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1. *Court of Cassation, 4 February 1988 No. 1130* 166

In case of the enforcement of an Austrian judgment in Italy, for the evaluation of the international competence of the Austrian judge – which has to be carried out by the Italian judge on his own motion – Art. 5(3) of the Italo-Austrian Convention of 16 November 1971 on the enforcement of judgments settles the criterium of forum destinatae solutionis in contractual matters, which applies only if the parties agreed on the performance of the obligation in question in the State of origin, irrespective of the various national provisions on this subject.

2. *L'Aquila Court of Appeal, 28 June 1988* 169

The decision of the court of appeal on the appeal against the enforcement in Italy of a foreign judgment according to the Brussels Convention of 27 September 1968 can not be suspended as per Art. 373 of the Civil Procedure Code, even though an appeal in cassation is pending.

3. *Court of Cassation (plenary session), 12 October 1988 No. 649* 169

The decision of the court of appeal ordering the enforcement of a judgment issued in a Contracting State of the Brussels Convention of 27 September 1968 can be contested only through appeal before the same court of appeal, according to Art. 36 of the Convention; therefore, if an appeal in cassation has been proposed against such decision, it should be declared inadmissible according to Art. 375 of the Civil Procedure Code.

4. *Rome Court of Appeal, 14 February 1989* 94

The Law 26 March 1984 No. 83, which determines in special drawing rights the limits of responsibility of the air carrier according to the Warsaw Convention 12 October 1929, applies also to proceedings started before its coming into force.

The issue of constitutional legitimacy of Arts. 1 and 2 of the Law dated 26 March 1984 No. 83 raised with reference to Art. 10 of the Constitution, is manifestly unfounded.

The issue of constitutional legitimacy of Law No. 83 of 1984 raised with reference to Arts. 2 and 3 of the Constitution is manifestly unfounded.

5. *Court of Cassation (plenary session), 18 February 1989 No. 960* 101

Waiting for the stipulation of the conventions between ACISMOM (Association of the Italian Knights of Malta) and the National Health Service according to Art. 41, third paragraph of Law No. 833 of 1978, the health structures of the Association operate on a conventional basis with Italian regions and are submitted to the same provisions as private health structures.

Italian judges are competent (in this case, ordinary judges) in a dispute between ACISMOM and an Italian doctor operating within the health service of the Association.

6. *Friuli Venezia Giulia Regional Administrative Tribunal, 13 March 1989 No. 53* . 417

Pursuant to Art. 31 of the Geneva Convention of 28 July 1951 on the status of refugees, the irregular refugee (i.e. a refugee who has not yet been recognized as such) can not be subject to restrictive measures, including expulsion, save for reasons of national security or public policy according to the following Art. 32.

It can not be approved the practice followed by Italian public authorities prohibiting the entry of a foreigner requesting asylum if he comes from a Country party to the Geneva Convention where he should have asked for political asylum as such a condition is not required by the Convention and is contrary to Art. 10, third paragraph of the Constitution.

7. *Court of Cassation (plenary session), 15 March 1989 No. 1282* 474

Italian judges are not competent in a dispute arisen between a foreign embassy in Italy and a typist whose performances imply her assignment in the public organization of the foreign State as such performances are carried out in direct connection with officers' functions which have fiduciary character because of the necessary knowledge of the institutional activities of such State.

8. *Court of Cassation (plenary session), 17 March 1989 No. 1332* 172

According to the combined provisions of Art. 5(1) of the Brussels Convention of 27 September 1968 and of Art. 59 of the Hague Convention of 1 July 1964 on international sale, Italian judges are competent regarding the action of the Italian seller against the Belgian purchaser for the recovery of the goods' price.

9. *Constitutional Court, 21 April 1989 No. 233* 174

According to Arts. 3 and 35, last paragraph of the Constitution, the issue of constitutional legitimacy of Art. 52, first paragraph of Law 27 December 1953 No. 658 is unfounded; such Article requires the residence or the domicile in Italy at the moment of its coming into force, for the granting of indemnities or contributions for damages suffered abroad during the war.

10. *Court of Cassation, 5 May 1989 No. 2102* 177

A French judgment condemning a person resident in Italy to the execution of an obligation in favour of a non resident can not be enforced in Italy if the contract has not been authorized according to Art. 2 of the Decree dated 6 June 1956 No. 476 as it is contrary to Italian public policy, unless it does not involve money debts and consequently flight of capital.

In assessing the conformity of such judgment to public policy, Italian and EEC legislation in force at the moment of the enforcement must be taken into consideration and, in particular, the fact that in the EEC the movement of capitals corresponding to goods and services is entirely liberalized and that capital movements are widely liberalized.

11. *Court of Cassation, 26 May 1989 No. 2533* 180

The principles affirmed in interpretative judgments of the EEC Court of Justice have direct effect in proceedings before Italian judges (according to

the principles laid down in the judgment of the Constitutional Court of 23 April 1985 No. 113), if they are sufficiently precise.

12. *Court of Cassation (plenary session), 5 June 1989 No. 2707* 181

The Decree of the Minister for Foreign Trade – based on Art. 1 of Law 4 May 1963 No. 388 (substituted by Law 8 April 1976 No. 215) regarding measures against countries limiting the freedom of international sea trade – which subjects to authorization the shipping of goods from Italy aboard a ship managed by a foreign company, is an administrative measure, not a political act on international relations and, therefore, is subject to the jurisdiction of the administrative judge, also with regard to the control on the requirements of the authorization itself.

13. *Court of Cassation (plenary session), 19 July 1989 No. 3374* 108

If a hospital of the ACISMOM (Association of the Italian Knights of Malta), like the S. Giovanni Battista Institute in Rome, stipulates with the regional administration a convention, binding itself to apply to its employees the rules of the workers' by-laws (Law 20 May 1970 No. 300) and of the collective agreements, all disputes regarding the relevant employment relationships are subject to Italian jurisdiction, as such convention means a valid waiver to the jurisdictional immunity, which can eventually be relied upon by the Malta Order (and by its public bodies) as a subject of international law.

14. *Court of Cassation (plenary session), 20 July 1989 No. 3398* 475

Italian judges are competent to hear a case concerning request of payment of goods brought by the seller with seat in Italy against the purchaser domiciled in a State party to the Brussels Convention of 27 September 1968 and to the Hague Convention of 1 July 1964 as the place of performance of the obligation in question is the seller's seat in Italy.

15. *Rome Juvenile Court, decree 24 July 1989* 114

The age limit for marriage between minors fixed by Art. 84 of the Civil Code has become part of public policy.

The authorization of marriage banns of the State of origin is a necessary requisite for the marriage of a foreign minor in Italy, but it is not sufficient, as it must combine with ascertainments carried out by the juvenile court.

The celebration of a marriage regulated by the Concordat between foreigners in Italy is admissible.

16. *Court of Cassation (plenary session), 24 August 1989 No. 3571* 475

Pursuant to Arts. 5(1) of the Brussels Convention of 27 September 1968 and 19 of the Hague Convention of 1 July 1964 on international sale, Italian judges are not competent to hear an action on the non-performance of the foreign seller's obligation of delivery of the goods to be carried out through carrier or shipping agent because the place of performance of such obligation is the place where the goods are taken over to the carrier, save specific contrary agreement.

17. *Rome Tribunal, 30 August 1989* 425

The preliminary contract concerning the purchase of an immovable property stipulated by a foreigner with an Italian citizen is null and void when

the former does not give evidence of reciprocity on the entitlement of property rights on immovables pursuant to Art. 16 of the Preliminary Provisions to the Civil Code.

18. *Court of Cassation (plenary session), 5 September 1989 No. 3838* 118

According to Art. 17 of the Brussels Convention of 27 September 1968, a clause conferring jurisdiction to the German judge contained in a letter of one of the contractors, following the stipulation of an agency contract, is valid if the counterpart agrees with the general principles contained in such letter and asks for some explanations and modifications about the contractual relationship without raising objections about such clause.

A clause conferring jurisdiction to the German judge for disputes arising out of an agency contract for the Italian territory can not extend to the non-contractual claim for damages for unfair competition against a person domiciled in Italy and against a German company, for which Italian jurisdiction applies according to Arts. 2, 5(3) and 6(1) of the Brussels Convention.

19. *Court of Cassation (plenary session), 15 September 1989 No. 3928* 479

In order to declare the validity of an agreement conferring jurisdiction pursuant to Art. 17 of the Brussels Convention of 27 September 1968 (which prevails over the jurisdiction criteria of Art. 5(1)) it is not necessary to approve it in writing according to Art. 1341 of the Civil Code but it is necessary to ascertain that it was effectively object of the parties' consent.

In connection with the time-limit allowed to the buyer to give notice of a possible lack of conformity of the goods, the reference to a «bref délai» («promptly») contained in Art. 39 of the Hague Convention of 1 July 1964 implies a substantial appreciation on the issue if the period of time between the discovery of the defects and the notice was sufficient.

20. *Genoa Tribunal, 26 September 1989* 122

According to Art. 16 of the Preliminary Provisions to the Civil Code, the foreigner can enjoy the same civil rights of Italian citizens on the basis of reciprocity.

Reciprocity does not concern the legal capacity of the foreigner to sue awarded to «everybody» according to Art. 24 of the Constitution.

As reciprocity is a fact, if the foreigner does not prove its existence, the exercise of the same rights is inadmissible.

The right of the foreign insurer to sue the third liable party in Italy, in order to recover the sums paid according to Art. 1916 of the Civil Procedure Code, is subject to reciprocity.

21. *Court of Cassation (plenary session), 2 October 1989 No. 3960* 482

Art. 95 of the consolidated laws 15 June 1959 No. 393, in connection with the Geneva Convention 19 September 1949 on road traffic, which allows in some circumstances the traffic in Italy of vehicles registered abroad for a maximum period of one year, applies both to foreigners and Italian citizens resident abroad and to Italian citizens resident in Italy.

22. *Milan Court of Appeal, 6 October 1989* 484

The three-year prescription term pursuant to Art. 2 of the EEC Regulation No. 1697 of 24 July 1979 applies also to VAT repayment claims during

import operations provided that such claims are based on a custom declaration not followed by a correct determination of the amount to be paid.

23. *Court of Cassation (plenary session), 25 October 1989 No. 4343* 126

The substantial (and therefore procedural) representation of a foreign legal person can not be recognized to the director of an Italian branch, neither on a certification of the German General Consulate nor on the basis of a joint declaration of the general directors of such body, if the body's by-laws provide for a general representation in favour of the Board of Directors, except for special power of attorney for single deeds.

The director of an Italian branch of a foreign body, who has not procedural representation, does not have the right to grant the power of attorney to the counsel for the defence to apply for a ruling on jurisdiction.

24. *Court of Cassation, 25 October 1989 No. 4391* 131

With regard to the breach exchange control regulations, punishable with money penalty for which, on 5 December 1987, the relative administrative proceedings or the opposition before the ordinary judge (even the Court of Cassation) against the ministerial measure determining and ordering the payment of the penalty itself is still pending, the changes introduced by Presidential Decree 29 September 1987 No. 454, and then by the Presidential Decree 31 March 1988 No. 148 apply also retroactively, both in the section which provides for the application of Arts. 18, 22 and 23 of Law 24 November 1981 No. 689, on the procedure of such measure, on the opposition of the person standing before the Pretore and on rules of the relevant proceedings (respectively, Arts. 31 and 32 of the above mentioned Decrees) and in the section which fixes the principle of personal responsibility of the infringer and of the consequent exclusion of inheritableness of the penalty debt (Art. 22 of these Decrees, corresponding to Art. 7 of Law No. 689 of 1981).

25. *Court of Cassation (plenary session), 27 October 1989 No. 4506* 137

If a cash on delivery clause has not been agreed upon, the place of performance of the carrier's obligation to deliver the goods and to collect the transport expenses and eventually the goods' price, which is relevant for the application of Art. 5(1) of the Brussels Convention of 27 September 1968, is the place where the delivery has occurred.

26. *Court of Cassation, 7 November 1989 No. 4653* 142

The legalization by an Italian consular authority of a power of attorney granted abroad, according to Art. 15 of Law 4 January 1958 No. 15, is not required in case such power of attorney has been drawn up by a public notary in a Contracting State of the Hague Convention of 5 October 1961.

With reference to the acquisition by foreigners of rights on goods located in Italy, the Italian legislator does not penally prohibit the simple constitution of foreign legal bodies or the participation to such bodies of a person resident in Italy, but only the fictitious registration in favour of foreign legal persons of goods located in Italy belonging to resident persons, which consequently escapes the prescribed control of monetary authorities.

The Ministerial Decree 12 March 1981 does not contain a general authorization to assume obligations abroad, but, as defined in the following Ministerial Decree 6 August 1982, it requires a specific previous

authorization for the purchase of shares in holdings or having a mere financial nature carried out for the only purpose to allow the investor to accede directly to the money and capital market of the foreign State.

27. *Court of Cassation, 10 November 1989 No. 4756* 486

As regards international carriage of goods by road covered by «carnet TIR» under the Geneva Convention 15 January 1959, the non-presentation of the goods to the customs of destination legitimates the customs administration to collect immediately the duties on the basis of the nature and entity of the goods themselves.

This principle does not exclude that such duties are subject to the rules on prescription of Art. 6, eighth paragraph of the Geneva Convention, which prevail over the relevant provisions of Art. 84 of the Italian Law on Customs; consequently if the evasion causes the opening of a criminal proceedings for forgery of the carnet the duties can not be collected before the date of settling of such action and is subject to a one-year period of prescription.

28. *Court of Cassation (plenary session), 17 November 1989 No. 4909* 488

Italian judges are competent in regard to disputes on labour relationships with foreign States when, irrespective of the employee's functions, the actions concern exclusively money aspects of the labour relationships themselves.

29. *Court of Cassation (plenary session), 20 November 1989 No. 4963* 151

The opposition against the order imposing an administrative money penalty, filed according to Art. 22 of Law 24 November 1981 No. 689, can not be considered the «original proceedings» for the purposes of Art. 6(2) of the Brussels Convention of 27 September 1968; consequently it is not possible to rely upon this provision to sue a person domiciled in another Contracting State.

30. *Court of Cassation (plenary session), 21 November 1989 No. 4964* 427

Article 52, second paragraph of the EEC Treaty recognizing to EEC nationals the freedom of establishment and of practicing a liberal profession does not prevail on national provisions of the State of establishment towards its nationals and therefore does not exempt from the performance of all obligations and burdens which apply to that practice according to national law.

The enlistment into the French Architects Register by virtue of the title released by the French «Ministre de l'urbanisme et de logement» does not qualify for the practice of a profession in Italy because the requirements of Italian law for the enrolment into the Italian Register are lacking.

The qualification released by the Ministre de l'urbanisme et de logement is not included in the list of Arts. 10 and 11 of Council Directive 10 June 1985 No. 384, for the purposes of the mutual recognition of formal qualifications for architects.

31. *Court of Cassation (plenary session), 21 November 1989 No. 4968* 488

Italian judges are competent in regard to disputes on labour relationships with foreign States when, irrespective of the employee's functions, the actions concern exclusively money aspects of the labour relationships themselves.

32. Court of Auditors (Control Session), 23 November 1989 No. 2182 792

Irrespective of the nature of international rules in force concerning the protection of the Slovene-speaking minority in Italy, the drawing up in this language of the application for a competitive examination for a teaching post in a secondary school where Slovene is taught does not constitute a reason for exclusion from the examination as it is possible to regularize such application.

33. Court of Cassation, 24 November 1989 No. 5048 490

Art. 3, third paragraph of the ILO Convention No. 146 of 1976, setting forth that the annual paid leave for seamen can not last less than thirty days every service year, has no immediate preceptive value as this Convention has not been implemented through the enactment of further national legislation or through the conclusion of special collective agreements.

34. Court of Cassation, 24 November 1989 No. 5074 155

For the purpose of the enforcement of a foreign divorce judgment, the exam of its conflict with public policy as per Art. 797(7) of the Civil Procedure Code must be carried out following different criteria according to whether the judgment concerns Italian citizens (so-called Italian public policy) or foreigners (so-called international public policy).

The enforcement of a divorce judgment between foreigners is allowed if this has been based on objective and predetermined grounds, not prejudicial to fundamental rights and subject to judicial control on the basis of adequate evidence.

Following the entry into force of the Convention on Recognition of Divorces and Legal Separations signed at The Hague on 1st June 1970, which excludes any review as to substance of the foreign judgment (Art. 6) and admits the refusal of its enforcement only in case of manifest incompatibility with public policy, the appraisal of Italian public policy can not anymore be based on the grounds provided by Art. 3 of Law 1 December 1970 No. 898 on Divorce.

35. Court of Cassation, 28 November 1989 No. 5173 158

The foreign measure whose recognition is sought in Italy must be qualified according to the principles of the Italian legal system and it is not being required the identity between such measure and the corresponding measure of the Italian legal system.

A foreign adoption measure, which has been enforced in Italy following a proceedings in chambers, must be qualified according to its content, to be valued in conformity with Italian law.

The Decree of the court of appeal which, according to Art. 801 of the Civil Procedure Code, enforces in Italy a foreign measure on adoption of a child can not be quashed according to Art. 742 of the Civil Procedure Code, for the reason that, granting to the child the status of adoptive child, it has decisive and definitive nature and, therefore, can be considered as a judgment.

36. Court of Cassation, 28 November 1989 No. 5177 482

The traffic of a vehicle registered abroad in Italy, for more than one year infringes Art. 58 of the consolidated laws 15 June 1959 No. 393 with the consequence of the compulsory confiscation pursuant to Art. 21, third

paragraph of Law 24 November 1981 No. 689, irrespective of the possible opening of a registration procedure in Italy within that term.

37. Court of Cassation (plenary session), 29 November 1989 No. 5224 1051

According to Art. 17 of the Brussels Convention of 27 September 1968, a clause on jurisdiction contained in an invoice sent by one of the contracting parties is not valid, even though the counterpart did not protest upon its receipt.

Art. 5(1) of the Brussels Convention does not apply to disputes on the restitution of the goods' price based on the invalidity of the contract because such obligation, founded on the lack of contractual basis, can not be considered as a contractual obligation.

38. Court of Cassation (plenary session), 1 December 1989 No. 5293 432

In case of a legal separation sought by the husband, an Italian citizen, against the wife, an Italian citizen by marriage, it is not significant that the wife has kept the foreign nationality of origin.

Italian judges are competent to hear a legal separation case between Italian spouses also when they are domiciled or resident abroad.

In accordance with the provisions of Art. 8 of Law 6 March 1987 n. 74 on Divorce (applicable also in case of legal separations) in a case of a separation between Italian spouses resident abroad all Italian judges have internal competence.

39. Constitutional Court, 11 December 1989 No. 536 81

The issue of constitutional legitimacy of Art. 33, third paragraph and Art. 37 of the Law 4 May 1983 No. 184 on Adoption - raised in connection with Art. 10 of the Constitution - which provide for the opening ex officio of the proceedings for the declaration of desertion of a foreign child in case of the refusal of enforcement of relative foreign adoption measure, is inadmissible, as it is not significant.

The issue of constitutional legitimacy of Art. 32 litt. c of the Law on Adoption, raised in connection with Arts. 2, 3, first paragraph and 10 of the Constitution, is unfounded, if the enforcement in Italy of foreign adoption measures based on the consent of the child's natural parents has been declared.

40. Court of Cassation, 18 December 1989 No. 5654 486

As regards international carriage of goods by road covered by «carnet TIR» under the Geneva Convention 15 January 1959, the non-presentation of the goods to the customs of destination legitimates the customs administration to collect immediately the duties on the basis of the nature and entity of the goods themselves.

This principle does not exclude that such duties are subject to the rules on prescription of Art. 6, eighth paragraph of the Geneva Convention, which prevail over the relevant provisions of Art. 84 of the Italian Law on Customs; consequently if the evasion causes the opening of a criminal proceedings for forgery of the carnet the duties can not be collected before the date of settling of such action and is subject to a one-year period of prescription.

41. Court of Cassation (plenary session), 22 December 1989 No. 5773 723

As Italian citizens are subject to Italian jurisdiction irrespective of their abode, a separation proceedings between Italian spouses is absolutely subject

to Italian judge's competence irrespective of their residence or domicile abroad.

Pursuant to Art. 8 of Law 6 March 1987 No. 74 amending the 1970 Law on Divorce, which applies also to separations, in case both spouses are resident abroad the application to obtain the divorce or the separation can be filed before any Italian court.

42. Court of Cassation (plenary session), 16 January 1990 No. 145 435

Italian judges are not competent in a dispute about a labour relationship with a foreign State, even though it regards the pecuniary aspects of the relationship, if the plaintiff asks the judge to evaluate his functions and consequently the activities of self-organization of the State itself.

43. Court of Cassation, 23 January 1990 No. 355 491

Law 10 February 1953 No. 136 instituting ENI (Ente nazionale idrocarburi), does not create a monopoly concerning hydrocarbons and natural gas trade in favour of this body.

The supply of natural gas by ENI or companies controlled by it at different prices does not infringe Art. 86 of the EEC Treaty when the differences among the prices are justified by the different quantities supplied.

44. Court of Cassation (plenary session), 23 January 1990 No. 376 493

The European School of Varese-Ispra founded by some EEC Member States has nature of public institution ruled by national and not by international law pursuant to Art. 6 of its Statute.

A dispute on the employment relationship of the European school staff is subject to Italian jurisdiction; Art. 45 of the School's teaching staff Statute, which provides for the competence of an international board of arbitrators in case of disputes relating to the employment relationship, can not be relied upon as it is not applicable to teachers entrusted with the teaching by the School's principal.

45. Court of Cassation (plenary session), 8 February 1990 No. 857 440

Also pursuant to the Paris Agreements of 4 November 1949 and 17 May 1965, the Lycée Chateaubriand, which depends on the French Ministry of Foreign Affairs, enjoys jurisdictional immunity for disputes on labour relationships of the personnel carrying out activities connected with institutional duties of the Lycée itself.

46. Court of Cassation (plenary session), 15 February 1990 No. 1117 496

The ordinary judge is competent to hear an action claiming that compensations paid by the Treasury Department for the nationalization of goods in Ethiopia are inadequate as it is a dispute concerning a matter of credits subject directly to Laws 26 January 1980 No. 16 and 5 April 1985 No. 135 and hence of perfect rights.

47. Court of Cassation (plenary session), 17 February 1990 No. 1172 441

Pursuant to Art. 59 of the Hague Convention of 1 July 1964 on international sale and to Art. 5(1) of the Brussels Convention of 27 September 1968, Italian judges are competent as regards the action for payment brought by the Italian seller against the German buyer.

If the jurisdiction of the seized judge is contested by the defendant, Art. 18 of the 1968 Brussels Convention does not imply the opening of a separate section of the proceedings limited to the solution of the jurisdictional issue.

48. Court of Cassation (plenary session), 17 February 1990 No. 1173 445

Pursuant to Art. 4(3) of the Civil Procedure Code, in the case of joinder of defendants, if one of the defendants is subject to Italian jurisdiction this extends to other foreign defendants.

Pursuant to Art. 4(2) of the Civil Procedure Code the Italian judge is competent on a dispute concerning services of a professional completely or partially provided in Italy.

49. Court of Cassation, 22 February 1990 No. 1304 726

The church wedding celebrated abroad between an Italian woman and a stateless man is valid also in Italy, pursuant to Art. 115 of the Civil Code, irrespective of the registration into the Italian Register of Marriages if, by virtue of the local law, it implies civil effects in the country where it has been celebrated.

If the Italian judge is called to verify the validity of a wedding celebrated abroad and, in case it is affected by procedural flaws, to decide if one of the hypotheses of affirmation set forth by Articles 113, 131, 132 and 137 of the Civil Code occurs, he must first of all ascertain that it is not non-existent because of lack of essential minimum requisites.

The marriage between an Italian woman and a stateless man celebrated in 1946 according to the Protestant rite at the American Mission of Cairo by a minister of religion not empowered for this celebration according to Egyptian Law and hence lacking the necessary authorization must be considered non-existent.

50. Court of Cassation (plenary session), 23 February 1990 No. 1396 975

The Brussels Convention of 27 September 1968 does not apply to the actio pauliana in winding up proceedings as these can be included in «bankruptcy measures» as construed by the European Court of Justice.

The Italian-German Convention of 9 March 1936 excludes from its field of application judgments pronounced in a bankruptcy or judicial arrangements.

The obligation in question in case of an actio pauliana in winding up proceedings, according to Art. 4(2) of the Civil Procedure Code, is the restitution of the amount paid by the wound up company, which, according to Art. 1182, third paragraph of the Civil Code, must be performed at the domicile of the creditor, the bankruptcy trustee.

51. Court of Cassation (plenary session), 23 February 1990 No. 1397 987

In case of a carriage of goods by sea, if the shipowner and his ship's agent, sued for the compensation for damages deriving from the undue goods' delivery, call the foreign consignee on guarantor, considering him as true responsible of that damage, as well as the foreign bank, guarantor of the same consignee, if the Italian judge has jurisdiction as regards the main action, he has jurisdiction also as regards the consignee according to Art. 4(3) of the Civil Procedure Code, as such guarantee operates also in case of different causae petendi objectively connected, or in case the liability contested through the main action and through the action on guarantee

derive from the same act. Moreover, if the compensating obligation must be carried out in Italy Italian judge's jurisdiction extends towards the guarantor bank according to Art. 4(2) of the Civil Procedure Code, considering that, to the purpose of jurisdiction and lacking contrary agreement, the place of performance of the guarantor's obligations is the place of performance of the guaranteed debtor's obligations.

52. Court of Cassation, 2 March 1990 No. 1616 1058

The principle of aggregation of all social security and tax periods taken into consideration by national legislations is valid both for the purpose of acquiring and retaining the right to benefit and of calculating its amount, according to EEC Regulation 14 June 1971 No. 1408.

53. Court of Cassation (plenary session), 9 March 1990 No. 1922 796

Italian judge has jurisdiction on the action brought by an employee of the AFSE South Europe Allied Forces General Headquarter enjoying international status against INPS in order to obtain a certain social security benefit; on the contrary its jurisdiction must be excluded, pursuant to Art. 8 of the Paris bilateral Agreement 26 July 1961 as regards the action brought against AFSE, as the circumstance that this has initially insured the employee at INPS is irrelevant.

54. Court of Cassation (plenary session), 9 March 1990 No. 1923 796

Pursuant to Art. 8 of the Paris Agreement 26 July 1961 between the Supreme Allied Command in Europe and the Italian Government, the civilian employees of the General Allied Headquarters in Italy, including the personnel of the division INAFA, fall within the category of personnel enjoying international status, not subject to Italian jurisdiction, when they are paid according to NATO tariffs and hold administrative, permanent offices in the sphere of institutional activities of the Headquarters themselves.

55. Court of Cassation (plenary session), 9 March 1990 No. 1924 797

The immunity of the goods of the General Allied Headquarters in Italy from every form of execution – set forth by Art. XI of the Protocol of the International General Military Allied Headquarters 28 August 1952, referred to by Art. 4 of the Paris Agreement 26 July 1961 in order to guaranty that the patrimony of the bodies is aimed to satisfy the institutional duties of the Atlantic Alliance – implies a limited non-seizability of the same goods. Therefore, AFSE does not enjoy an absolute immunity with reference to execution but only as regards non-seizability of the goods aimed at satisfying its institutional purposes. This issue pertains to the merits of the case and not to jurisdiction and has to be decided by the judge of the execution.

56. Court of Cassation, 21 March 1990 No. 2350 734

Art. 17 of the Preliminary Provisions to the Civil Code applies in order to find out the law applicable to a paternity suit when the natural child is an Italian citizen and the presumed father an Argentine citizen.

Argentine provisions of law which provide that the paternity suit must be carried out by the child himself and can not be exercised on his behalf by third parties, are contrary to Italian public policy.

57. Trieste Court of Appeal, 27 March 1990 738

The service of a summons - carried out before the entry into force of Law 6 February 1981 No. 42 (enforcing the Hague Convention of 15 November 1965) but after the decision of the Constitutional Court 2 February 1978 No. 10 - is null and void when the impossibility of carrying out the service itself in the ways provided for by international conventions and by the Presidential Decree 5 January 1967 No. 200 on consular functions and powers has not been ascertained.

If the parties concerned have not contested a first instance judgment because of lack of jurisdiction (where the judge has implicitly affirmed his jurisdiction deciding the merits), such issue can no more be examined by virtue of one party's exception or ex officio as a consequence of the res iudicata effect.

58. Court of Cassation (plenary session), 28 March 1990 No. 2500 1051

According to Art. 18 of the Brussels Convention of 27 September 1968, the submission to the jurisdiction of the seized judge is excluded also when the defendant, domiciled in another contracting State, raised merits exceptions, subordinate to the exception of lack of jurisdiction.

According to Art. 5(1) of the 1968 Brussels Convention, as construed by the EEC Court of Justice, in order to avoid the splitting up of a dispute among judges of different contracting States, it must be decided which of the different obligations brought in action reserved to different judges' competence is the characteristic obligation.

59. Court of Cassation, 9 April 1990 No. 2966 742

As status and legal capacity of persons are governed by the law of the national State, pursuant to Art. 17 of the Preliminary Provisions to the Civil Code, the proceeding for the enforcement of administrative deeds of that foreign State affecting the status and the capacity is not necessary as they have direct effect in Italy.

As foreign administrative deeds are presumed to be legal and valid, the judge can not disregard their content stating that the circumstances described therein are not proved.

In the enforcement procedure of a foreign adoption measure the Juvenile Court can not doubt the authenticity of the child's birth certificate, thus considering unproved the age difference between the adopters and the adopted child required by Art. 32 litt. c of Law 4 May 1983 No. 184, neither can it fail to control the age of the child through its own enquires.

60. Court of Cassation (plenary session), 10 April 1990 No. 3018 745

The enjoyment of double nationality (the Italian and a foreign one) does not exclude Italian jurisdiction even though the sued Italian citizen is resident abroad.

Pursuant to Art. 8 of Law on Nationality 13 June 1912 No. 555, the loss of Italian nationality occurs when the foreign nationality has been acquired of one own's will or, in case of unwilling acquisition, when there has been explicit waiver of the Italian nationality (pursuant to Art. 6 of the Royal Decree 2 August 1912 No. 949) and in any case is subject to the change of residence abroad.

Lacking a contrary evidence by the concerned person, the change of

residence abroad is presumed to affect domicile as well (Art. 44 of the Civil Code).

Pursuant to Art. 4(1) of the Civil Procedure Code Italian judges have no jurisdiction when a former Italian citizen resident abroad has been sued.

Pursuant to Art. 4(2) of the Civil Procedure Code Italian judges have jurisdiction when at least one of the obligations arising from the contract in question must be perfomed in Italy.

61. *Court of Cassation (plenary session), 11 April 1990 No. 3069* 748

The action for legal separation between spouses falls within the sphere of application of Art. 4(1) of the Civil Procedure Code, even when it is joined to other actions on money aspects.

Italian judges have no jurisdiction in a separation proceedings against a foreign defendant who has neither residence nor domicile (even elective) in Italy nor has accepted Italian jurisdiction.

62. *Constitutional Court, order 12 April 1990 No. 213* 799

Art. 10, seventh paragraph of Law 28 February 1990 No. 39, relating to the registration of non-Community nationals into the professional rolls notwithstanding the provisions setting forth the requisite of Italian nationality for the performance of the relevant professions, may affect Art. 9 of the Decree-Law of the Provisional Chief of State 13 September 1946 No. 233, which subjects the registration of foreign citizens into the roll of doctors to reciprocity.

63. *Camerino Tribunal, decree 12 April 1990* 800

The Registrar can be authorized to publish the banns of marriage between an Italian and a foreign citizen when the lack of authorization (set forth for the latter by Art. 116 of the Civil Code) is due to an unjustified behaviour of the foreign authority so as to be in contrast with Art. 31 of the Preliminary Provisions to the Civil Code which refers also to administrative neglects of a foreign country.

64. *Court of Cassation (plenary session), 19 April 1990 No. 3246* 1059

The Italian-Swiss Convention of 9 January 1933 on recognition and enforcement of judgments does not concern judges' jurisdiction in contracting States, but their indirect competence.

According to Art. 4(2) of the Civil Procedure Code, Italian judges have jurisdiction with reference to obligations arisen in Italy and which must be enforced in Italy, even though only in part.

65. *Court of Cassation (plenary session), 19 April 1990 No. 3248* 991

To the purposes of the exemption from jurisdiction, the Vienna Convention of 24 April 1963 on Consular Relations and Immunities considers not only the consul, but also the consular office, where the consular employees work.

As regards the labour relationships entered into by consuls in Italy, the existence of a fixed labour relationship and the participation to a public activity of the employee are necessary and sufficient elements to substract the relationship itself from Italian judge's jurisdiction.

66. *Court of Cassation (plenary session), 20 April 1990 No. 3334* 1061

According to Art. 8 of the Paris Agreement of 26 July 1961, employment disputes regarding employees of Allied Headquarters are not subject to Italian jurisdiction; such employees are considered part of the staff enjoying international status, even if they are Italian citizens, and even if the proceedings relate to the establishment of the labour relationship; on the contrary, the exception as to the application by the Italian competent judge of the internal regulation of the Allied Forces of the Headquarters in South Europe to civilians enjoying local status does not concern jurisdiction but the merits.

67. *Court of Cassation (plenary session), 20 April 1990 No. 3336* 1061

According to Art. 8 of the Paris Agreement of 26 July 1961, employment disputes regarding employees of Allied Headquarters are not subject to Italian jurisdiction; such employees are considered part of the staff enjoying international status if they are Italian citizens and even if the proceedings relate to the establishment of the labour relationship; on the contrary, the exception as to the application by the Italian competent judge of the internal regulation of the Allied Forces of the Headquarters in South Europe to civilians enjoying local status does not concern jurisdiction but the merits.

68. *Court of Cassation (plenary session), 20 April 1990 No. 3337* 1061

According to Art. 8 of the Paris Agreement of 26 July 1961, employment disputes regarding employees of Allied Headquarters are not subject to Italian jurisdiction; such employees are considered part of the staff enjoying international status, even if they are Italian citizens and even if the proceedings relate to the establishment of the labour relationship; on the contrary, the exception as to the application by the Italian competent judge of the internal regulation of the Allied Forces of the Headquarters in South Europe to civilians enjoying local status does not concern jurisdiction but the merits.

69. *Milan Court of Appeal, 20 April 1990* 447

Pursuant to Art. 4(2) of the Civil Procedure Code Italian judges are not competent to hear a case concerning the payment of professional fees for services provided by a foreign defendant resident abroad, as Art. 1182, last paragraph of the Civil Code states that the obligation must be fulfilled at the debtor's domicile; nor is Art. 1182, third paragraph of the Civil Code applicable if the determination of the amount by the professional association has not been accepted by the debtor.

70. *Court of Cassation (plenary session), 23 April 1990 No. 3373* 1051

Art. 17 of the Brussels Convention of 27 September 1968 applies also to employment or agency relationship disputes.

71. *Court of Cassation, 28 April 1990 No. 3599* 750

Pursuant to Arts. 115 of the Civil Code and 26 of the Preliminary Provisions to the Civil Code, the marriage celebrated between Italian citizens (or between a citizen and a foreigner pursuant to Art. 50 of the Law on Registry offices organization) in a foreign State according to the law therein

in force is valid in Italy irrespective of the compliance with the Italian rules on banns of marriage and of its registration into the Register of Marriages. The same applies also in case of a religious marriage abroad, if the lex loci confers to it the same civil effects.

With regard to marriages of Italian citizens abroad the proof of the marriage is given through the summary of the marriage certificate of the Registers of the foreign State where the marriage itself has been celebrated.

The assessment of reciprocity pursuant to Art. 16 of the Preliminary Provisions to the Civil Code regards a fact - i.e. the existence of foreign provisions of law granting Italian citizens the same treatment accorded to the nationals of the foreign State – which must be proved by the foreigner.

With reference to Arts. 3 and 24 of the Constitution the issue of constitutional legitimacy based on the lack of effects, as regards the validity of the marriage, of the registration in Italy of marriages celebrated abroad is manifestly unfounded.

The issue of constitutional legitimacy based on the difference of treatment between a religious marriage celebrated in Italy – which has no legal effect unless properly registered – and a religious marriage celebrated abroad is unfounded.

72. Central Tax Commission (Session XXI), 8 May 1990 No. 3418 162

The fiscal presumption of money, jewels and chattels for an amount equal to 10% of the total value of the hereditament, according to Art. 8, second paragraph of Presidential Decree 24 October 1972 No. 637, applies in case of succession of a person resident abroad who left in Italy hereditary assets which can be submitted to the inheritance tax.

The issue of constitutional legitimacy of the above mentioned rule in connection with Arts. 3 and 53 of the Constitution is manifestely unfounded.

73. Court of Cassation (plenary session), 15 May 1990 No. 4195 758

Italian judge has jurisdiction as regards an action concerning a carriage by sea brought by an Italian company with seat in Italy against a Yugoslav company which has a representative in Italy and has stipulated the contract in Italy, pursuant to the jurisdiction criteria provided for by Art. 4(1) and (2) of the Civil Procedure Code.

Italian jurisdiction can not be excluded by virtue of an agreement between the parties as this is admissible, pursuant to Art. 2 of the Civil Procedure Code, only in case of obligations among foreigners or between a foreigner and an Italian citizen neither resident nor domiciled in Italy.

74. Court of Cassation (plenary session), 15 May 1990 No. 4198 993

In case of an action brought by the Italian buyer against the seller domiciled in a Contracting State of the 1968 Brussels Convention, if Art. 5(1) of such Convention can not apply because the obligation in question – the goods' delivery – had to be carried out in a non-Contracting State, the general jurisdiction criterium set forth by Art. 2 of the same Convention must apply.

The contracting parties of an international sale can exclude the application to their contract of the Hague Convention of 1 July 1964 even through the recall to special rules as those of the Waren Verein of the Hamburg Stock Exchange; this does not need specific written approval if it is not inserted in standard conditions prepared by one of the parties.

75. Milan Tribunal, 17 May 1990 760

An action concerning nationality must be brought against the Ministry of the Interior, as in this regard the Registrar lacks the capacity.

The judgments of the Constitutional Court declaring the constitutional illegitimacy of a provision of law – which have no retroactive effect before 1 January 1948 – imply the annulment of the non-definitive effects of such provision only and, as regards relationships still pending, also of the effects following the publication of the Court's judgment; this is without prejudice to those preceding effects of the said provision of law which, though they can be taken back to the same relation still pending, have definitively reached – completely or in part – their aim through the constitution, extinction, modification or transfer of legal situations.

The loss of Italian nationality for a woman following marriage with a foreigner (pursuant to Art. 10, third paragraph of Law 13 June 1912 No. 555) can only be governed by the law in force at the time of the marriage; therefore, as this caused its effects on the Italian nationality of the woman at the same time when it was celebrated, the judgment of constitutional illegitimacy (16 April 1975 No. 87) and the consequent elimination of the said provision can not modify the previous effects.

The Constitutional Court's judgment 9 February 1983 No. 30, concerning the nationality of the children of an Italian mother, can have no effect (however not before 1 January 1948) as regards children who, at the date of its publication, already came of age.

76. Court of Cassation, 19 May 1990 No. 4537 1064

The principle providing for the compulsory use of Italian language refers to acts of the proceedings in the strict sense (among these, the decisions of the judge and the acts of his assistants, the acts instituting the proceedings, the defending pleadings and petitions, the Court records) and not also to documents presented by the parties; if these are worded in a foreign language, the judge, according to Art. 123 of the Civil Procedure Code, may, but must not, appoint a translator, so that the fact that the judge does not exercise such power, particularly if the text is easy to be understood both by the judge and by the parties, can not be contested through an appeal in cassation.

77. Court of Cassation, 22 May 1990 No. 4618 766

Pursuant to Art. 1 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, the divorce obtained in a contracting State must be recognized when it follows judicial or other proceedings officially recognized in that State.

Pursuant to the Hague Convention of 1 June 1970, a Swiss judgment on divorce, based on Art. 142 of the Swiss Civil Code, between an Italian husband and a Swiss wife can be recognized even though it contains only a brief statement of reasons.

Pursuant to Art. 10 of the Hague Convention of 1 June 1970, a Swiss judgment on divorce, from which it results that the foreign judge had a broader discretion in comparison with the Italian judge in the ascertainment of the status of the relationship between the spouses and that the same judge has limited himself to refer per relationem to the facts brought by the parties is not manifestly incompatible with Italian public policy.

78. *Court of Cassation (plenary session), 30 May 1990 No. 5091* 450

Pursuant to the international rule on restricted immunity, Italian judges are competent in a dispute concerning a tenancy of an immovable seat of a consular office. According to the international rule on immunity Italian judges are not competent for the enforcement of such judgment.

79. *Court of Cassation (plenary session), 12 June 1990 No. 5713* 1065

In case of an international sale, if the place where the goods have been delivered by the foreign seller sued in Italy is abroad, Italian judge has not jurisdiction according to Art. 4(2) of the Civil Procedure Code.

According to Art. 4(3) of the Civil Procedure Code, Italian judges have jurisdiction with reference to the action on guarantee for possible lack of conformity of the goods against the foreign seller by the Italian buyer, who had been sued by the further consignee of the goods, as these proceedings are related through petitum identity.

80. *Constitutional Court, order 14 June 1990 No. 291* 1000

Further to the entry into force of Law 28 February 1990 No. 39 on non-EEC nationals, it is necessary to verify the actual relevance of the issue of constitutional legitimacy of Art. 224, first paragraph of the Provisions on the implementation and coordination of the Criminal Procedure Code and provisional measures, approved by Decree Law 28 July 1989 No. 271, which provides for flagrancy arrest in case of breach of Art. 152 of the consolidated laws on public security.

81. *Turin Court of Appeal, order 19 June 1990* 967

According to Art. 44, litt. b of Law 4 May 1983 No. 184 on Adoption, a child can be adopted by a spouse if he is the biological son of the other spouse.

The issue of constitutional legitimacy of Art. 44, litt. b of Law No. 184 of 1983, according to Art. 29, second paragraph of the Constitution, is not manifestly unfounded where, foreseeing the adoption of a child by the spouse of the biological parent of the child himself, it does not allow to declare the enforcement in Italy of a foreign measure concerning the adoption in favour of both spouses of the biological child of one of them.

82. *Court of Cassation (plenary session), 22 June 1990 No. 6324* 770

Also following the entry into force of Art. 5 of Law on Divorce 1 December 1970 No. 898 (which has implicitly repealed Art. 72, third paragraph of the Civil Procedure Code) is up to the attorney general at the court of appeal which has enforced a foreign judgment on divorce the power to contest the enforcement judgment.

In case of appeal in cassation against the enforcement judgment lodged by other parties, the attorney general at the same court of appeal must necessarily intervene; otherwise – in case of lack of service upon him of the appeal in cassation or if the parties do not comply to the order of the Court of Cassation on his joinder within the prescribed term – the appeal in cassation itself would be inadmissible.

83. *Court of Cassation (plenary session), 22 June 1990 No. 6330* 772

As regards non-contractual liability, the expression «place where the harmful event occurred» as per Art. 5(3) of the Brussels Convention of 27

September 1968, as construed by the Court of Justice, the plaintiff can choose to sue the defendant either before the judge of the place where the damage occurred or before the judge of the place where the harmful event occurred.

In a dispute between two banks having their seat in different States, one of which has unlawfully kept an amount of money, which had been wrongly credited to it by the other bank's disposal to pay an apparent creditor, the plaintiff bank can choose to sue the defendant bank in the State where the amount's appropriation occurred (Germany) or in the State where the estate's reduction took place (Italy).

84. Court of Cassation, 23 June 1990 No. 6397 1066

Art. 95 of the consolidated laws 15 June 1959 No. 393 which, implementing the Geneva Convention of 19 September 1949, allows the circulation in Italy of vehicles registered abroad after the fulfilment of customs formalities for no more than one year, on the basis of the registration certificate of the origin State. Such provision, lacking specific limitations, applies not only to Italian citizens resident abroad and to foreign citizens, but also to Italian citizens resident in Italy who import cars registered in foreign States.

85. Court of Cassation, 27 June 1990 No. 6563 1003

Art. 365 of the Civil Procedure Code, which provides that the appeal in cassation must be subscribed by a lawyer who is granted with special power of attorney, excludes only that such power of attorney ad lites granted for all the phases of the proceedings may be effective also with reference to the proceedings in cassation, but it does not prevent that the general attorney ad negotia of the party, neither resident nor domiciled abroad, exercising the power of substantial representation according to Art. 77 of the Civil Procedure Code, grants such special power of attorney.

The modalities set forth by Art. 142 of the Civil Procedure Code for the service of documents to a person whose residence or domicile is not in Italy, must be observed only when – and this also after the amendments of the rule introduced by Law 6 February 1981 No. 42 – the addressee has not elected domicile in Italy or has not appointed an attorney according to Art. 77 of the Civil Procedure Code: these hypotheses are alternative, in the sense that the observance of such modalities for each is autonomous; for this reason the service carried out at the general attorney's appointed in Italy by the addressee, non resident nor domiciled in Italy, is valid even though with such appointment there has not been the election of domicile.

86. Genoa Court of Appeal, order 4 July 1990 1010

If a proceeding on the existence of requisites for the enforcement of a foreign judgment, according to the Brussels Convention of 27 September 1968, is pending before an Italian judge and a proceeding for the same dispute and among the same parties is pending before another Italian judge, the latter may suspend it according to Art. 295 of the Civil Procedure Code in order to avoid a later appeal against its judgment for inconsistency between the two judgments (Art. 395 of the Civil Procedure Code).

87. Court of Cassation, 5 July 1990 No. 7081 1013

An agreement between undertakings regulating the form of their respective products in order to avoid confusion among them does not

constitute an agreement restricting competition according neither to Arts. 85 and 86 of the EEC Treaty nor to Art. 2596 of the Civil Code.

88. *Court of Cassation, 9 July 1990 No. 7162* 776

With reference to a loan stipulated between two spouses, Art. 137 of the Swiss Civil Code, referred to by Art. 25, first paragraph of the Preliminary Provisions to the Italian Civil Code, allows one of the spouses to bring an action to obtain a declaratory judgment also ordering the restitution of the sum by the other spouse even though, as long as the marriage lasts, the possibility of an enforcement is excluded.

Art. 177 of the Swiss Civil Code provides that spouses can stipulate any contract between themselves.

89. *Court of Cassation, 21 July 1990 No. 7452* 1066

Art. 95 of the consolidated laws 15 June 1959 No. 393 which, implementing the Geneva Convention of 19 September 1949, allows the circulation in Italy of vehicles registered abroad after the fulfilment of customs formalities for no more than one year, on the basis of the registration certificate of the origin State. Such provision, lacking specific limitations, applies not only to Italian citizens resident abroad and to foreign citizens, but also to Italian citizens resident in Italy who import cars registered in foreign States.

90. *Constitutional Court, Order 31 July 1990 No. 394* 1065

Further to the entry into force of Law 28 February 1990 No. 39 on non-EEC nationals, it is necessary to verify the actual relevance of the issue of constitutional legitimacy of Art. 224, first paragraph of the Provisions on the implementation and coordination of the Criminal Procedure Code and provisional measures, approved by Decree Law 28 July 1989 No. 271, which provides for flagrancy arrest in case of breach of Art. 152 of the consolidated laws on public security.

91. *Udine Pretore (civil session), order 31 July 1990* 454

In case the Italian judge is not competent in a dispute concerning an international sale of goods, pursuant to Art. 5(1) of the Brussels Convention of 27 September 1968, the Italian judge has jurisdiction to award provisional measures to be enforced in Italy according to Art. 4(3) of the Civil Procedure Code and Art. 24 of the Brussels Convention.

In case of a protective measure adopted for the safeguard of a documentary credit the periculum in mora can not be based on the fact that the counterparty is a foreign company, when the possible future enforcement will take place in a Contracting State of the Brussels Convention.

92. *Court of Cassation, 1 August 1990 No. 7662* 1016

The decree in chambers issued by the court of appeal on a claim against a measure adopted by the juvenile court regarding fitness for adoption of a foreign child as per Arts. 30 and 6 of Law 4 May 1983 No. 184 is not subject to appeal in cassation according to Art. 111 of the Constitution.

93. *Court of Cassation (plenary session), 6 August 1990 No. 7935* 1018

According to Art. 41 of the Civil Procedure Code, the claim for preliminary ruling on jurisdiction and the relevant counterclaim must be subscribed by a lawyer granted with special power of attorney.

The filing of a claim for preliminary ruling on jurisdiction by the foreign defendant shows that the service of the summons, even late, and the summons itself, eventually irregular or void, reached their aim.

The 1978 Accession Convention to the 1968 Brussels Convention applies between Italy and Great Britain only for actions brought after 1 January 1987, according to its Art. 34.

The issue of reciprocity according to Art. 16 of the Preliminary Provisions to the Civil Code, relating to the exercise of the right of action by the foreign plaintiff, falls within the merits of the case and not within jurisdiction.

According to Art. 4(3) of the Civil Procedure Code and to Art. 6(1) of the 1968 Brussels Convention, as amended by the 1978 Accession Convention, the joinder by causa petendi allows to sue foreigners before the Italian judge in the presence of other Italian defendants.

94. Court of Cassation, 7 August 1990 No. 7957 780

It is the duty of the guardianship judge, who watches over the compliance to the conditions set forth by Art. 337 of the Civil Code for the exercise of parental authority, to decide upon the authorization for the issue of the passport to a minor child of separated parents in order to carry out a journey abroad with one of the parents.

95. Court of Cassation, 8 August 1990 No. 7995 1024

Art. 798 of the Civil Procedure Code applies only to the enforcement of foreign judgments by default and not also of arbitral awards.

According to Art. V(1) litt. b of the New York Convention of 10 June 1958, the party objecting that it was not given proper notice of the arbitration proceedings and the consequent violation of the rights of the defense must prove such situation.

During the enforcement of an arbitral award according to the 1958 New York Convention, Art. II of this Convention, regarding the recognition of the arbitral clause, can not apply, but Arts. III and followings must apply, and in particular, with reference to such clause, Art. V.

Art. V(2) litt. a of the 1958 New York Convention concerns the arbitrability of the claim, which can be determined according to the lex fori, but it does not submit to this law the whole arbitration proceedings, which is ruled by the law of the place where the award has been given.

The issue regarding the difference between the terms of the submission to arbitration and the object of the arbitral award, according to Art. V(1) litt. c of the 1958 New York Convention regards the merits of the action which can not be brought in the cassation proceedings.

96. Court of Cassation (plenary session), 8 August 1990 No. 8061 1032

As per Art. 801 of the Civil Procedure Code, foreign judgments in chambers may be enforced in Italy according to Arts. 796 and 797 of the Civil Procedure Code in so far as applicable.

May be regarded as judgments or non contentious measures those foreign measures which, for their nature or content, would be respectively qualified as such in Italy, though they are differently qualified in the foreign State.

A foreign measure appointing a guardian for an incapable person can be compared to a disability or interdiction measure in Italian law.

The procedure for enforcement of a foreign measure appointing a guardian is entirely subject to Arts. 796 and 797 of the Civil Procedure Code as regards the summons, the debate and the conclusive judgment.

The enforcement procedure of a foreign measure appointing a guardian can be appealed in cassation, according to Art. 111, second paragraph of the Constitution.

97. *Court of Cassation (plenary session), 17 August 1990 No. 8359* 1051

To the purposes of the determination of Italian jurisdiction according to Arts. 5(1) of the Brussels Convention of 27 September 1968 and 19 of the Hague Convention of 1 July 1964 on international sale, the clause CIF/FIO added to the sale contract involves only the undertaking of transportation costs and connected charges by the seller, but it does not change the place of delivery of the goods.

98. *Court of Cassation (plenary session), 18 August 1990 No. 8427* 782

As the right of the parties to appeal to the Court of Cassation for a ruling on jurisdiction may be exercised in course of all procedures, also special, having contentious nature, pursuant to Art. 41 of the Civil Procedure Code, it is admissible also in a proceedings of legal separation between spouses.

Art. 4, first paragraph of Law 1 December 1970 No. 898 on Divorce, in the original text and in the text substituted by Art. 8 of Law 6 March 1987 No. 74, regards only the internal competence of the seized judge and not Italian jurisdiction.

The issue of jurisdiction in a case of legal separation between spouses does not fall within the application of Art. 4(2) of the Civil Procedure Code but within Art. 4(1) of the same Code.

Pursuant to Art. 4(1) of the Civil Procedure Code, Italian judges are competent to hear a case of legal separation when the sued foreign spouse is domiciled in Italy at the time of the action, even though such domicile is proved through an attested affidavit.

99. *Court of Cassation (plenary session), 29 August 1990 No. 8981* 458

When a previous foreign judgment about legal separation between spouses is called upon as a condition to obtain divorce in Italy, the Italian judge's assessment upon the finality of the foreign judgment, the foreign judge's competence and other conditions does not fall within the sphere of enforcement, though interlocutory, of the title, so that the prohibition of the interlocutory enforcement in status matters does not apply.

Art. 2 of the Convention on the Recognition of Divorce and Legal Separations, signed in The Hague on 1st June 1970, allows the enforcement of foreign judgments passed upon jurisdictional criteria different from those provided for by Italian law and excludes among Contracting Parties the Italian judge's exclusive jurisdiction for disputes on these matters arisen among Italian citizens.

Pursuant to Art. 19, first paragraph of the 1970 Hague Convention, Italy has reserved the right not to recognize a foreign separation or divorce between spouses who, at the time of the judgment, were exclusively Italian nationals in case a law other than that indicated by its rules of private international law was applied, unless the same result was reached.

The reservation referred to in Art. 19, first paragraph of the 1970

Hague Convention, does not apply if the foreign judge has passed a judgment of separation because of intolerability of cohabitation of Italian spouses and has therefore come to the same result, irrespective of the law applied, which the parties' national law would have reached.

100. Milan Tribunal, 24 September 1990 463

In a dispute concerning industrial patents, jurisdiction does depend neither on the possible election of domicile of the defendant at the agent indicated in the application (Art. 4(1) of the Civil Procedure Code) nor on the criterium of «goods existing in Italy» (Art. 4(2) of the Civil Procedure Code).

As concerns industrial patents, Italian jurisdiction is determined by Art. 75 of the Royal Decree 29 June 1939 No. 1127, which provides that such actions are to be brought before Italian judges, irrespective of the parties' nationality.

101. Council of State (4th Session), 3 October 1990 No. 730 792

As the protection of linguistic minorities may be achieved only through the ordinary law, the decision of the Trieste Province Administration to attribute to the Slovene speaking councillors the option to speak in their mother tongue is unlawful as the Province Administration has no power to amend State laws in matters of the use of languages.

There is no general international rule setting forth that subjects belonging to ethnic minorities can use their mother tongue, different from the official one of the country, when they hold official offices.

102. Constitutional Court, order 10 January 1991 No. 8 721

The issue of constitutional legitimacy of Art. 423 of the Navigation Code - raised with reference to Art. 3 of the Constitution - which does not foresee the benefit of limitation of liability in favour of the carrier in case of national carriages unlike the provisions on international carriages of the Brussels Convention of 25 August 1924 on the bill of lading, as amended by the Brussels Protocols of 2 February 1968 and 21 December 1979, is manifestly inadmissible.

103. Milan Court of Appeal, 15 January 1991 1037

According to Art. 19 of the Hague Convention of 1 June 1970 on Recognition of Divorces and Legal Separations, the «equivalence of results» involves a comparison between the circumstances on which the foreign divorce was based and on which it can be pronounced in Italy, which do not have to be the same.

A divorce judgment given in the United Kingdom can be enforced in Italy if the foreign judge has come to an ascertainment of the irreversible breaking off of marriage using admissible evidences, even though these have been deduced by the declarations of the spouses themselves.

104. Milan Court of Appeal, 18 January 1991 786

In order to enforce a Belgian divorce judgment, Art. 2(5) of the Italian-Belgian Convention 6 April 1962 - which provides for criteria of indirect international competence in contractual matters - does not apply because the Convention sets forth apposite rules on divorce and because it would be reducing to consider the marriage bond among obligations.

Pursuant to Art. 2(11) of the 1962 Italian-Belgian Convention, a Belgian divorce judgment can be enforced in Italy if the foreign judge's jurisdiction is based on the rules provided by the legislation of the State where the enforcement is sought, that is to say on the criterium of the defendant's residence set forth by Art. 4(1) of the Civil Procedure Code.

A foreign judgment on divorce between an Italian man and an Italian-French woman, to which Belgian law was applied, is not contrary to Italian public policy so long as an irretrievable breakdown of the marriage has been ascertained.

A foreign divorce judgment based on a notion and function of divorce different from those provided for in Italian law is not contrary to Italian public policy when it ascertains not only the termination of the spiritual and material relation between the spouses but also a serious non-compliance with the marriage duties.

105. Constitutional Court, 24 January 1991 No. 27 967

The issue of constitutional legitimacy of Art. 44, first paragraph litt. b of Law 4 May 1983 No. 184 on Adoption – raised with reference to Art. 29, second paragraph of the Constitution – where, foreseeing the adoption of a child by the spouse of the biological parent of the child himself, it does not allow to declare the enforcement in Italy of a foreign measure concerning the adoption by both spouses of a biological child of one of them, is unfounded.

106. Milan Court of Appeal, 29 January 1991 1040

According to Art. 1(4) of the Brussels Convention of 27 September 1968, arbitration is excluded from its field of application.

The decree with which the Court of Appeal, following an application as per Art. 31 of the Brussels Convention, ordered the enforcement in Italy of a French judgment, which enforced an arbitral award in France, must be repealed.

107. Court of Cassation, 7 March 1991 No. 2425 466

Pursuant to Art. 9, first paragraph n. 3 of the Law on Nationality 13 June 1912 n. 555, an Italian citizen having lost his nationality as per Arts. 7 and 8 of the same Law recovers it after a two years' residence in Italy.

The recovery of nationality is a complex issue made up of various elements, among which an explicitly or implicitly favourable attitude of the concerned person's will, which do not include the need of an express declaration of the concerned person aimed at the recovery itself; consequently the burden of proof of such will, which can not be presumed, lies upon the person recovering nationality.

The issue of constitutional legitimacy of Art. 9, first paragraph n. 3 of the Law on Nationality, in connection with Arts. 2, 3, 10 and 22 of the Constitution, is manifestly unfounded.

108. Milan Tribunal, 14 October 1991 1043

According to Art. 4(1) of the Civil Procedure Code, Italian judges have jurisdiction against a foreign company, which has in Italy a branch office where a general attorney with widest powers, also representative, is appointed.

According to Art. 25, second paragraph of the Preliminary Provisions to the Civil Code, the law applicable to the compensating obligation deriving

from an air crash occurred abroad is the law of the State where such crash took place.

The application of a foreign provision of law disposed by Italian rules of private international law concerns the material discipline of the substantial relationship in question and it does not involve the foreign rules regarding the proceedings which are subject to the lex fori, according to the Art. 27 of the Preliminary Provisions to the Civil Code.

The Constitutional judgment of 6 May 1985 No. 132, declaring the illegitimacy of the law implementing the 1929 Warsaw Convention and the 1955 Hague Protocol regarding the limitation liability in international air transportation is considered one of the parameters in order to verify the incidence of international public policy according to Art. 31 of the Preliminary Provisions to the Civil Code.

Spanish Law on air navigation of 17 December 1960 No. 48 (and the following Royal Decree 4 August 1983 No. 2333) can not apply, as it is contrary to the principle of international public policy on the necessity of sufficient guarantees of adequate damages' compensation because it foresees a compensation limit, in case of passenger's death, which is inadequate to the damage's compensation.

The foreign law applicable to the merit applies also to the determination of the so-called moral damages, whose amount is subordinated to the conclusion of the criminal proceedings pending in the foreign State.

According to a general principle of Art. 3 of the Civil Procedure Code, a civil proceedings pending in Italy on an air crash occurred abroad, can not be suspended in order to wait for the conclusion of the criminal proceedings pending in the foreign State.

COURT OF EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 4, 17.

Brussels Convention of 1968: 5, 6.

Community institutions: 11.

Community procedure: 3.

Companies: 7.

Competition: 1, 2.

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Free movement of goods: 18.

Freedom of movement for persons: 21.

Freedom to provide services: 20, 21.

International judicial assistance: 14.

Non-contractual liability of the Community: 9.

Preliminary ruling on interpretation: 15.

Public works and supply contracts: 24.

Right of residence and establishment: 16, 21.

1. *Judgment 21 September 1989, cases 46/87 and 227/88* 184

The rights of the defence, a fundamental principle of Community law, must be observed not only in administrative procedures which may lead to the imposition of penalties, but also during preliminary inquiry procedures as investigations.

The right to the inviolability of the home of natural persons cannot apply tout court to undertakings, which, nonetheless, may invoke a general principle of EEC law providing protection to business premises against arbitrary or disproportionate intervention.

The exercise of the Commission's power of investigation under Article 14 of Regulation No. 17 of 1962 is subject to conditions serving to ensure that the rights of the undertakings concerned are respected and, in case they express their opposition, it must comply with the relevant procedural guarantees laid down by national law as regards the assistance afforded to the Commission's officials by national authorities.

The Commission is obliged to state the reasons on which a decision ordering investigations is based, which must contain the essential indications prescribed by Article 14(3) of Regulation No. 17, as well as the presumed facts on which the Commission intends to investigate.

Decisions adopted by the so-called delegation procedure are to be considered Commission's decisions under Article 15 of Regulation No. 17.

The obligation to hear the undertakings concerned and to consult the Advisory Committee on Restrictive Practices and Dominant Positions under Regulation No. 99/63 of the Commission is fulfilled if the hearing and consultation take place before the fixing of the definitive amount of the periodic penalty payment.

2. *Judgment 18 October 1989, case 374/87* 193

In case of an inquiry of the Commission into the existence of agreements or concerted practices contrary to Article 85(1) of the EEC Treaty, if the request of information and the decision were addressed or notified, respectively, to a subsidiary and to the parent company, it need merely be stated that the latter in fact had full knowledge of the prior request for information.

Under Regulation No. 17 of 1962, the Commission can require, for the purposes of a request of information as per Article 11, the disclosure of documents of which it was unable to take copy or extract when carrying out a previous investigation based upon Article 14.

While neither Article 6 of the European Convention on Human Rights, nor Article 14 of the International Covenant on Civil and Political Rights upholds the right not to give evidence against oneself in the field of competition law, the existence of a fundamental principle of EEC law safeguarding the rights of the defence implies that the Commission may not compel an undertaking to provide it with answers which might involve an admission on its part of the existence of an infringement which is incumbent upon the Commission to prove.

3. *Order 6 December 1989, case 147/86 TO 1* 498

Under Article 39 of the Protocol on the Statute of the Court of Justice, third-party proceedings may be instituted only by persons who could have taken part in the case. Natural or legal persons other than the Member States and the Community institutions have no capacity to make an application

originating third-party proceedings against a judgment of the Court given in proceedings for a declaration that a Member State has failed to fulfil its obligations.

4. *Judgment 13 December 1989, case 322/88* 509

In the light of the fifth paragraph of Article 189 of the EEC Treaty, the Commission Recommendation of 23 July 1962 concerning the adoption of the European schedule of industrial diseases and Commission Recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases cannot in themselves confer rights on individuals upon which the latter may rely before national courts. However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular when they are capable of casting light on the interpretation of other provisions of national or Community law.

5. *Judgment 10 January 1990, case 115/88* 501

An action whereby a creditor seeks to have a disposition of a right in rem in immovable property rendered ineffective as against him on the ground that it was made in fraud of his rights by his debtor does not come within the scope of Article 16(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments.

6. *Judgment 11 January 1990, case 220/88* 199

The jurisdictional rule of Article 5(3) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments cannot be interpreted in such a way that a plaintiff who appeals in reference to damage which he says to be the consequence of losses suffered by others, who are direct victims of the harmful event, is thereby authorized to sue that person who caused the event before the court of the place where the plaintiff himself found damage to his property.

7. *Judgment 11 January 1990, case 38/89* 504

Article 54(3)(g) of the EEC Treaty and the fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies must be interpreted as meaning that the legislation of Member States intended to implement that directive must be brought into force and applied even if other Member States have not yet adopted measures to implement the directive.

8. *Judgment 22 February 1990, case 221/88* 1070

Though the ECSC Treaty contains no express provision governing the exercise by the Court of Justice of a power of interpretation, the Court has jurisdiction to give preliminary rulings on questions proposed by national judges on the ECSC Treaty and measures adopted under it.

Commission Recommendation 86/198/ECSC of 13 May 1986 must be interpreted as meaning that in the absence of national implementing measures the ECSC may rely on that Recommendation, once the period laid down for its implementation has expired, as against a Member State which has failed to implement it; however, the preferential status of the debts owed to it may be recognized only as against that State, the Community's claims

being placed on the same footing as any claims by the State, and does not prejudice the rights of creditors other than the State under national legislation on the rights of creditors in the absence of the Recommendation.

The second paragraph of Article 4 of the Recommendation must be interpreted as meaning that the ECSC may claim preferential treatment, in the circumstances and subject to the conditions specified above, for all debts owed to it by undertakings in respect of the levies referred to in Articles 49 and 50 of the ECSC Treaty, irrespective of the date on which they arose, if those debts are still provable in the liquidation of the undertaking in accordance with the provisions of national law governing the rights of creditors.

9. *Judgment 22 March 1990, case 201/89* 512

Articles 178 and 183 of the EEC Treaty and Article 1 of the Protocol on Privileges and Immunities of the European Communities must be interpreted as meaning that:

(a) the Court has no jurisdiction to hear an action for non-contractual liability simply because the act complained of took place on the premises of the European Parliament;

(b) the distribution by a political group, within the meaning of Article 26 of the Rules of Procedure of the European Parliament, of a publication alleged as defamatory does not give rise to the non-contractual liability of the Communities.

10. *Judgment 15 May 1990, case 365/88* 1076

Where a defendant domiciled in a Contracting State is sued in a court of another Contracting State pursuant to Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, that court has also jurisdiction by virtue of Article 6(2) of the Convention to entertain an action on a warranty or guarantee brought against a person domiciled in a Contracting State other than that of the court seized of the original proceedings.

Article 6(2) of the Brussels Convention must be interpreted as meaning that it does not require the national court to accede to the request for leave to bring an action on a warranty or guarantee and that the national court may apply the procedural rules of its national law in order to determine whether that action is admissible, provided that the effectiveness of the Convention in that regard is not impaired and, in particular, that leave to bring the action on the warranty or guarantee is not refused on the ground that the third party resides or is domiciled in a Contracting State other than that of the court seized of the original proceedings.

11. *Judgment 22 May 1990, case 70/88* 514

An action for annulment brought by the Parliament against an act of the Council or the Commission is admissible provided that the action seeks only to safeguard its prerogatives and that it is founded only on submissions alleging their infringement.

12. *Judgment 19 June 1990, case 213/89* 1080

Community law must be interpreted as meaning that a national court which, in a case before it concerning Community law, considers that the sole

obstacle which precludes it from granting interim relief is a rule of national law must set aside that rule.

13. *Judgment 12 July 1990, case 188/89* 809

Article 5(1) of Council Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions may be relied upon in a claim for damages against a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals.

14. *Order 13 July 1990, case 2/88* 516

Under the principle of sincere co-operation between Member States and the Community institutions, pursuant to Article 5 of the EEC Treaty, the privileges and immunities granted to the European Communities are functional in the sense that they aim to prevent any obstacle to the functioning and the independence of the Communities.

The Court of Justice has the task of controlling that the obligation of sincere co-operation has been fulfilled.

15. *Judgment 20 September 1990, case 192/89* 518

The interpretation of the decisions of the Association Council instituted by the Association Agreement between the EEC and Turkey falls within the application of Art. 177 of the EEC Treaty.

16. *Judgment 3 October 1990, cases 54/88, 91/88 and 14/89* 519

The provisions of the EEC Treaty concerning freedom of establishment do not apply to situations occurred within a Member State like those relating to citizens of a Member State exercising in its territory an autonomous activity, where they can not benefit from previous training or practice acquired in another Member State.

17. *Judgment 9 October 1990, case 366/88* 520

An act like the internal service instructions adopted by the Commission with reference to the Council's Regulation No. 729/70 constitutes an act which can be reviewed pursuant to Art. 173 of the EEC Treaty.

18. *Judgment 17 October 1990, case 10/89* 521

Articles 30 and 36 of the EEC Treaty do not preclude national legislation from allowing an undertaking which is the holder of a trademark in a Member State from opposing the importation from another Member State of similar products lawfully bearing an identical trade mark in the latter State or liable to confusion with the protected mark even though the mark under which the contested products are imported originally belonged to a subsidiary of the undertaking which opposes the importation and was acquired by a third undertaking as a result of the expropriation of that subsidiary.

19. Judgment 18 October 1990, cases 297/88 and 197/89 1085

EEC Council's Regulation of 15 October 1968 No. 1612, Council's Directive of 15 October 1968 No. 68/360/EEC, EEC Commission's Regulation of 29 June 1970 No. 1251 and Council's Directive of 25 February 1964 No. 64/221/EEC on workers' freedom of movement and rights do not apply to merely internal situations of a Member State as those concerning a third State's citizen who, by virtue of only his status of spouse of a Member State's national, invokes a right of stay in the territory of such Member State.

The spouse of a worker, citizen of a Member State, presently or previously employed in another Member State, can invoke the right of stay in the latter State at the conditions set forth by the Directive of 15 October 1968 No. 68/360, by the Regulation of 15 October 1968 No. 1612 and by the Regulation of 29 June 1970 No. 1251. If, on the one hand, the national judge is bound by the indications and the rulings on interpretation of EEC law given by the Court of Justice, on the other hand, it is the same judge's task to evaluate, according to the nature of the reference of national rules to the above-mentioned EEC provisions, the conditions regulating the application of said provisions to the internal situation giving rise to the dispute pending before him.

Under Art. 8 of the Directive 25 February 1964 No. 64/221, Member States are obliged to grant to persons to which this Directive applies a jurisdictional protection not less favourable, in particular with reference to the authority to seize and its powers, than that granted to its citizens in case of appeal against administrative acts.

Under Art. 9 of the Directive 25 February 1964 No. 64/221, Member States are not obliged to grant to persons foreseen in the same Directive an action before the judge competent to issue precautionary measures in matters of right to stay in order to obtain a provisional measure before the enforcement of a decision denying the right of stay or ordering the expulsion from Italy.

20. Judgment 12 December 1990, case 263/88 523

By failing to adopt the measures needed to allow nationals of other Member States in possession of the requisite French qualifications to establish themselves or provide services as doctors, general nurses, midwives, dentists or veterinary surgeons in the overseas territory of French Polynesia, and by failing to adopt within the prescribed period the necessary provisions regarding the occupation of veterinary surgeon in New Caledonia and its dependencies, the French Republic has failed to fulfil its obligations under Article 137 of Council Decision 80/1186/EEC of 16 December 1980 and Article 176 of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community.

21. Judgment 12 December 1990, cases 100 and 101/89 523

The sphere of application of Article 176 of Council Decision 86/283/EEC of 30 June 1986 on the association of overseas countries and territories with the European Economic Community does not extend to cover decisions taken by the competent authorities of the Member States in regard to entry and residence of nationals of other Member States in an overseas territory, except where such decisions concern the nationals of the other

Member States who exercise or seek to exercise the right of establishment or the freedom to provide services in such a territory.

The prohibition of discrimination laid down by Article 176 of Council Decision 86/283/EEC may be relied on before the competent authorities of a country or a territory by a national of a Member State, other than the one with which that country or territory maintains special relations, for the purpose of establishing himself or providing services there, once the person concerned satisfies the conditions required of nationals not established in that country or territory and if the Member State of which he is a national accords the same treatment to persons from the country or territory in question.

22. *Judgment 13 December 1990, case 238/89* 811

Article 30 of the EEC Treaty must be interpreted as precluding the application of a national provision on unfair competition which enables a trader to obtain a prohibition in the territory of a Member State on the putting into circulation of goods bearing the letter R in a circle beside the trade mark, where the trade mark is not registered in that State but is registered in another Member State.

23. *Judgment 5 February 1991, case 363/89* 812

Prior registration of a national of a Member State of the Community with a social security scheme established by the legislation of the host State cannot be required as a condition for obtaining the right of residence or the delivery of a corresponding residence permit. Registration with one social security scheme rather than the other cannot justify a refusal to issue a residence permit or a decision ordering expulsion from the territory.

Article 4 of Directive 68/360 and Article 6 of Directive 73/148 preclude Member States from accepting only prior registration with a social security scheme as evidence that the person concerned falls within one of the categories enjoying freedom of movement of persons and thus must be issued with a residence permit.

Member States are obliged to issue a residence permit to a national of another Member State if it is not disputed that that person is engaged in economic activity, without it being necessary in that regard to classify the activity as that of an employed or self-employed person.

Member States may not, on the basis of the Community rules concerning freedom of movement for persons, refuse to issue a residence permit to a Community citizen on the ground that he does not exercise his activity in accordance with the social security legislation in force.

24. *Order 6 February 1991, case 21/88* 525

Rectification of paragraph 3 of judgment 20 March 1990, case 21/88.

25. *Judgment 21 February 1991, cases 143/88 and 92/89* 1088

Article 189 of the Treaty must be interpreted as meaning that it does not preclude the power of national courts to suspend the operation of an administrative measure based on a Community regulation.

Suspension of the operation of a national measure in implementation of a Community measure may be granted by a national court only if it has serious doubts as to the validity of the Community measure and refers the question of the validity of the contested measure to the Court of Justice, if

that has not already been done; and if the matter is urgent, there is a risk to the applicant of serious and irreparable harm and the national court takes due account of the Community's interests.

26. *Judgment 26 February 1991, case 292/89* 1090

It is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.

27. *Judgment 5 March 1991, case 330/88* 506

The Court of Justice is competent to hear a case about the execution and the interpretation of a contract between the Commission and a private undertaking for the execution of some work in the Ispra Research Center, by virtue both of Art. 153 of the Euratom Treaty and of a specific arbitral clause included for this purpose in the contract itself.

According to the general terms for contracts between the EEC Commission and third parties, the relationships between them are subject to the written form both for the conclusion of the contract and for every subsequent amendment.

When a subject, after carrying out some works in performance of a contract with the Commission, applies for a judgment declaring the latter's unjust enrichment, such action, having non-contractual basis, does not fall within the application of the arbitral clause and, consequently, within the Court of Justice's jurisdiction.

28. *Judgment 21 March 1991, case 305/89* 802

Those public or private bodies which receive from the State an endowment fund or are controlled by such a body, bodies whose board of directors is appointed by the State or by a State-controlled company, or companies which must follow the directives of Government's committees must be considered public holding companies controlled by the State.

Capital contributions awarded through public holding companies are to be considered States aid under Article 92(1) of the EEC Treaty.

Capital contributions awarded through a public holding company, which a private investor, under the normal conditions of a market economy and even if he adopted a global, long-term policy, without seeking immediate profitability, would not have been willing to make, are to be regarded as State aid.

The recovery of unlawful aid is the logical consequence of the finding that it is unlawful.

FOREIGN COURTS CASES

Tribunal d'arrondissement de Luxembourg, 7 July 1988 1092

Arts. 1 to 16 and 21 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations apply in Luxembourg even before

the international entry into force of the Convention and also to relationships with non-Contracting States.

According to Art. 3 of the 1980 Rome Convention, in the absence of an express choice of law the probable or presumed intention of the parties can not be researched nor, lacking other elements, a jurisdiction clause or the place of conclusion can be sufficient to this purpose.

According to Art. 4 of the 1980 Rome Convention, the characteristic obligation in an agency is the obligation of the agent: therefore such contract is ruled by the law of the State where the agent's activity is carried out.

As the evidence of foreign law is a matter of fact, information to foreign authority can be requested, if the parties do not provide the judge with sufficient documents, according to the London Convention of 7 June 1968.

Tribunal d'arrondissement de Luxembourg, 14 July 1988 1095

The Hague Convention of 1 July 1964 on international sale does not apply to a contract stipulated by companies having their seat in Luxembourg and in France because the latter State did not ratify it.

Arts. 1 to 16 and 21 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations apply in Luxembourg even before the international entry into force of the Convention pursuant to Law 27 March 1986 and also to relationships with non-Contracting States.

According to Art. 4 of the 1980 Rome Convention, in a contract of sale the characteristic obligation is that of the seller to deliver the goods: therefore, the law of the State of the seller's seat must apply to such contract.

Supreme Court of the United States, 17 January 1990 204

In case of an action for damages brought by an U.S. unsuccessful bidder against a U.S. company, which awarded a government contract in Nigeria by means of bribes, prohibited by Nigerian Law, the act of state doctrine cannot apply because the cause of action does not rest upon the asserted invalidity of an official act of a foreign state but requires imputing to foreign officials an unlawful motivation in the performance of such an official act.

Tribunal d'arrondissement de Luxembourg, 27 March 1990 1097

The Luxembourg Regulation 14 October 1963 limiting the interest rate for loans of money to consumers to 0.75% per month is not a mandatory provision of law.

Arts. 1 to 16 and 21 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations apply in Luxembourg even before the international entry into force of the Convention pursuant to Law 27 March 1986 and also to relationships with non-Contracting States.

In case of a loan of money agreement concluded by a consumer, Art. 5, second and third paragraphs of the Rome Convention can not apply because it is a contract with real effects which ends up with the money delivery , thus the possible contacts between the parties in the State of the habitual residence of the consumer are mainly preliminary acts.

A fraud on a statute (fraude à la loi) occurs when rules of private international law are used to the aim of eluding the application of mandatory provisions of law otherwise applicable.

Tribunal d'arrondissement de Luxembourg, 14 November 1990 1103

The Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which applies in Luxembourg before its international entry

into force according to Law 27 March 1986, does not rule contracts concluded before the entry into force of such law.

In the absence of an express choice of law, reference to provisions of specific law, the place of performance of the contract and use of the letterhead of one of the contracting parties are sufficient revealing indexes of their implicit will to such end.

Court of Appeal, 19 December 1990 815

The decision of an English Court to refuse jurisdiction, in a case against a person domiciled in England, in favour of the court of a non-Contracting State of the 1968 Brussels Convention on the ground of forum non conveniens is not contrary to the Convention itself.

Articles 21 and 22 of the Brussels Convention do not deal with the situation where there is one lis pending in a court of a Contracting State against a person domiciled in that State and another lis pending, in proceedings involving the same cause of action or in a related action, in the courts of a non-Contracting State.

Article 17 of the Brussels Convention does not apply when the parties to a contract have agreed that the courts of a non-Contracting State shall have exclusive jurisdiction to resolve their disputes.

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