoming statute barred. This provision prevails over national law due to its special nature.
- According to Art. 3 n. 6, fourth paragraph of the Brussels Convention, and to Art. 50 of the Civil Procedure Code, as interpreted extensively by Italian case law, the claim does not become barred when within a six month term from the Court's decision declining its competence the case is filed before the competent judge.
62. *Venice First Instance Tax Commission (3rd session), 22nd June 1987* . . . 151
- According to Art. 29 of the Italo-Austrian Convention dated 29th June 1981 on the prevention of fiscal evasion, its provisions are applicable in Italy to taxable incomes relating to tax periods starting from January 1st, 1974. Following the retroaction of the Convention, the Tax Commission can examine the merits of assessments even if the requirements thereof have ceased in the meanwhile.
- According to Art. 5 of the Convention, the expression « stable organization » indicates the place where the company partially or totally has its business.
- Book-keeping of a stable organization in Italy, which falls within the notion of « form of deeds », can be disciplined by the law of the place where the company is based, as per Art. 26 of the Preliminary Provisions to the Civil Code. Italian fiscal provisions are mandatory, as per Art. 31 of the Preliminary Provisions to the Civil Code.
- Therefore a foreign company having a stable organization in Italy is subject to the Italian fiscal provisions of law even regarding the documentary evidence of the various expenses subordinated by the company.
63. *Council of State (1st Section), ruling 3rd July 1987, n. 1225/87* . . . . 736
- The acquisition of Italian nationality by a foreign spouse who has married an Italian national only for that reason cannot be denied save in case of non compliance with the conditions requested under the Law n. 123 dated 21st April 1983.
64. *Milan Court of Appeal, 14th July 1987* . . . . . 537
- The reference to « sufficient time to enable the defendant to defend » as per Art. 15 of the Hague Convention on the service abroad of documents dated 15th November 1965 implies that a power-duty is conferred upon the judge to ascertain case by case the congruity of the terms assigned to the defendant for his statement of defence.
- A 28 day term assigned to a defendant residing in Finland, in order to make his appearance before the Italian judge, is not sufficient.

65. *Criminal Court of Cassation, 17th-23rd July 1987 n. 3932* . . . . . 327
- The institutional bodies of the Catholic Church cannot be controlled by the Italian Government and therefore cannot be sued before a Criminal Court, according to Art. 11 of the Laterano Treaty signed between the Italian Government and the Holy See and enforced in Italy by the Law n. 810 dated 27th May 1929.
66. *Bologna Tribunal, 18th July 1987* . . . . . 740
- As per Art. 27 of the Preliminary Provisions to the Civil Code and per Art. II n. 3 of the New York Convention dated 10th June 1958 on the enforcement of foreign arbitral awards, whether a claim can be settled by arbitration has to be ascertained in accordance with the law of the judge whose jurisdiction is contested.
- The issue of the validity of a clause under which no competition policy is undertaken by the party for a period of two years following the cancellation of an agency contract cannot be settled by arbitration as public law provisions and public interest provisions are applicable (Art. 85 of the EEC Treaty and Art. 2, first paragraph, lett. a) of the EEC Commission Regulation 67/67 dated 22nd March 1967).
- An infringement of Art. 85 of the EEC Treaty takes place when the contract hereof compromises the trade relationship between the Member States and produces its effects outside the territory of only one State.
67. *Florence Court of Appeal, 22nd July 1987* . . . . . 541
- According to Art. 10 of the Navigation Code a carriage by sea is governed by the national law of the ship, save the different choice of the parties.
- When U.S. law applies to a carriage by sea, on the base of the Uniform Commercial Code, negotiable bills of lading have to be distinguished from non negotiable bills of lading because only the former ones are to be considered negotiable instruments.
- As per Art. 30 of the Preliminary Provisions to the Civil Code the renvoi set forth under U.S. law to the law of the country where the bill of lading has been issued cannot be taken into consideration in order to ascertain if the bill of lading is negotiable.
68. *Milan Tribunal, 3rd October 1987* . . . . . 745
- The Italian judge is not competent to hear a claim arising out of an employment relationship between a foreign citizen and some foreign companies not registered in Italy, according to Art. 17 of the Brussels Convention dated 27th September 1968, when the parties have agreed in writing the Dutch judge's jurisdiction on the case; and, when no contract is deemed to have been entered into, according to Art. 5 n. 1 of the said Convention, when the parties have reached an oral agreement abroad (Art. 25, first paragraph of the Preliminary Provisions to the Civil Code) and, finally, the performance has taken place abroad (Art. 25, second paragraph aboveof).
69. *Court of Cassation (plenary session), 15th October 1987 n. 7625* . . . . . 776
- According to Art. 5 n. 1 of the Brussels Convention dated 27th September 1968 and to Art. 59 of the Hague Convention on the uniform law on international sales, the payment of the goods sold by an Italian company to a French buyer has to be performed at the seat of the seller in Italy.



70. *Milan Court of Appeal, 10th November 1987 n. 2348* . . . . . 360

In order to ascertain the validity of an international arbitration clause forming part of a contract entered into by an Italian citizen Art. II of the New York Convention dated 10th June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards is applied.

According to Art. II a valid international arbitration clause can be incorporated in an agreement signed by the parties or formulated by means of telegrams or letters mailed between the parties, even if the formal requirement set forth under the provisions of the law in force in the country where the contract is entered into is more strict.

71. *Criminal Court of Cassation, 13th November 1987 n. 2189* . . . . . 483

The extradition to the U.S.A. of a minor aged over fourteen when he is considered under American Law as an indicted adult can not be allowed because it is contrary to the supreme constitutional principles.

72. *Criminal Court of Cassation, 13th November 1987 n. 2416* . . . . . 546

As per Art. 12 of the European Convention on Extradition signed in Paris on 13th December 1957, the authority of the State to which the request for extradition is filed must limit itself to ascertain that the original or authentic copy of the enforceable sentence has been produced.

According to Art. 3 of the second Protocol to the European Convention on Extradition opened to signature in Strasbourg on 17th March 1978 (not ratified by the State filing the request), and according to the right of defence recognized under the Italian legal system and upheld by the Constitutional Court, Italian authorities have to ascertain, in order to consent to the extradition request, that during criminal proceedings abroad the minimum defence standards have been complied with.

The principle underlying the second paragraph of Art. 3 of the European Convention on Extradition is the same principle formulated under Arts. 3 and 13 of the Constitution and Arts. 5 and 14 of the European Convention on Human Rights. Such principle maintains the fundamental right of the individual to be free and protected from any discrimination that could take place by means of a request for extradition.

When the extradition is requested by a democratic government, the burden of the proof that a so called « masked » extradition is taking place is borne by the person whose extradition is requested.

73. *Trieste Court of Appeal, 18th November 1987* . . . . . 332

A Swiss judgment deciding on a petition for divorce between two Italian spouses both resident in Switzerland can be enforced in Italy according to Art. 1 n. 1 and n. 2 of the Hague Convention dated 1st June 1970 on the Recognition of Divorces and Legal Separations.

As per Art. 6, second paragraph sect. *b* of the Hague Convention, recognition of a foreign judgment on divorce cannot be denied when the law applied does not correspond to the applicable law under the private international law provisions in force within the State in which the enforcement is sought.

A foreign judgment on divorce based on a grounding compatible with the provisions set forth under the Law n. 898 dated 1st December 1970 is not contrary to public policy, as to Art. 10 of the Hague Convention.

74. *Milan Criminal Tribunal, order 26th November 1987* . . . . . 335

The issue of constitutional validity of Art. 11 of the Law n. 810

dated 27st May 1929, providing for the exemption of the Catholic Church's central institutional bodies from any control of the Italian Government, is not manifestly unfounded according to Arts. 1, second paragraph, 7, first paragraph, 102, 112, 3, first paragraph, and 25, second paragraph of the Constitution. Provisions set forth under treaties entered into by the Italian Government cannot however be in contrast with the supreme principles of the constitutional legal order.

75. *Vallo della Lucania Tribunal, 27th November 1987* . . . . . 749

A clause conferring jurisdiction to a German judge forming part of a know-how transfer contract written in a language that one of the parties declares not to know is valid as per Art. 17 of the Brussels Convention dated 27th September 1968. The said contract, being thus only voidable, is still effective until a possible judgment declares it void.

76. *Milan Criminal Tribunal, order 2nd December 1987* . . . . . 342

The exemption from criminal jurisdiction accorded to the Catholic Church's central institutional bodies, as to the interpretation of Art. 11 of the Laterano Treaty provided for by the Court of Cassation, is in contrast with the system of criminal jurisdiction immunities provided for under the Constitution. Therefore the issue of constitutional validity of Art. 11 of the Law n. 810 dated 27th May 1929, according to Arts. 3, 7, 24 and 25 of the Constitution is not manifestly unfounded.

77. *Milan Tribunal, 3rd December 1987* . . . . . 755

According to Art. 17 of the Preliminary Provisions to the Civil Code, any question relating to the juridical capacity of foreign entities has to be solved under the national law of the said entities.

Under the «green book» contemplating the fundamental principles of the Libyan State, banks are not separate entities from the State but are mere technical instruments by means of which the State operates on the financial market.

The determination of reciprocity in order to submit a foreign State's assets to execution or provisional measures, under the Royal Decree n. 1621 dated 30th August 1925, implies the request of the prescribed authorization case by case.

A protective sequestration ordered in Italy on the assets and credits of the Libyan State and of Libyan governmental entities and banks is void if the prescribed authorization has not been previously filed by the Ministry of Justice.

78. *Constitutional Court, 10th December 1987 n. 477* . . . . . 67

Art. 20, first paragraph of the Preliminary Provisions to the Civil Code, in as far as it provides the application of the national law of the father at the time of the marriage to personal relations between spouses, is in contrast with Art. 3, first paragraph and with Art. 29, second paragraph of the Constitution, because it discriminates against the mother for reasons linked exclusively to differences of sex.

The question of constitutional invalidity of Art. 1, n. 2 and of Art. 2, second paragraph of the Law dated 13th June 1912 n. 555 on Italian nationality is manifestly unfounded.

79. *Trieste Court of Appeal, 16th December 1987* . . . . . 351

A judgment on divorce between Italian citizens rendered by a Swiss

judge can be recognized in Italy as per Art. 2 of the Hague Convention dated 1st June 1970 on the Recognition of Divorces and Legal Separations and as per Art. 4, first paragraph of the Civil Procedure Code, when the spouses were resident in Switzerland upon the filing of the suit.

A foreign divorce judgment, rendered on grounds substantially compatible with the provisions of Italian law is not contrary to public policy (Art. 10 of the Hague Convention) nor to the reservation applied by Italy to the Convention (art. 19 n. 1) and therefore can be enforced in Italy.

80. *Trieste Court of Appeal, 11th January 1988* . . . . . 551

According to Art. 797 n. 7 of the Civil Procedure Code and Art. 4, first paragraph of the Convention signed between Italy and Germany on 9th March 1936 on the recognition and enforcement of judgments, a judgment rendered by a German judge on a divorce between an Italian citizen and a citizen of the Federal Republic on the basis of a foreign law analogous in the substance to Italian law, is enforceable in Italy.

81. *Venice Court of Appeal, decree 19th January 1988* . . . . . 155

During proceedings for the enforcement of a foreign judgment under Arts. 31 and following of the Brussels Convention dated 27th September 1968, the order for enforcement cannot be issued until the time for appealing has expired (Art. 36 of the Convention).

82. *Constitutional Court, 18th February 1988 n. 190* . . . . . 495

The issue of the constitutional validity under Art. 3 of the Constitution of Art. 76 of the Law dated 4th May 1983 n. 184 on adoption is unfounded as within the Italian legal system the principle of irretroactivity of the law is not considered as an absolute constitutional principle.

83. *Trieste Criminal Tribunal, 3rd May 1988* . . . . . 766

According to the principle of international law codified under Art. 19 of the Geneva Convention on territorial sea dated 29th April 1958, the criminal jurisdiction of the coastal State on foreign ships passing through the State's territorial sea can be exercised only if the consequences of the crime extend to the said State.

The Italian judge lacks jurisdiction if arms and ammunition are found on board of a foreign merchant ship passing through the State's territorial sea and the said arms and ammunition are considered « board equipment » duly authorized by the foreign authority and no acts affecting the Italian State's security have been committed (Art. 14 of the 1958 Geneva Convention).

84. *Constitutional Court, 5th May 1988 n. 503* . . . . . 691

Art. 8, last paragraph of the Law n. 153 dated 30th April 1969 on retirement benefits, which excludes the minimum integration to a pension accrued on the basis of annual contributions payed for during the working periods in Italy and abroad when the beneficiary is entitled to receive a different pension, is constitutionally illegitimate as contrary to Art. 3, first paragraph, and 38 of the Constitution.

85. *Genoa Tribunal, 18th May 1988* . . . . . 770

The expression "form" figuring in Art. 27 of the Preliminary Provisions to the Civil Code has to be broadly interpreted with the effect that the *lex fori* is applicable to all the aspects of the proceedings.

The provisions on the effects produced by bankruptcy proceedings on pre-existing legal relationships set forth under Arts. 72 and following of the Royal Decree n. 267 dated 16th March 1942 are special provisions and therefore are applied as per Art. 27 of the Preliminary Provisions to the Civil Code when the bankruptcy proceedings take place in Italy.

86. *Constitutional Court, 8th June 1988 n. 609* . . . . . 498

After a judgment has been rendered by the Court of Cassation stating the lack of jurisdiction in an incidental proceeding (dealing with the validity of a warrant for arrest), the judge of the merits can only provide for the consequent proceedings, which consist in the transcription of the abovesaid judgment on the original copy of the annulled decision.

The judgment on the lack of jurisdiction rendered by the Court of Cassation in an incidental proceeding prevents the continuation of the principal cause of action during which the cause restricting personal liberty has occurred.

The issue of constitutional validity cannot be motioned by the judge of merit after that judgment on the lack of jurisdiction has been rendered by the Court of Cassation.

87. *Constitutional Court, 10th June 1988 n. 632* . . . . . 694

When the implementation of EEC law has to be accomplished through domestic provisions of law, these are also binding on Regions and special statute Provinces in matters falling within their specific and exclusive competence.

With reference to Arts. 5 and 116 of the Constitution the issue of constitutional validity of Art. 1, second paragraph and 2 through 15 of the Law dated 30th March 1981 n. 113, concerning adaptation of assignment procedures for procurements under EEC Directive n. 77/62 dated 21st December 1976, is unfounded.

#### COURT OF EUROPEAN COMMUNITIES CASES

- Judgment 10th July 1986, case 198/85* . . . . . 362

The second paragraph of Article 33 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that the obligation to give an address for service of process laid down in that provision must be fulfilled in conformity with the rules laid down by the law of the State in which enforcement is sought, and if that law is silent as to the time at which that formality must be observed, no later than the date on which the decision authorizing enforcement is served.

The consequences of a failure to comply with the rules on the furnishing of an address for service are, by virtue of Article 33 of the Convention, governed by the law of the State in which enforcement is sought, provided that the aims of the Convention are respected.

- Judgment 11th November 1986, case 313/85* . . . . . 365

Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that where a written agreement containing a jurisdiction clause and stipulating that an agreement can be renewed only

in writing has expired but has continued to serve as the legal basis for the contractual relations between the parties, the jurisdiction clause satisfies the formal requirements in Article 17 if, under the law applicable, the parties could validly renew the original agreement otherwise than in writing, or if, conversely, one of the parties has confirmed in writing either the jurisdiction clause or the set of terms which has been tacitly renewed and of which the jurisdiction clause forms part, without any objection from the other party to whom such confirmation has been notified.

*Judgment 15th January 1987, case 266/85* . . . . . 562

For the purposes of determining the place of performance within the meaning of Article 5 n. 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, the obligation to be taken into consideration in a dispute concerning proceedings for the recovery of fees commenced by an architect commissioned to draw up plans for the building of houses is the contractual obligation which forms the actual basis of legal proceedings.

*Judgment 8th December 1987, case 144/86* . . . . . 566

The notion of *lis pendens* under Art. 21 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters can be referred to the case of a request filed before the Court of a Member State for the annulment or the cancellation of an international sales of goods contract by one of the parties while before the Court of another Member State proceedings for the performance of the said contract are still pending.

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