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1. *National Council of Architets, order 30th May 1984* 368

The issue of the constitutional validity of Art. 7 lett. *b* of the Royal Decree dated 23rd October 1925 n. 2537, in so far as it does not authorise foreign citizens, to whom the full exercise of democratic rights is not assured in their home country, to enlist in the National Association of Architects Register, is not manifestly unfounded.

2. *Rome Tribunal, order 18th December 1985* 371

The issue of the constitutional validity of Art. 18 of the Preliminary Provisions to the Civil Code, that provides for the application to the separation between an Italian wife and a Sri-Lanka husband of the national law of the latter at the time of the marriage, is not manifestly unfounded with reference to Arts. 3 and 29 of the Constitution.

3. *Lazio Regional Administrative Tribunal (1st Section), order 7th July 1986* . 95

The issue of the constitutional validity of Art. 8, second paragraph of the Law on nationality dated 13th June 1912 n. 555, concerning the national service of former Italian nationals, arising in relation to the provisions set forth under Arts. 52 and 10, second paragraph of the Constitution, is not manifestly unfounded.

4. *Liguria Regional Administrative Tribunal, order 15th January 1987* . . 89

The issue of the constitutional validity of Art. 10, second paragraph of the Law on nationality dated 13th June 1912 n. 555 and of Art. 7 of the Law dated 21st April 1983 n. 123, relating to the acquisition of Italian nationality by marriage, is not manifestly unfounded.

5. *Court of Cassation, 23rd January 1987 n. 658* 416

The duty on the employer to pay social security contributions even for employees of foreign nationality who have been engaged in Italy as per Art. 1 of the Royal Decree dated 28th August 1924 n. 1422 derives from the principle of the territorial effectiveness of social security.

6. *Court of Cassation (plenary session), 11th February 1987 n. 1464* . . . 417

According to Art. 5 n. 1 of the Brussels Convention dated 27th September 1968 the Italian judge is competent to hear a case concerning the termination of a contract for supply between Italian and German companies if the contract is to be performed in Italy.

7. *Court of Cassation, 25th February 1987 n. 2015* 420

The employer's duty to pay allowances for services rendered abroad, which are distinguished from the salary, ceases when no more services are rendered abroad.

In case the employee is permanently engaged abroad, the part of benefits which have payment and compensation nature must be considered in determining seniority indemnity.

8. *Court of Cassation, 25th March 1987 n. 2911* 420

The indemnity fee of 82% of the salary provided for stewards and hostesses in duty abroad under the Collective agreement dated 1973 is considered as daily allowance or travelling indemnity having nature of compensation and payment, and it is relevant in order to determine the pension due only for the 50% of its amount, therefore to the extent that it is subject to social security contributions.

9. *Court of Cassation, 7th April 1987 n. 3382* 426
According to Art. 57 of the EEC Ruling dated 14th June 1971 n. 1408, when a coal miner suffering from an occupational disease has been working in two or more EEC Member States, the insurance allowances are due according to the law of the country where the miner has been exposed for the last time to risks on work.

10. *Court of Cassation, 10th April 1987 n. 3579* 426
According to Art. 12 of the EEC Ruling dated 25th September 1958 n. 3, when a worker has performed his activities exclusively in one State and in that State only the relevant insurance relationship is established, the worker may demand his social security benefits only from that State.

11. *Court of Cassation, 22nd April 1987 n. 3908* 426
Art. 2, second paragraph of the Law dated 12th August 1962 no. 1338 is to be interpreted in the sense that the prohibition to grant the minimum pension to workers who enjoy benefits from the Italian pensions administration does not apply to a worker who has accrued his pension through various insurance and social security contributions both in Italy and abroad.

12. *Court of Cassation, 22nd April 1987 n. 3909* 427
According to the provisions under Art. 67 n. 1 and Art. 71 n. 1 lett. *b* II, of the EEC Ruling dated 14th June 1971 n. 1408 (as interpreted by the Court of Justice of the European Communities) even employees who have kept a tie link to the State of usual abode can benefit from the addition of all social security contributions paid and all working periods spent in any Member State in order to determine the amount of unemployment compensation.

13. *Court of Cassation (plenary session), 28th May 1987 n. 4795* 417
The Italian judge is not competent under Art. 5 n. 1 of the Brussels Convention dated 27th September 1968 to hear a case filed for the termination of an agency agreement to be performed in France.

14. *Court of Cassation, 1st June 1987 n. 4825* 420
In order to determine the compensation and payment elements of allowances for services rendered abroad, the cause of the foreign assignment, whether by contract or unilateral, the existence of expenses reimbursement, the object and the length of the activities and the legal sources concerning fiscal treatment of said allowance must be considered.

15. *Court of Cassation, 19th June 1987 n. 5378* 863
According to a fundamental principle of the Italian provisions on international adoption (as per Law dated 4th May 1983 n. 184) a child of foreign nationality can be adopted abroad by Italian nationals and the adoption can be effective in Italy if the foreign State has, through its authorities, given its consent to the fact that its national is leaving the State's community to become member of another State's community.

In order to be enforced in Italy, a foreign judgment on adoption is to be legalized according to Art. 17 of the Law dated 4th January 1968 n. 15.

The declaration released by the Italian consul under Art. 31, first paragraph of the Law n. 184 of 1983 stating that the foreign judgment on adoption has been taken in accordance with the laws of the foreign country cannot be considered substitutive to the required legalization.

16. *Court of Cassation, 20th June 1987 n. 5459* 101

The provisions under Paragraph 7 of the Annex XIV to the Peace Treaty dated 10th February 1947 and under the bilateral Agreement between Italy and Yugoslavia dated 18th February 1954 on social security apply to Italian nationals as of 10th June 1940 who after 16th September 1947 opted or did not opt for the Italian nationality. The above provisions do not apply to Italian nationals that chose to change nationality under other rules.

For the application of the Exchange of notes between Italy and Yugoslavia dated 5th February 1959 on social security, a former Italian national who has become Yugoslavian national under the Peace Treaty and has thereafter acquired again Italian nationality is considered as an « Yugoslav national ».

In order to determine social security contributions paid in Italy and in Yugoslavia by a person who has changed nationality, the bilateral Convention of 14th November 1957 shall apply. Art. 18 thereunder, contemplating a « safeguard provision », considers equally relevant the contributions periods accrued in any of the two States and equivalent periods, such as national service.

17. *Court of Cassation (plenary session), 27th June 1987 n. 5722* 909

Disputes arising out of an employment contract for a limited period entered into between the Ministry of foreign affairs and an Italian national relating to teaching services to be rendered at the University of Asmara have to be filed before the ordinary judge having such contract private law nature.

18. *Rome Tribunal, 27th June 1987* 652

Under Art. 22 of the Preliminary Provisions to the Civil Code, Italian law is applicable in order to determine the property of goods belonging to cultural property stolen abroad but purchased bona fide in Italy and herein seized.

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 14th November 1970, is binding only for Contracting States.

The psycological element required in order to figure an uncautious acquisition (Art. 712 of the Criminal Code) is different from the gross negligence in the possession in good faith (Art. 1147, second paragraph of the Civil Code).

Gross negligence is not chargeable to an antiquarian, who having purchased in Italy cultural property stolen abroad has neglected to investigate on how the seller had come into possession of the goods.

19. *Court of Cassation (plenary session), 13th July 1987 n. 6099* 155

The General Headquarters of the Allied Forces in Southern Europe (A.F.S.E.) can stand before the Court upon proxi by the Supreme General Headquarters of the Allied Forces in Europe (S.H.A.P.E.) as per Art. 6, lett. *b* of the Paris bilateral Agreement dated 26th July 1961.

The General Headquarters of the Allied Forces in Southern Europe is immune from Italian jurisdiction for disputes with the administrative personnel enjoying international status, having Italian nationality.

20. *Court of Cassation (plenary session), 13th July 1987 n. 6100* 155

The General Headquarters of the Allied Forces in Southern Europe is immune from Italian jurisdiction regarding disputes arising out of employment relationships with the personnel enjoying international status even of Italian nationality and rendering legal consultancy services or legal services connected with claims before Italian courts.

21. *Court of Cassation (plenary session), 15th July 1987 n. 6171* 106

A foreign public authority is subject to Italian jurisdiction as far as litigation on a lease of property in Italy notwithstanding the reasons for which that authority has entered the contract.

22. *Court of Cassation (plenary session), 15th July 1987 n. 6172* 109

A foreign State is not subject to Italian jurisdiction regarding disputes arising from an employment contract entered into with an Italian national who permanently belongs to the organization of the diplomatic mission even though he performed manual activities.

23. *Constitutional Court, 16th July 1987 n. 269* 912

The issue of the constitutional validity of Art. 34, first paragraph lett. *a* of the Law dated 6th February 1941 n. 176 as contrary to Art. 3 of the Constitution is manifestly unfounded insofar as it excludes teachers employed by the Ministry of education who have rendered their services in Africa when re-enrolled in the national service from the raise accorded to primary school teachers employed by the Ministry of foreign affairs and by the Ministry for Italian colonies in Africa for the determination of the retirement benefit.

24. *Court of Cassation 25th August 1987 n. 7009* 913

The salary paid in Italy by an Italian company to an Italian employee emigrated abroad for services rendered abroad is not part of the taxable income and therefore is not subject to the withholding tax.

25. *Court of Cassation, 12th October 1987 n. 7526* 866

Considered that the possibility to appeal in cassation depends on the nature of the decision appealed, the decision of enforcement in Italy of a foreign judgment on adoption can be appealed before the Court of Cassation because such decision is affecting the conflicting rights of the parties.

Art. 76 of the Law dated 4th May 1983 n. 184, which provided for the applicability of the provisions of law previously in force to the adoption proceedings pending or already closed at the entry into force of the new provisions, is relevant for adoption proceedings pending before the judge of the State of origin of the minor as well as for proceedings pending before the Italian judge and relating to the recognition of a foreign judgment on adoption even if the request has been filed after the entry into force of the said law; such request has therefore to be filed before the Court of Appeal.

The issue of the constitutional validity, as in contrast with Arts. 3, 24, and 25 of the Constitution, of Art. 801 of the Civil Procedure Code, which does not refer to Art. 798 of the said Code and therefore does not allow a review as to substance of a foreign judgment issued in chambers is manifestly unfounded.

26. *Court of Cassation, 12th October 1987 n. 7531* 870

Lacking any specific provision of law, the appeal in cassation against a decree issued by the Juvenile Tribunal providing for the enforcement in Italy of a foreign judgment on adoption, foster placement and guardianship (Art. 32, 2nd paragraph of the Law dated 4th May 1983 n. 184) has to be filed within sixty days according to the general principle of law under Art. 325 of the Civil Procedure Code.

Any agreement or act between the family of the minor and the adoptive parents relating to the foster placement of the minor is not contrary to public policy if such act has been submitted to real scrutiny by the foreign public authority.

The issue of the constitutional validity raised because of a non-equal treatment between the minor of Italian nationality, for whom the law prohibits any private agreement, and the minor of foreign nationality, for whom such agreements can be valid in the adoption proceedings abroad, is manifestly unfounded upon the condition that the fundamental rules of the Italian legal order are maintained.

The enforcement of a foreign judgment in Italy does not entail necessarily that the extent and the effects produced by such judgment according to the legal order under which it has been issued are the same recognized to it in Italy.

The recognition of a Brazilian judgment on adoption in which the foreign judge has simply transferred the contents of an act issued by a Notary Public cannot be admitted in Italy being such recognition contrary to the principles of Italian law ruling family relations.

27. *Rome Tribunal, 15th October 1987* 114

For the purposes of Art. II of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10th June 1958, it is sufficient that the arbitration clause be contained in an agreement signed by the parties or in letters or telegrams exchanged between them, not being a specific approval in writing required as under Arts. 1341 and 1342 of the Civil Code.

The arbitration clause under Art. II of the New York Convention is effective if the consent is specifically expressed by the parties by means of specific written declarations: mere reference to general conditions of other contracts is not sufficient.

The recognition of a foreign arbitral award may be rejected due to the insufficient time accorded to the parties to appear before the arbitrators, as per Art. V of the New York Convention, only if the interested party is able to prove that such a short time has prevented that party from being timely informed on the arbitration proceedings or from exercising its right to defense.

Art. 798 of the Civil Procedure Code concerning the review as to substance is not applicable to the recognition of a foreign arbitral award because default in appearing is not to be technically considered as such in arbitration proceedings.

28. *Court of Cassation, 21st October 1987 n. 7762* 158

Only goods qualified as naval stores and loaded on military ships for consumption during navigation are exempted from custom duties.

29. *Court of Cassation (plenary session), 28th October 1987 n. 7972* . . . 119

According to Art. 57 of the Brussels Convention dated 27th September 1968, in order to determine the competent judge in relation to an arrest in respect of a maritime claim, the Brussels Convention of 10th May 1952 on the Arrest of Seagoing Ships applies.

A clause conferring jurisdiction to a foreign judge, contained in a contract relating to a carriage of goods by sea, and relative to disputes arising out of a bill of lading cannot be invoked when the parties submitted in court events taken place prior to the signature of the said bill and not related to any operation connected with the bill of lading.

Under the Brussels Convention of 1952 on the Arrest of Seagoing Ships the Italian judge has jurisdiction on issues relating to the arrest of a foreign ship made in Italian territorial waters. The Italian judge is also competent to hear the claims concerning the cancellation of the contract for breach of contract and the subsequent compensation for damages because they arise out of a maritime claim and are submitted to the judge of the State in which the arrest was made. Italian jurisdiction is based also on national provisions of law, as the dispute concerns obligations arisen in Italy (Art. 25 of the Preliminary Provisions to the Civil Code and Art. 4 n. 2 of the Civil Procedure Code) and to be fulfilled in Italy (Art. 25 of the Preliminary Provisions to the Civil Code and Art. 1182 of the Civil Code).

30. *Court of Cassation (plenary session), 2nd November 1987 n. 8050* . . . 125

Under the New York Convention dated 10th June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, an arbitration clause which provides that the appointment of arbitrators and the arbitration proceedings will take place according to the rules of an international organization (in this case the ICC) is valid.

Even in case of a valid arbitration clause, the Italian judge is competent to authorize a seizure to be made in Italy and subsequently to confirm it, irrespective of the fact that proceedings on the merits are pending before an arbitral court.

31. *Court of Cassation, 16th November 1987 n. 8380* 129

In order to perform the ius postulandi in proceedings for the enforcement in Italy of a foreign decision the simple appointment of a barrister is sufficient. There is no specific provision requiring that the barrister need a special power of attorney indicating the court before which the barrister has to appear.

As stated by the Court of Justice of the European Communities, according to Art. 39 of the Brussels Convention dated 27th September 1968 the party who has been authorized to enforce the foreign decision can, pending the terms indicated under said article, proceed to protective measures against the property of the party against whom enforcement is sought: a specific confirmation of such measures is not required.

32. *Court of Cassation (plenary session), 19th November 1987 n. 8499* . . 160

The enforcement of a foreign arbitral award as per the New York Convention dated 10th June 1958 excludes the review as to substance of the claim decided by the arbitrators.

33. *Court of Cassation (plenary session), 11th December 1987 n. 9210* . . . 161

The jurisdiction clause in favour of a German court incorporated in the general conditions of contract printed on the back of a bill of lading signed by the carrier's agent on the front page and by the shipper on the back page is not valid under Art. 17 of the Brussels Convention dated 27th September 1968 if there is no explicit reference to the jurisdiction clause and to the general conditions.

34. *Court of Cassation (plenary session), 11th December 1987 n. 9214* . . 136

In a case concerning the payment of professional fees due for extra-judicial services, under Art. 5 n. 1 of the Brussels Convention dated 27th September 1968, the partial payment already performed in Italy cannot be considered the "disputable obligation", but the amount still due is to be taken into consideration. The payment has to be performed according to Art. 1182 of the Civil Code at the domicile of the debtor because it is an illiquid credit. The opinion of the Bar Association on the specific issue is not binding before the Court.

35. *Court of Cassation (plenary session), 16th December 1987 n. 9321* . . 141

Under Art. 31 of the Vienna Convention dated 18th September 1961 on Diplomatic Relations, the diplomatic agent of a foreign country enjoys immunity from Italian jurisdiction even for those activities performed as a private person.

The exceptions to diplomatic immunities set forth under Art. 31 of the 1961 Convention (interpreted in accordance with Arts. 31 and 32 of the Vienna Convention dated 23th May 1969 on the Law of Treaties) and in particular the exception relating to real actions concerning private immovable property, have to be construed in accordance with the pre-existing relevant rules of international law.

The Italian judge is not competent to hear a claim arising between an Italian national and a foreign diplomatic agent relating to the lease of an immovable property rented to the latter for his residence.

36. *Court of Cassation (plenary session), 16th December 1987 n. 9322* . . 143

The rule of international customary law under which foreign States are immune from Italian jurisdiction is embodied in the Italian legal order as per Art. 10 of the Constitution. Such immunity can be invoked in connection with the instruments by means of which foreign States pursue their public purposes.

The Italian judge is not competent to hear a claim arising out of an employment contract between an Italian national and a French Lyceum, if the activities of the latter can be directly connected with France, who aims through this Institute to the diffusion of the French culture abroad.

37. *Turin Tribunal, 22nd December 1987* 659

Art. 24 of the Law on Bankrupcty is meant to govern the internal competence of the Italian judge and not his international jurisdiction.

The actio pauliana set forth under Art. 67, second paragraph of the Law on Bankruptcy has its grounding in and is strictly connected to the winding up proceedings and therefore the Brussels Convention dated 27th September 1968 does not apply according to its Art. 1, second paragraph n. 2.

Art. 4 n. 2 of the Civil Procedure Code applies in order to determine Italian jurisdiction on a case filed against a defendant domiciled in a

Contracting State of the Brussels Convention and to which said Convention is not applicable.

Italian judges lack jurisdiction, under Art. 4 n. 2 of the Civil Procedure Code, to hear an actio pauliana in a winding up proceedings filed against a foreign company being such law suit meant to ascertain the uneffectiveness of the payments made by the wound up company; though said payment is caused by the existence of an obligation between the latter and the defandant, still it does not constitute an obligation under the mentioned provisions of law.

According to Art. 4 n. 3 of the Civil Procedure Code, while Italian jurisdiction extends to the petition filed in order to ascertain the uneffectiveness of the payments made by a wound up company by an actio pauliana, it does not extend to an ancillary petition for the reimbursement of a sum filed against a foreign company.

38. *Court of Cassation, 11th January 1988 n. 67* 884

The Court of Appeal has to control the existence of the conditions for the enforcement of foreign judgments, issued in chambers, in compliance with Art. 801 of the Civil Procedure Code within the limits set forth under Art. 797 of said Code without any further examination on the issues relating to substantial or formal legitimacy of the foreign judgment.

The limits and the difference of age between the adoptive parents and the adopted child indicated under Art. 6, second paragraph of the Law dated 4th May 1983 n. 184 are not principles of public policy.

A foreign judgment issued prior to the entry into force of the Law n. 184 dated 1983 providing for the adoption of a minor of Italian nationality by Italian nationals residing abroad can be enforced in Italy by the Court of Appeal and produce the effects of an ordinary adoption even if the difference of age between the adoptive parents and the adopted child differs from the limits under the above mentioned provisions of law.

39. *Court of Cassation, 18th January 1988 n. 325* 666

If a foreign judgment fully embodies events mentioned by the parties and considered still existing, the judge before whom its enforcement is sought cannot but refer to such events, which entail an ascertainment of the foreign decision without any modification and without infringing the prohibition of review as to substance set forth under Art. 798 of the Civil Procedure Code.

For the enforcement of a foreign judgment, the judge has to examine both the contents of the foreign law applied and the contents and effects of the foreign judgment; therefore, is not contrary to public policy a divorce filed and issued in France between a French and an Italian national under Art. 233 of the French Civil Code which provides that the judge has to be informed on the events (chargeable to one or to the other spouse) which make life in common intollerable.

A foreign judgment on divorce is not contrary to public policy even if it is based on the evaluation or the decision of the spouses.

40. *Court of Cassation (plenary session), 19th January 1988 n. 392* . . . 890

Art. 37 of the Law dated 4th May 1983 n. 184 provides that the minor of foreign nationality deserted in Italy is subject to the Italian Law on adoption.

Considering furthermore the judgment n. 199 issued by the Constitutional Court on 18th July 1986, Art. 37 of the Law on adoption figures

as a provision of law ruling on the jurisdiction which requires as sole condition that the minor is within the Italian territory in state of desertion, waiving therefore to the principles set forth under Art. 4 of the Civil Procedure Code. The provisions of the Law on adoption are mandatory provisions of law and therefore prevail on the common principles of private international law.

Art. 37 of the Law on adoption does not infringe general international law as referred to under Art. 10 of the Constitution because the special Law on adoption issued with the intent to protect the deserted minor prevails on the general provision of Art. 17 of the Preliminary Provisions to the Civil Code.

41. *Court of Cassation, 22nd January 1988 n. 487* 375

Art. 5 of the Law on divorce dated 1st December 1970 n. 898 has implicitly abrogated the third paragraph of Art. 72 of the Civil Procedure Code without affecting the power of the "Pubblico Ministero" to appeal against the enforcement of foreign judgments on divorce (Art. 72, fourth paragraph of the Civil Procedure Code).

Art. 796, second paragraph of the Civil Procedure Code providing that the "Pubblico Ministero" has necessarily to intervene in case of enforcement of foreign judgments is a mandatory provision of law.

The appeal in cassation against the judgment of the Court of Appeal declaring the enforcement in Italy of a French decision issued during a divorce proceedings is not admissible if the "Procuratore Generale" by the Court of Appeal has not been summoned to stand before the Court of Cassation.

42. *Court of Cassation, 25th January 1988 n. 607* 712

In accordance with the principle of perpetuatio iurisdictionis, the Juvenile Tribunal declaring the fitness of the spouses for adoption is also competent to issue the subsequent acts in order to continue and eventually close the international adoption proceedings.

43. *Constitutional Court, order 26th January 1988 n. 109* 87

The issue of the constitutional validity of Art. 8, second paragraph of the Law on nationality dated 13th June 1912 n. 555 arising in relation to the provisions set forth under Art. 3 of the Italian Constitution is manifestly unfounded.

The reasons for different applicable rules to national service relevant to a former national under Art. 7 of said Law lay on the actual different situations to be governed.

44. *Court of Cassation (plenary session), 3rd February 1988 n. 1073* . . . 712

The Italian judge is competent to hear a case arising between the Sovereign Military Order of Malta and the director of a farm owned by said Order, being the employment relationship only indirectly meant to provide the means for the achievement of the institutional aims of the Order.

45. *Bologna Juvenile Tribunal, 4th February 1988* 379

The enforcement in Italy of a foreign judgment authorizing the adoption of a minor of foreign nationality by two Italian spouses does not entail the recognition of the personal data of the adopted child as figuring in the judgment.

The intent of the Law dated 4th May 1983 n. 184 on adoption of

minors, according to which only the Italian judge is competent to issue the act of adoption of a minor of foreign nationality and which bars subsequently any automatic enforcement in Italy of an adoption judgment issued abroad, constitutes a limit of public policy which prevents Art. 17 of the Preliminary Provisions to the Civil Code from being applied, as per Art. 31 thereof.

46. *Court of Cassation, 16th February 1988 n. 1631* 382

As per Art. 3 of the Law dated 12th March 1968 n. 316 on commercial agency, the enlistment in the Register of commercial agents takes place upon application filed by the interested party who possesses the requirements and is an Italian national or a national of one of the EEC Member States or a foreigner residing in Italy. The application has to be filed to the Chamber of Commerce of the district where the party has his residence.

The enlistment is mandatory only for agents resident in the territory of the State and not for those agents who, even if Italian nationals, are operating abroad.

Art. 9, first paragraph of the Law of 1968, prohibits commercial agents to operate if not enlisted, while its second paragraph prohibits commercial agency agreements with not enlisted agents.

Under the principle of the territorial effectiveness of criminal law, the provision under the first paragraph of Art. 9 of the Law of 1968 can only affect commercial agents operating in Italy and the prohibition set forth in the second paragraph of said article affects only commercial agency agreements to be performed in Italy.

Commercial agency agreements entered into in Italy but to be performed abroad cannot be considered void for default of enlistment of the agent.

47. *Court of Cassation, 25th February 1988 n. 2029* 674

The employment relationship between an Italian national and a branch office abroad of an Italian bank is governed by Italian law, according to Art. 25, first paragraph of the Preliminary Provisions to the Civil Code, being such office an organ of the bank.

Lacking any contrary provision of law or principle in the Italian legal system, collective agreements are applied even to the employment relationship between Italian nationals for services rendered abroad if the parties have not limited the territorial effects of such agreements.

48. *Milan Court of Appeal, 26th February 1988* 681

Under Art. 18, second paragraph of the Geneva Convention dated 19th May 1956 on the Carriage of Goods by Road, the burden to demonstrate that the loss or the damage of goods derives from one of the special risks which, according to Art. 17, fourth paragraph, free the carrier from any liability lays on same carrier.

49. *Court of Cassation (plenary session), 1st March 1988 n. 2171* 387

The Italian judge is competent to hear a case arisen between an Italian company and several foreign companies if a settlement on the distributorship of a film outside Italy has been entered into by the parties, under which the Italian judge is indicated as competent to hear the cases arising thereunder.

According to Art. 4 n. 3 of the Civil Procedure Code, Italian courts

are competent to hear cases arising between an Italian company and several foreign companies when the causa petendi is the same as in a case filed by the same plaintiff against an Italian company.

50. *Court of Cassation (plenary session), 4th March 1988 n. 2265* . . . 714

According to Art. 36 of the Constitution (and to the 1975 OIL Convention n. 143) the right to receive an adequate salary, to rest, to holidays are attributed to workers irrespective of their nationality; consequently the requisite of reciprocity as per Art. 16 of the Preliminary Provisions to the Civil Code is irrelevant.

51. *Court of Cassation, 9th March 1988 n. 2358* 392

The recognition of a natural child released abroad by an Italian national according to the forms under Art. 26 of the Preliminary Provisions to the Civil Code has to be registered in the Italian Register of births, not being the formal enforcement of the authentic instrument made abroad required.

Pecuniary obligations based on a natural parental relationship arising from such recognition are governed by Art. 20 of the Preliminary Provisions to the Civil Code.

52. *Milan Tribunal, 14th March 1988* 685

According to Art. 4 n. 2 of the Civil Procedure Code, the Italian judge is not competent to hear a case filed against three foreign companies and relating to the sale of movable goods to be carried, if such agreement is entered into abroad ex Art. 1326 of the Civil Code and the seller has delivered abroad the goods to be carried, freeing himself therefore from his obligations as per Art. 1510, second paragraph of the Civil Code.

The appointment of a expert witness in course of preliminary expert valuation proceedings cannot be interpreted as the tacit acceptance of the jurisdiction of the seized judge by the defendant according to Art. 4 n. 1 of the Civil Procedure Code.

53. *Court of Cassation (plenary session), 18th March 1988 n. 2488* . . 895

With reference to the request of compensation for damages filed by the consignee of goods against the foreign carrier and the Italian company which has taken care of the unloading, the existence of a valid international arbitration clause in the bill of lading for disputes between the consignee and the carrier does not affect Italian jurisdiction in relation to the other defendant, but this procedure may be stayed as in case of preliminary questions.

54. *Court of Cassation (plenary session), 25th March 1988 n. 2568* . . . 146

The condition of the written form required by Art. 17 of the Brussels Convention dated 27th September 1968 is observed when a choice of foreign jurisdiction is contained in the general conditions drafted by one of the parties and printed on the back of the contract if the document is signed by both parties and contains an express reference to said general conditions.

If the documents containing the agreement are signed by both parties, they have the effect of a contract notwithstanding the fact that they are called "confirmation of order".

The use of a foreign language is irrelevant as to the validity of a jurisdiction clause.

55. *Court of Cassation (plenary session), 22nd April 1988 n. 3126* 396

The Italian judge is not competent on a counterclaim filed by the Italian defendant against the French plaintiff even if it has been filed in course of the Italian proceedings as a proof against the estate of the French plaintiff, against whom a winding up procedure is pending in France: both Italian and French law provide for the exclusive competence of the judge who declared the winding up on cases filed before the winding up organs.

56. *Turin Court of Appeal, 22nd April 1988* 399

In case of a decision authorizing the enforcement of a foreign court's judgment under the Brussels Convention dated 27th September 1968 the confirmation of a seizure authorized with such decision is not required, as per Art. 39 of said Convention confirmation proceedings are not allowed and in any case are superfluous.

57. *Constitutional Court, order 27th April 1988 n. 490* 89

The recent provisions on nationality (Law 21st April 1983 n. 123) are based on the principle of equal treatment for men and women. This principle avoids any automatic acquisition of nationality by marriage.

The issue of the constitutional validity of Art. 10, second paragraph of the Law on nationality dated 13th June 1912 n. 555 and of Art. 7 of the Law dated 21st April 1983 n. 123 which do not provide for the automatic acquisition of Italian nationality by the foreign husband of an Italian national is manifestly unfounded.

58. *Court of Cassation, 10th May 1988 n. 3414* 897

The Court of Appeal cannot submit to the Court of Cassation the proceedings relating to the opposition to the decree issued by the Juvenile Tribunal which denies the enforcement of a foreign judgment on adoption.

59. *Milan Tribunal, 12th May 1988* 149

Taking into consideration that the stay of proceedings on the merits due to a ruling on jurisdiction constitutes a special case of stay of proceedings, the burden of the parties to re-file the case after the decision on jurisdiction under Art. 367, second paragraph of the Civil Procedure Code is provided for under Art. 125 of the Rules of Implementation of the said Code.

The power of attorney is to be considered as an act of the proceedings and therefore is subject to Art. 27 of the Preliminary Provisions to the Civil Code.

The provisions set forth under the Hague Convention dated 5th October 1961 on the Abolition of Legalization of Foreign Public Documents are applicable even to the legalization of signatures on private agreements as per its Art. 1 lett. *d*.

Considered that the 1961 Hague Convention has to be interpreted under its ordinary meaning and not under the possible different meaning of terms in Contracting States, its provisions can be applied even in case of authentication by a British Notary Public of the signature on a power of attorney issued for proceedings in Italy.

60. *Court of Cassation (plenary session) 24th May 1988 n. 3584* 401

According to Art. 24 of the Constitution and to Art. 4 of the Civil Procedure Code, a foreigner can always sue an Italian citizen before the Italian judge, while he can sue a foreign national only under one of the cases indicated under Art. 4.

The residence and domicile as provided for under Art. 4 n. 1 of the Civil Procedure Code have to be determined according to Italian law.

The Italian judge is competent as per Art. 4 n. 2 of the Civil Procedure Code to hear a case of separation for fault of one of the spouses arising between spouses of foreign nationality who reside in Italy.

61. *Court of Cassation 24th May 1988 n. 3610* 899

Art. 11 of the Convention on double taxation between Italy and France signed in Paris on 29th October 1958 states that an income from royalties and redevances is subject to taxation in the State where the beneficiary's fiscal domicile is placed except in the case the beneficiary has set up in another country a permanent establishment even if such permanent establishment is substituted with an ownership quota in another company.

In order to construe Art. 11 of the 1958 Convention between Italy and France the minutes of a meeting of the Italian-French Commission held in Rome in 1968 as under Art. 26 of said Convention are not relevant.

Under Art. 11 of the 1958 Convention between Italy and France the acquisition of an ownership quota in a company and the release of the permanent establishment of a company does not necessarily entail two different events in time but rather that same duties and activities are entered into.

The 1958 Convention between Italy and France applies even to taxes as the tax on legal persons (IRPEG) and local revenue tax (ILOR) due after its entry into force, as under Art. 75 of the Presidential Decree dated 27th September 1973 n. 600 and Art. 2, second paragraph of said Convention.

62. *Milan Tribunal, 26th May 1988* 690

The son of an Italian citizen emigrated in Palestine in 1940 in order to escape the racial persecutions and forced to accept the Palestinian nationality and furthermore the Israeli nationality without having ever renounced to the Italian one, is an Italian national (Art. 8 of the Law dated 13th June 1912 n. 555).

63. *Court of Cassation, 2nd June 1988 n. 3744* 694

The legalization by Italian diplomatic or consular authorities of deeds issued abroad that are to be produced in Italy is valid only if it concerns deeds issued by local authorities operating within the districts of the diplomatic authority and if it concerns directly the deed issued by the foreign public official.

The legalization by Italian authorities of the authentication issued by an authority of the foreign State where the Italian Embassador is accredited, that is different from the State of the public official who issued the deed to be legalized, cannot be considered valid.

64. *Constitutional Court, order 16th June 1988 n. 655* 715

The issue of the constitutional validity raised with reference to Art. 24, second paragraph of the Constitution and relating to Art. 2 of the Law dated 30th April 1976 n. 159 on the omission of declaration to deposits illegally constituted abroad is manifestly unfounded.

65. *Court of Cassation (plenary session), 17th June 1988 n. 4119* 404

As per Art. 5 n. 1 of the Brussels Convention dated 27th September 1968 the Italian judge is competent to hear a case arising out from a contract for data processing and transmission to Italy via satellite.

66. *Turin Tribunal, decree 23rd June 1988* 699

Statelessness can be declared in chambers even if not expressly contemplated under Title II of Book IV of the Civil Procedure Code.

Statelessness has to be ascertained only with reference to two fundamental elements: the loss of the nationality of the State of origin and the non acquisition of the nationality of the State (or States) of residence or domicile.

67. *Milan Tribunal, order 2nd July 1988* 702

According to Art. 4 n. 3, first part of the Civil Procedure Code, the Italian judge is competent to hear a counterclaim filed by the Italian defendant against a foreign plaintiff, even if it has not the same causa petendi as the main claim.

According to Art. 4 n. 3, second part of the Civil Procedure Code, the Italian judge is competent to hear the request of provisional measures (in the case: prohibition injunction ex Art. 700 of the Civil Procedure Code related to unfair competition) if such request is ancillary to a relationship the judge is competent to hear.

The law governing the obligations deriving from unfair competition is the law of the State where the mentioned acts have been committed in compliance with Art. 25, second paragraph of the Preliminary Provisions to the Civil Code. As the foreign provisions of law embodied into private international law are special provisions of law, if their content is not ascertained the dispute shall be ruled by the lex fori.

68. *Constitutional Court, 26th July 1988 n. 880* 365

Arts. 1 and 4 of the Presidential Decree dated 30th June 1965 n. 1124 providing for mandatory insurance for industrial accidents and occupational diseases are constitutionally illegitimate as in contrast to Arts. 35 and 38 of the Constitution in so far as they do not impose mandatory insurance in favour of artisans working abroad.

69. *Constitutional Court, order 29th July 1988 n. 952* 368

The issue of the constitutional validity under Art. 10, third paragraph of the Constitution, of Art. 7 lett. *b* of the Royal Decree dated 23rd October 1925 n. 2537 is not admissible in so far as said Art. 7 does not authorize foreign citizens, to whom the full exercise of democratic rights is not assured in their home country, to enlist in the National Association of Architects Register.

70. *Milan Tribunal, 19th September 1988* 706

The declared winding up of a foreign company abroad already summoned before an Italian judge, whose jurisdiction it has accepted, entails that the jurisdiction of the Italian judge has to be newly examined.

According to Art. 27 of the Preliminary Provisions to the Civil Code, the capacity of a foreign company to stand in court is ruled by Italian law if the case is filed before an Italian court.

According to Art. 75 of the Civil Procedure Code and Art. 17, first paragraph of the Preliminary Provisions to the Civil Code, the organ entitled to represent the legal person before the court and the thereunder required authorization have to be determined with reference to the law under which the legal person has been established.

A payment petition against a foreign company wound up abroad is not admissible if the plaintiff does not prove that the persons to whom the

papers concerning the re-filing of the case have been served had the quality of special directors and were in the capacity to legally represent the wound up company.

71. *Constitutional Court, 19th October 1988 n. 974* 95

The provisions of Art. 1 lett. *b* of the Presidential Decree dated 14th February 1964 n. 237 on national service and of Art. 8, last paragraph of the Law dated 13th June 1912 n. 555 on nationality are constitutionally illegitimate as in contrast to Art. 3 of the Constitution, in so far as they provide that the loss of the Italian nationality due to the acquisition of the nationality of another State in which the former Italian national has already undertaken national service does not entail any exemption from national service in Italy.

72. *Milan Court of Appeal, 11th November 1988* 407

Acquisition or loss of nationality cannot depend exclusively on the express or even implied will of the person.

Art. 9, second paragraph n. 3 of the Law on nationality dated 13th June 1912 n. 555 on the re-acquisition of Italian nationality after two years of residence in the country implies a real will of the person towards such re-acquisition, which can be inferred by the establishment (or re-establishment) of the residence in Italy.

73. *Constitutional Court, order 15th November 1988 n. 1036* 371

The issue of the legitimacy of Art. 18 of the Preliminary Provisions to the Civil Code, already declared constitutionally illegitimate with Constitutional Court decision n. 71 in 1987, is manifestly not admissible.

74. *Milan Pretore, 12th December 1988* 709

According to Art. 25, first paragraph of the Preliminary Provisions to the Civil Code, an agency agreement between an Italian company and the foreign agent is governed by the foreign law when the will of the parties clearly proves to be in such sense.

The applicability of Italian law as per Art. 25, first paragraph of the Preliminary Provisions to the Civil Code, is not influenced by the application of the same law by the Court of Cassation when ruling on jurisdiction.

The Italian judge is free to construe the foreign law applicable according to conflict of laws rules.

75. *Constitutional Court, 14th February 1989 n. 40* 646

Art. 2, first paragraph lett. *A* of the Presidential Decree dated 31st July 1980 n. 618 is illegitimate because contrary to Art. 76 of the Constitution insofar as it does not provide for medical assistance to Italian nationals working abroad if they already are benefitting from their employers of an assistance non inferior to the standards set forth under the law.

COURT OF EUROPEAN COMMUNITIES CASES

Judgment 9th December 1987, case 218/86 164

Article 5 n. 5 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters applies

to a case in which a legal person established in a Contracting State does not operate any dependant branch, agency or other establishment in another Contracting State but nevertheless pursues its activities there by means of an independent undertaking which has the same name and identical management, which negotiates and conducts business in its name and which it uses as an extension of itself.

Judgment 19th January 1988, case 292/86 170

A person who is a national of two Member States and who has been admitted to a legal profession in one of those States may rely, in the territory of the other State, upon the provisions of Directive 77/249 to facilitate the effective exercise by *avocats* (lawyers) of freedom to provide services where the conditions for the application of that directive, as defined therein, are satisfied.

Directive 77/249 must be interpreted as meaning that its provisions may not be relied upon by an *avocat* (lawyer) established in one Member State with a view to pursuing his activities as a provider of services in the territory of another Member State where he had been barred from access to the profession of *avocat* in the latter Member State for reasons relating to dignity, good repute and integrity.

Article 52 of the EEC Treaty must be interpreted as meaning that a Member State whose legislation requires *avocats* (lawyers) to be registered at a bar may impose the same requirement on *avocats* (lawyers) from other Member States who take advantage of the right of establishment guaranteed by the Treaty in order to establish themselves as members of a legal profession in the territory of the first Member State.

Judgment 2nd February 1988, case 309/85 438

The interpretation of Article 7 of the EEC Treaty laid down by the Court in its judgment of 13 February 1985 in case 293/83, *Gravier*, is not limited in scope to applications for admission to vocational training courses made after the delivery of that judgment and applies also to the period before that date.

Under community law, pupils and students from other Member States who have been improperly obliged to pay a registration fee may not be deprived by national legislation of their right to repayment if they did not bring legal proceedings for repayment before the delivery of the aforesaid judgment on 13 February 1985.

Judgment 2nd February 1988, case 24/86 438

University studies in veterinary medicine fall within the meaning of the term "vocational training", and consequently a supplementary enrolment fee charged to students who are nationals of other Member States and wish to enrol for such studies constitutes discrimination on grounds of nationality contrary to Article 7 of the EEC Treaty.

In so far as access to university studies is concerned, the direct effect of Article 7 of the EEC Treaty may not be relied on in support of the claims regarding supplementary enrolment fees improperly charged prior to the date of this judgment, except in respect of students who brought legal proceedings or submitted an equivalent claim before that date.

Judgment 4th February 1988, case 145/86 432

A foreign judgment recognised by virtue of Article 26 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of

Judgments in Civil and Commercial Matters must in principle have the same effects in the State in which enforcement is sought as it does in the State in which the judgment was given.

A foreign judgment whose enforcement has been ordered in a Contracting State pursuant to Article 31 of the Convention and which remains enforceable in the State in which it was given must not continue to be enforced in the State in which enforcement is sought when, under the legislation of the latter State, it ceases to be enforceable for reasons which lie outside the scope of the Convention.

A foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his obligations, arising out of the marriage, to support her is irreconcilable for the purposes of Article 27 n. 3 of the Convention with a national judgment which has decreed the divorce of the couple in question.

Article 36 of the Convention means that the party who has failed to appeal against the enforcement order referred to in that provision is thereafter precluded, at the stage at which the judgment is enforced, from relying upon a valid reason *ex officio* by the courts of the State in which enforcement is sought. However, that rule does not apply when it has the effect of obliging the national court to make the effects of a national judgment lying outside the scope of the Convention conditional on that judgment being recognised in the State in which the foreign judgment whose enforcement is at issue was given.

Judgment 25th February 1988, case 427/85 174

The Federal Republic of Germany has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty and Council Directive 77/249 to facilitate the effective exercise by lawyers of freedom to provide services; by requiring the lawyer providing services to act in conjunction with a lawyer established on German territory, even where under German law there is no requirement of representation by a lawyer; by requiring that the German lawyer, in conjunction with whom he must act, himself be the authorised representative or defending Counsel in the case; by not allowing the lawyer providing services to appear in the oral proceedings unless he is accompanied by the said German lawyer; by laying down unjustified requirements regarding proof of the co-involvement of the two lawyers; by imposing the requirement, without any possible exception, that the lawyer providing services is to be accompanied by a German lawyer if he visits a person held in custody and is not to correspond with that person except through the said German lawyer; and by making lawyers providing services subject to the rule of territorial exclusivity laid down in section 52 n. 2 of the Bundesrechtsanwaltsordnung.

Judgment 8th March 1988, case 9/87 167

Proceedings relating to the wrongful repudiation of an independent commercial agency agreement and the payment of commission due under such an agreement are proceedings in matters relating to a contract 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.

Judgment 6th July 1988, case 158/87 717

Article 16 n. 1 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, in a dispute as to the existence of a lease relating to immovable property situated in two Contracting States, exclusive jurisdiction over the property situated in each Contracting State is held by the courts of that State.

Judgment 14th July 1988, case 38/87 726

By maintaining in force provisions which do not expressly uphold the right of nationals of other Member States to register with the Chamber of technical professions of Greece as ordinary members, whilst registration as such is a precondition for and facilitates access to the professions of architect, civil engineer and surveyor and the exercise thereof in Greece, Greece has failed to fulfil her obligations under Articles 52 and 59 of the EEC Treaty.

Judgment 27th September 1988, case 81/87 92

In the present state of Community law, Articles 52 and 58 of the Treaty, properly construed, confer no right on a company incorporated under the legislation of a Member State and having its registered office there to transfer its central management and control to another Member State.

Council Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, properly construed, confers no right on a company to transfer its central management and control to another Member State.

Judgment 27th September 1988, cases 89, 104, 114, 116, 117 and 125-129/85 916

Where producers of a particular product who are established outside the Community concert on the prices to be charged to their customers in the Community and put that concertation into effect by selling at prices which are actually co-ordinated they are taking part in concertation which has the object and effect of restricting competition within the Common Market within the meaning of Art. 85 of the EEC Treaty.

The EEC Commission's competence as regards the application of EEC competition rules to such conduct is covered by the territoriality principle and is not in breach of the principle of international comity.

The EEC-Finland free trade agreement does not exclude the application of Articles 85 and 86 of the EEC Treaty.

Judgment 27th September 1988, case 189/87 92

For the full application of Article 6 n. 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters there must exist between the various actions brought by the same plaintiff against different defendants a link such that it is expedient to determine those actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

The term "tort, delict or quasi-delict" in Article 5 n. 3 of the Convention must be regarded as an independent concept covering all actions which seek to establish the liability of a defendant and which are not related to a "contract" within the meaning of Article 5 n. 1.

A court which has jurisdiction under Article 5 n. 3 to entertain an action with regard to tortious matters does not have jurisdiction to entertain that action with regard to other matters not based on tort.

Judgment 22th June 1989, case 103/88 719

Art. 29 n. 5 of the EEC Council Directive n. 71/305 does not allow Member States to issue dispositions which ipso facto exclude from participating to public bids some offers on a mathematical basis, instead of forcing the administrative authority to apply the verification debate set forth under the Directive.

EEC Member States in implementing the EEC Council Directive n. 71/305 are not entitled to issue provisions which substantially differ from the provisions set forth under Art. 29 n. 5 of the same Directive.

Art. 29 n. 5 of the EEC Directive n. 71/305 allows Member States to provide for a verification of tenders when these are abnormally low and not only when they are clearly low.

As the domestic judge, even the administrative local entity is obliged to apply Art. 29 n. 5 of the Council Directive n. 71/305 and therefore not to apply domestic provisions of law not complying with the mentioned provisions.

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As defined by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965, "service of process" refers to formal delivery of documents that is legally sufficient to charge defendant with notice of pending action.

The Hague Service Convention does not itself describe standard for determining legal sufficiency of delivery of service of process; thus, internal law of forum State controls.

Where forum State's law does not define applicable method of serving process on foreign corporation as requiring transmittal of documents abroad, the Hague Service Convention does not apply.

The Hague Service Convention does not apply when process is served on foreign corporation by serving its domestic subsidiary which, under State law, is foreign corporation's involuntary agent for service.

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