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1. *Corte di Cassazione (S.U.), 8 February 1990 No. 859* 138

The claim brought for the payment of a sum against the delivery of the goods - which must be fulfilled at the domicile of the seller in Italy as per Art. 59 of the Hague Convention of 1 July 1964 - falls within Art. 5 No. 1 of the Brussels Convention and it is therefore subject to Italian jurisdiction irrespective of the fact that the buyer has issued a cheque payable abroad which was protested.

2. *Corte di Cassazione (S.U.), 3 December 1990 No. 11559* 140

Italian judges are not competent to hear a claim brought for the payment of an immovable in Italy by the German seller against the buyer, also domiciled in Germany, if the parties expressly indicated in the contract Cologne as place of performance and forum, as per Arts. 5 No. 1 and 17 of the Brussels Convention of 27 September 1968, although the contract, written on a form prepared by the seller, was not signed by him.

3. *Milan Court of Appeal, 5 November 1991* 576

Italian law applies to the succession of an Italian citizen as per Art. 23 of the Preliminary Provisions to the Civil Code.

The capacity to inherit is subject to the law applicable to the succession.

As per art. 600, first paragraph of the Civil Code, the provision of a will in favour of a Swiss foundation to be constituted has no legal effect if such foundation has not been recognised in Italy or in Switzerland within one year.

As per Art. 4 of the Civil Procedure Code, Italian judges are competent to hear a case concerning the succession of an Italian citizen connected to the claim of the goods, which is subject to Italian jurisdiction.

4. *Corte di Cassazione (S.U.), 14 January 1992 No. 374* 142

The Sovereign Military Order of Malta is not exempt from Italian jurisdiction as regards a claim on the title to and the administration of goods belonging to the «Baliaggio di S.Sebastiano» and on the right to present the Balì. As far as the first aspect is concerned, they are pecuniary rights stemming from the institution which are not bound to its public aims; as regards the second aspect, the recognition is not requested ex se but only in order to administer the goods and it is not related to the religious and charitable purposes of the Order.

5. *Corte di Cassazione, 19 January 1992 No. 606* 145

According to the Hague Convention of 15 April 1958, in order to recognize foreign judgments on maintenance obligations towards children, the impossibility to safeguard the rights of the defense, which can be invoked to hinder the enforcement, refers to the regularity of the proceedings abroad only; it does not concern other procedural situations not envisaged by the above-said Convention.

The action of the Ministry of the Interior, as intermediary institution, for the enforcement of the foreign judgment condemning to the payment of maintenance to a minor, is not hindered by the fact that the enforcement of the part of the judgment regarding filiation is not asked for.

6. *Corte di Cassazione, 3 February 1992 No. 1128* 147

Art. 37 of Law 4 May 1983 No. 184, applying Italian law to a foreign deserted minor in Italy, implies the competence of the Italian judge, irrespective of Art. 4 of the Civil Procedure Code, as well as the application of Italian law to the adoption, aside from private international law rules.

7. *Lombardy Regional Administrative Tribunal, 12 February 1992 No. 98* 329

Acts concerning the exercise of international policy can be considered political, such as the decree through which the Minister of Justice allows the extradition of a foreign national, according to Art. 708 of the Criminal Procedure Code.

The expulsion measure, set forth by Art. 7, fifth paragraph of Law 28 February 1990 No. 39, disposed against a foreigner for reasons regarding the safety of the State has not a political nature, even if a brief statement of reasons is given.

As regards the evaluation of possible social danger deriving from the acquisition of Italian nationality by a foreigner, the Ministry of the Interior does not have to demonstrate the facts which are prejudicial for public order and which hinder the above-said acquisition.

8. *Corte di Cassazione (S.U.), 13 February 1992 No. 1716* 394

The Basel Convention of 16 May 1972 on the Immunity of the States supplies evidence of the evolution of international customary law though it was not ratified by Italy. The Convention excludes immunity from civil and administrative jurisdiction of the hosting State for labour agreements concluded and to be fulfilled within its territory.

Italian judges are competent with reference to a dispute filed against the Institut Franaisby the heirs of an Italian citizen in order to recover part of the salary of the deceased even if the labour relationship between the latter and the Institut Français concerns the public function of the Institut, such as the teaching and promotion of French. In fact the claims in the case at stake have pecuniary nature.

9. *Corte di Cassazione (criminal), 15 February 1992* 148

The principle of specialty, as per Art. 14, first paragraph of the European Convention on Extradition of 13 December 1957, is not infringed in case a different legal characterisation is given to facts on which extradition is based, if such fact, as envisaged in the extradition measure, corresponds in its substance to the fact for which the sentence was passed, since only a different fact falls within the clause of specialty.

10. *Corte di Cassazione, 18 February 1992 No. 2046* 397

In order to apply the provisional measures provided for by Art. 76 of Law 4 May 1983 No. 184 on Adoption, it is necessary that the Juvenile Court pronounced a declaration of fitness of the spouses before 1 June 1983 in view of the specific foreign measure of adoption to be enforced.

11. *Corte di Cassazione, 22 February 1992 No. 2193* 150

The principle of favour towards the employee imposes a limitation of international public policy which hinders the application of a foreign law - even if invoked by the parties according to Art. 25, first paragraph of the Preliminary Provisions to the Civil Code - regulating the employment time-contract less favourably than Law 18 April 1962 No. 230.

12. *Turin Tribunal, order 13 March 1992* 150

In accordance with the automatism set forth by Art. 39 of the Brussels Convention of 27 September 1968, no discretionary evaluations, concerning the opportunity of conservative measures in favour of the party who has obtained the enforcement during the time specified for an appeal pursuant to Art. 36, are permitted; nor a confirmation envisaged by domestic law is necessary.

13. *Treviso Tribunal, 13 March 1992* 837

Art. 8 of Law 13 June 1912 No. 555 provides for the loss of Italian nationality in case of a voluntary acquisition of a foreign nationality and the establishment of the residence abroad.

Such acquisition is voluntary when it is freely chosen by the person whose will is not coerced by physical or moral violence, nor vitiated by error, nor determined by fraudolent activities of a third party.

14. *Corte di Cassazione (S.U.), 18 March 1992 No. 3360* 399

Italian judges are competent to hear disputes concerning labour contracts entered into by the Association of Italian Knights of the Sovereign Order of Malta in order to carry out medical activities regulated through Art. 41 of the Health Law 23 December 1978 No. 833.

15. *Corte di Cassazione, 2 April 1992 No. 4021* 151

According to Art. 32 of Law 4 May 1983 No. 184, in order to be qualified as pre-adoptive foster placement to be enforced in Italy, a foreign measure must order that the foreign minor is placed with the family of two Italian spouses.This is necessary to enable the judge to evaluate whether the relationship is satisfactory and the adoption can be granted.

16. *Florence Court of Appeal, 15 April 1992* 403

According to Art. IV of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, the production of the original text or of a true copy of the arbitral award is a condition for the enforcement, which has to be controlled by the judge even ex officio.This applies also when its conformity with the original is not contested.

17. *Corte di Cassazione, 28 April 1992 No. 5059* 90

Art. 17 of the Preliminary Provisions to the Civil Code, in declaring the applicability to the law of the State of nationality refers to legal, not to natural incapacity, which is not subject to the substance of legal provisions of law and must be verified concretely and case by case.

The ascertainment of natural incapacity may imply the evaluation of a valid expression of will and it may thus concern an essential element of the agreement.

18. *Corte di Cassazione (criminal), 28 April 1992* 405

As per Art. IX of the Treaty on Extradition between Italy and the United States of America of 13 October 1983, only the Government of the requesting State has the power to undertake formally the committment not to inflict the death penalty.

The relationships between the federal State and the federate States in United States' Law are irrelevant.

A verbal note of the Ambassador of the United States in Italy will suffice to that purpose, as this is one of the means of communication between States according to international law.

19. *Corte di Cassazione (criminal), 4 June 1992* 153

The existence of serious circumstancial evidence of guilt is not relevant for the enforcement of coercive provisional measures against the person whose extradition is asked for.

20. *Corte di Cassazione (S.U.), 9 June 1992 No. 7073* 408

In order to determine the place where the obligation in question has arisen and must be fulfilled as per Art. 4 No. 2 of the Civil Procedure Code, the legal characterisation of the agreement between the parties as a public contract and not as a sale excludes the applicability of the Hague Conventions on International Sales of 15 June 1955 and 1 July 1964.

21. *Corte di Cassazione, 10 August 1992 No. 9443* 151

According to Art. 32 of Law 4 May 1983 No. 184, in order to be qualified as pre-adoptive foster placement to be enforced in Italy, a foreign measure must order that the foreign minor is placed with the family of two Italian spouses.This is necessary to enable the judge to evaluate whether the relationship is satisfactory and the adoption can be granted.

22. *Corte di Cassazione (criminal), order 27 August 1992* 411

The order by which the President of the Court of Appeal, upon request of the government authority through the «procuratore generale», extends the final date of temporary arrest - according to Art. 10, fourth paragraph of Law 22 April 1985 No. 158 - may be appealed in cassation but it cannot be repealed by the judge who issued it.

23. *Corte di Cassazione, 7 October 1992 No. 10937* 413

The Ministry of Finance cannot impute for taxing purpose the income deriving from the share in an Italian limited partnership (società in accomandita semplice) both to a foreign company and to another subject (in this case a natural person) on the assumption that the latter has the actual property of the shares in the Italian company and that the registration of such shares in the name of the foreign company is fictitious. In fact, this would be contrary to the prohibition of double taxation provided for by Art. 67 of Presidential Decree No. 600 of 29 September 1973, as the base of the tax is the same.

24. *Corte di Cassazione (S.U.), 15 October 1992 No. 11262* 93

The notion of lis pendens, as per Art. 21 of the Brussels Convention of 27 September 1968, as interpreted by the EEC Court of Justice, does not require a complete identity of questions, but it occurs when two disputes between the same parties coincide as regards the cause of action and the petitum, i.e. they concern claims deriving from the same legal relationship, even if they are formally different and reciprocal.

25. *Corte di Cassazione, 3 November 1992 No. 11898* 416

Art. 76 of Law 4 May 1983 No. 184, which leaves the enforcement of foreign adoption measures issued before the coming into force of such Law to the Court of Appeal, is not contrary to the Constitution.

26. *Corte di Cassazione, 3 November 1992 No. 11906* 417

Principles governing proceedings in labour matters do not exclude the possibility that expert evidence appointed by the court is taken through a request to foreign authorities - as per Art. 204 of the Civil Procedure Code - as the activity performed by the expert is controlled ex post by the judge.

The power to issue a letter of request to a foreign judge is not limited

by the fact that Art. 442 of the Civil Procedure Code provides for that the consultant must know Italian legislation on social security. This difficulty can be overcome through an accurate formulation of the questions to the foreign expert.

27. *Corte di Cassazione (S.U.), 18 November 1992 No. 12315* 340

The Italian judge is not competent with reference to a dispute concerning the labour relationships between an Italian employee of a Consulate of a foreign State in Italy in so far as he carries out activities connected with the public functions of the Consulate.

The insertion by will of the parties of collective agreements in a labour contract between an Italian national and a foreign Consulate has no effect on the public characterisation of such contract, which is exempt from Italian jurisdiction. In fact, such insertion does not affect the substantial nature of the relationship, nor does it imply the acceptance of the jurisdiction of the judge who may eventually be indicated in the collective agreement.

28. *Milan Court of Appeal, 4 December 1992 No. 2091* 873

In order to enforce a foreign arbitral award, according to the New York Convention of 10 June 1958, the fact that proceedings are pending before the Italian judge is not relevant; moreover, the contrast with public policy must be evaluated only with regard to the effects of the judgment.

29. *Milan Court of Appeal, 4 December 1992 No. 2100* 821

Italian provisions regarding intestacy (Art. 536 et seq. of the Civil Code) are based on the constitutional protection of the principle of family solidarity and concern public policy.

Art. 831 of the Civil Code of Quebec, which allows the testator to dispose freely of his property, is in contrast with public order (Art. 31 of the Preliminary Provisions to the Civil Code) and therefore must not be applied.

30. *Corte di Cassazione, 5 December 1992 No. 12951* 97

Art. 3 of the Vienna Convention of 18 April 1961 on Diplomatic Relations and Immunities provides that the functions of a diplomatic mission consist mainly of representing the accrediting State in the territorial State and of protecting the interests of the former and of its nationals in the latter.

Private law interests of the accrediting State are among the interests which the diplomatic agent must protect.

As the accrediting State is represented by its diplomatic mission (particularly by its chief), the ambassador has a power of representation which has both substantial nature and procedural character as per Art. 75 of the Civil Procedure Code.

The ambassador of a foreign State in Italy may appear for his State in order to protect its pecuniary interests arising from a tort - in this case a libel - subject to private law (Arts. 2043-2059 of the Civil Code, according to Art. 25, second paragraph of the Preliminary Provisions to the Civil Code).

31. *Salerno Tribunal, 21 December 1992* 418

Art. 10 of the EEC Council Directive 17 July 1969 No. 335, which

allows Member States to apply only tax on contributions, enjoys direct application even if a national measure of enforcement has not been issued; therefore the tax for the registration of companies in commercial registers (Law No. 17 of 1985) is contrary to the EEC prohibition and must be repaid.

32. Corte di Cassazione (S.U.), 4 January 1993 No. 1 344

According to Art. 5 No. 3 of the Brussels Convention of 27 September 1968, the Italian judge is competent to hear a dispute regarding acts of unfair competition, carried out by the agent of a German company in Italy if such acts and the consequent damages occurred in Italy, as the claim for compensation for damages is not founded on the non-fulfilment of the contractual obligations between the parties, but on the infringement of extra-contractual rules of conduct.

Pursuant to Art. 6 of the 1968 Brussels Convention, if there is a large number of defendants the judge of the State in which one of these defendants is domiciled is competent, provided that the actions are related.

33. Corte di Cassazione, 29 January 1993 No. 1127 104

According to Art. 9, second paragraph of the Preliminary Provisions to the 1865 Civil Code, the transfer of property carried out in 1902 on immovables at that time located in an area that was subject to Austrian sovereignty, is ruled by Austrian law.

Foreign laws to be applied by virtue of private international law, though unknown to the Italian judge, must be considered as law.

As per paragraph 232 of the Austrian Civil Code of 1811, in force in Trentino until 1929, an immovable belonging to a minor cannot be conveyed, except in case of real need or of manifest profit for such minor, subject to the authorization of the tutelary judge and through a public auction.

The party who invokes the application of a foreign law, claiming that it is different from Italian law, must prove such difference; otherwise Italian law must apply, according to the principle of completeness of the legal system.

34. Alessandria Tribunal, 1 February 1993 348

Following the declaration of partial constitutional illegitimacy of Art. 18 of the Preliminary Provisions to the Civil Code, the law that governs personal relationships between spouses can be found neither through the application of Art. 17 of the Preliminary Provisions to the Civil Code, nor through reference to the connecting factors of the residence or the domicile of the spouses.

The divorce between an Italian husband and a foreign wife is subject to the law of the country where the marriage was celebrated, as per Art. 26 of the Preliminary Provisions to the Civil Code, which can be extended through analogy to all the aspects of the marriage relationship.

35. Corte di Cassazione, 2 February 1993 No. 1266 110

Regarding the enforcement of a foreign adoption measure, Art 32 litt. a of Law 4 May 1983 No. 184 establishes, among the requirements for fitness for adoption, that the adopter must not be over forty years older than the adopted child - though it does not state how to compute such difference.

It is not in contrast with the fundamental principles concerning family and minors law and the law on adoption a foreign adoption measure in which the judge has determined the difference of age between the adopters and the adopted child according to solar year, instead of considering their date of birth.

The Corte di Cassazione cannot enforce a foreign adoption measure directly.

36. *Corte di Cassazione (S.U.), 3 February 1993 No. 1307* 351

Given the link between the authorization and the confirmation of the arrest, Art. 4 No. 3 of the Civil Procedure Code provides for the competence of the Italian judge with reference to the application for confirmation of a seizure, authorized and carried out against the foreign debtor in Italy.

Pursuant to Art. 12 of the Convention signed in Luxemburg on 25 October 1982 between Greece and the States which are party to the Brussels Convention of 27 September 1968, as amended by the Convention of 9 October 1978, the latter applies in the relations between Italy and Greece to actions proposed after 1 April 1989.

As per Art. 2 of the Civil Procedure Code, a clause conferring jurisdiction to a Greek judge contained in a contract stipulated between an Italian and a Greek company is null.

As per Art. 4 No. 2 of the Civil Procedure Code, Italian judges are competent as regards the claim for payment brought by the Italian agent against a Greek shipping company.

37. *Corte di Cassazione (S.U.), 3 February 1993 No. 1308* 113

The action for ruling on jurisdiction in the proceedings concerning the extension of the declaration of insolvency to a foreign partner, unlimitedly liable, of an Italian company is admissible.

Italian judges are competent with reference to proceedings concerning the extension of insolvency to the foreign unlimitedly liable partner of an Italian company, as the foreigner may acquire the quality of unlimitedly liable partner in an Italian company.

38. *Corte di Cassazione (S.U.), 3 February 1993 No. 1309* 115

As per Art. 4 of the Civil Procedure Code, a foreigner can always sue an Italian to appear before an Italian judge without any limit.

Pursuant to Art. 16 of the Preliminary Provisions to the Civil Code, reciprocity does not affect jurisdiction, but the enjoyment of those civil rights which the foreigner wants to assert in the proceedings.

39. *Corte di Cassazione (S.U.), 4 February 1993 No. 1388* 421

A labour contract between a conservatory and a foreign national may have public character.

40. *Pisa Tribunal, 9 February 1993* 421

Art. 3 No. 2 litt. e of Law 1 December 1970 No. 890 applies to the divorce between an Italian and a foreigner even if the foreign divorce judgment was issued upon the joint application of the spouses.

41. *Corte di Cassazione, 10 February 1993 No. 1681* 560

As regards reciprocity as per Art. 16 of the Preliminary Provisions to

the Civil Code, the evaluation as to the existence of a right in a foreign legal system and the lack of discriminations against Italians may leave out of consideration the differences in the formalities for the practical exercise of the said right in the foreign legal system and in Italy.

An Egyptian can assert the right to compensation by the Fund for Road Casualties in Italy as the Egyptian legal system in general guarantees to foreigners the right to compensation without any discrimination.

42. *Corte di Cassazione (S.U.), 13 February 1993 No. 1821* 354

As per Art. 24 of the Brussels Convention of 27 September 1968, the application for temporary or provisional measures submitted to the judge of one of the contracting States does not bind the party as regards jurisdiction on the substance of the case since the relevant actions must be brought to the competent judge, according to the criteria set forth by the said Convention.

The application for provisional measures as per Art. 700 of the Civil Procedure Code, proposed in Italy by a company having its seat in another State party to the 1968 Brussels Convention against a company having its seat in Italy cannot found Italian jurisdiction in an autonomous proceedings brought by the latter against the former, in case other juridiction criteria provided for by the said Convention are lacking.

The issue of «delict» or «quasi-delict», as per Art. 5 No. 3 of the 1968 Brussels Convention does not include an application to obtain from the judge the declaration that the plaintiff has the right of publishing and distributing a magazine in Italy; nor can Art. 5 No. 3 be invoked with reference to the counter-claim filed by the defendant and related to the infringement of the trademark if it is a secondary claim vis-à-vis the exception on jurisdiction of the seized judge.

Art. 16 No. 4 of the 1968 Brussels Convention, as construed by the EC Court of Justice, does not apply to an action for the declaration of the existence of an exclusive right on the title of a magazine which is based on the fact that the plaintiff was first in utilizing its title, rather than on the registration of a trademark, patent or the alike.

As per Art. 18 of the 1968 Brussels Convention, the circumstance that the defendant filed contextually a defense on merits does not hinder the admissibility of the exception on jurisdiction as the domicile established in Italy, as per Art. 5 of Law 8 February 1948 No. 47 on press, is not equal to a seat and not even to a secondary seat, pursuant to Arts. 2 and 53 of the Brussels Convention; in fact, the seat must be considered as the centre of interests and of the real administration and management of the company.

43. *Corte di Cassazione, 15 February 1993 No. 1853* 422

The fact that a foreign legal person is constituted by only one partner is not in contrast with public policy. Therefore, an Anstalt can enjoy civil rights in Italy subject to reciprocity, according to Art. 16 of the Preliminary Provisions to the Civil Code.

44. *Corte di Cassazione, 16 February 1993 No. 1882* 117

With the application for the enforcement of a foreign judgment of condemnation not only the recognition of the res judicata effect, but also the authorisation to carry out measures of enforcement is sought.

The application for the enforcement of a foreign judgment condemning

to maintenance in favour of the natural son is subject to the ordinary prescription term of ten years, according to Art. 2946 of the Civil Code.

Neither the Hague Convention of 15 April 1958, nor the Hague Convention of 2 October 1973, concerning the recognition and the enforcement of judgments on maintenance obligations contain provisions affecting the procedural rules of the requested State, nor the terms within which an action should be brought.

45. *Corte di Cassazione, order 17 February 1993* 79

It is not manifestly unfounded, with reference to Arts. 3 and 24 of the Constitution, the question of legitimacy of Art. 680 of the Civil Procedure Code, in so far as it provides for a fifteen days term for the service of a seizure, even if the opponent is not domiciled nor resident in Italy.

46. *Corte di Cassazione, 25 February 1993 No. 2311* 361

In order to determine the law applicable to a labour relationship carried out in Italy between a foreign State and an Italian employee having also another nationality the Italian judge can only consider the Italian nationality, as it happens in matters regarding status and capacity.

The labour relationships carried out between Italians and a foreign State, party to the Atlantic Treaty, in Italy are governed by Italian law as per the London Convention of 19 June 1951 on the statute of the armed forces of the Powers of the Atlantic Treaty stationed in an allied State; however, the provisions on collective dismissal and the protection of work do not apply, as in this case the employer is not an enterpreneur.

47. *Corte di Cassazione, 26 February 1993 No. 2405* 641

With reference to the rule established by Art. 46, second paragraph of the EEC Ruling 14 June 1971 No. 1408, if an Italian citizen has completed the insurance and contribution requisites for the disability pension, summing up the periods of insurance carried out in different Member States of the Community, but he has not completed in Italy the minimum annual contribution envisaged by Art. 48, first paragraph of the said Ruling, he cannot obtain the pension from the Italian social security system. He can assert such right only before the social security offices of those Member States where he has reached that minimum contributory period.

48. *Corte di Cassazione (S.U.), 26 February 1993 No. 2415* 642

Italian judges are not competent to hear a dispute concerning the cancellation of the labour relationship of the General Secretary of the Association of Italian Knights of the Military Sovereign Order of Malta - due to the abolition of such office - and its pecuniary consequences, as it would necessarily imply an investigation on the organization of the Order which is a subject of international law; in fact, the activity of the General Secretary is not limited to the sanitary field, but it covers the fundamental and public functions of the Order.

49. *Corte di Cassazione, 13 March 1993 No. 3029* 124

Since the statement of reasons in the foreign judgment is not among the requisites laid down by Art. 797 of the Civil Procedure Code, the lack of such statement does not hinder the enforcement of the said judgment.

Pursuant to Art. 797 No. 7 of the Civil Procedure Code, a German divorce judgment is not contrary to public policy as German law is very similar to Italian law on this matter.

50. Corte di Cassazione, 17 March 1993 No. 3190 126

As per to Art. 27 of the Preliminary Provisions to the Civil Code, the proceedings are always regulated by the lex fori.

A Canadian divorce judgment between two Italian spouses cannot be enforced in Italy if the defendant has neither his residence, nor his domicile in that State (Art. 797 No. 1 of the Civil Procedure Code) and if the judgment is contrary to public policy (Art. 797 No. 7 of the Civil Procedure Code) as it was given at the end of a pure summary proceedings, in which the plaintiff claimed the dissolution of the marriage only.

51. Rome Juvenile Court, decree 24 March 1993 319

Art. 6 of the Strasbourg Convention of 24 April 1967 on Adoption states a general principle and is not self-executing; it does not allow the adoption of a minor by a single person without limitations.

52. Monza Tribunal, 29 March 1993 367

The Vienna Convention of 11 April 1980 on International Sales cannot apply to a sale, stipulated between a party resident in Italy and a party resident in Sweden before the coming into force of the said Convention for Sweden.

53. Corte di Cassazione, 1 April 1993 No. 3907 130

In order to enforce a foreign adoption measure, Art. 32 litt. c of Law 4 May 1983 No. 184 requires that such measure is not contrary to the fundamental principles that govern family and minors law in Italy.

The difference of age between the adopters and the adopted child, pursuant to Art. 6, second paragraph of the Law on adoption, does not express fundamental principles of law, but it must be ascertained in relation to the natural biological difference between parents and children. Thus a foreign adoption measure of a foreign minor can be enforced in Italy even if the adopter is just over forty years older than the minor.

54. Corte di Cassazione (S.U.), 2 April 1993 No. 3966 372

The issuing of provisions of law on traffic signs, in accordance with the situation in different localities, is part of the legislative power of the State, while the application of such rules in each case is a duty incumbent on the same State. If the competent authority neglects to comply with this duty, it may be held responsible for the consequences and this evaluation does not interfere with the exercise of public functions.Therefore a foreign State can be sued in Italy either directly by the damaged party - claiming for damages to be paid in Italy - or indirectly through the action on warranty related to the main action and it cannot invoke the principle «par in parem non habet iurisdictionem».

55. Corte di Cassazione (S.U.), 14 April 1993 No. 4406 132

In case the proceedings do not concern immovables located abroad and the foreigner is the plaintiff, the lack of competence of the Italian judge is

considered as a procedural exception which can be made by the foreign defendant only; thus the application of preliminary ruling on jurisdiction proposed by the Italian defendant must be declared inadmissible.

56. *Corte di Cassazione, 28 April 1993 No. 4972* 644

Pursuant to Art. 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, the European Commission for Human Rights can be seized only by the contracting States and not by the judges of those States.

The institutions created by the Convention - Commission and Court - are not competent as regards the application or the interpretation of national law by national judges, unless the law applied is contrary to the convention or the judges infringed the convention in the application or the construction of the law.

Under Art. 6, first paragraph of the Convention, Member States have the duty to guarantee a fair and public hearing and the conclusion of the trial in a reasonable time, save as regards the constitutional legitimacy of national provisions.

57. *Corte di Cassazione (S.U.), 28 April 1993 No. 4992* 375

The power of attorney given by a foreigner resident abroad to the Italian defending counsel and drawn up at the bottom of the deed is valid if the signature of the former has been certified by a notary of the country of residence abroad.

According to Art. 1, second paragraph, No. 4 of the Italo-German Convention of 7 June 1969, notarial deeds are not subject to legalisation.

There is no lis pendens, according to Art. 21 of the Brussels Convention of 27 September 1968, if one of the two proceedings is discontinued or it ended up with a judgment against which no appeal has been or can be lodged.

Pursuant to Art. 5 No. 2 of the 1968 Brussels Convention, a claim concerning maintenance obligations can be brought before the judge of the domicile of the creditor.

Italian judges are not competent in relation to a claim brought by a maintenance debtor to obtain a declaration that he must not fulfil any maintenance obligation; this claim implies a preliminary examination of the relationship of natural paternity.

58. *Corte di Cassazione (S.U.), 13 May 1993 No. 5425* 645

The exemption of foreign States property and of foreign Government offices from Italian jurisdiction for provisional measures is limited to the property used in the exercise of sovereign functions or for aims linked to public interest.

59. *Corte di Cassazione (S.U.), 25 May 1993 No. 5848* 568

According to Art. 4 No. 3 of the Civil Procedure Code, Italian judges are competent with reference to the confirmation of a seizure carried out in Italy.

As regards the proceedings for the confirmation of a seizure carried out in Italy, Italian jurisdiction does not extend to the merits of the action brought against a foreign shipowner for obligations arisen and to be fulfilled abroad.

The Brussels Convention of 10 May 1952 on seizures of ships does not apply to ships flying the flag of States which are not party to such Convention.

60. *Corte di Cassazione, 28 May 1993 No. 5954* 382

The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations cannot apply to the enforcement of the part of a Swiss divorce judgment concerning findings of fault and ancillary orders.

As per Art. 4 of the Italo-Swiss Convention of 3 January 1933 on the Recognition and the Enforcement of Judgments, the review as to substance of the judgment for which the declaration of enforcement is sought is excluded.

In the Italian procedural system the judge is bound by the content of the claim, but this is not a principle of public policy. Therefore, if the foreign judge has given a judgment exceeding the petitum, this does not hinder its enforcement in Italy.

61. *Milan Court of Appeal, 28 May 1993* 646

Pursuant to the Hague Convention of 1 June 1970 on the Recognition of Divorces and of Legal Separations, a Swedish divorce judgment can be recognized in Italy provided that the application is submitted by the wife, a Swedish national habitually resident in Sweden (Art.2 No. 4), and that the judgment is not in contrast with previous judgments concerning the marriage rendered in Italy (Art. 9), nor it is contrary to public policy (Art.10).

62. *Venice Court of Appeal, decree 11 June 1993* 830

The Court of Appeal is competent to declare the enforcement of a foreign measure of adoption of a minor by the spouse of the natural parent.

63. *Bologna Court of Appeal, 24 June 1993* 385

The assertion of the international competence stated by the foreign judge - who applied Art. 5 No. 1 of the Brussels Convention of 27 September 1968 - binds the judge before whom the enforcement is sought, who, according to Art. 28 of the said Convention, cannot control such competence.

As per Art. 39 of the Brussels Convention, the party who requested and obtained the enforcement of the foreign judgment can take protective measures against the property of the other party directly, without any specific authorization.

The irregularities and the abuses which may occur during the enforcement of the protective measures cannot be examined through the proceedings provided for by Art. 36 of the Brussels Convention.

64. *Corte di Cassazione, 28 June 1993 No. 7130* 390

Successions are subject to the law of the State of nationality of the deceased which applies as it was in force at the time of the opening of the succession. Thus in case of a succession of an Austrian national in 1909, Austrian law applies, which requires for the acquisition of the property - even on movables - a formal acceptance, either written or oral, but with a later verbal proceedings.

65. *Corte di Cassazione, 1 July 1993 No. 7148* 571

The action for the enforcement of a foreign judgment may be brought in Italy after the judgment acquires res iudicata effects; such action is subject to the ordinary ten-year limitation period.

The Ministry of the Interior, as intermediary institution (according to the New York Convention of 20 June 1956 on the Recovery of Maintenance Abroad), is a substitute of the real party in interest as per Art. 81 of the Civil Procedure Code; though it does not enjoy personally of the right in question, it has the capacity to bring the action in its own name.

The action brought by intermediary institution for the enforcement of the foreign maintenance judgment, is subject to the ordinary limitation period irrespective of the moment when such authority started to act.

66. *Corte di Cassazione (S.U.), 1 July 1993 No. 7186* 575

In a dispute concerning the succession of an Italian who registered his property in the name of two Anstalten and of a Swiss foundation to be constituted, such companies and the foundation must not be sued in court as a necessary joinder; it is sufficient to bring an action against the administrator of the property, appointed by the Swiss judge.

According to Art. 23 of the Preliminary Provisions to the Civil Code, if the de cuius has the Italian nationality at the time of his death, the succession and the contents of his will are subject to Italian law, even if the property is located abroad.

The capacity to inherit is a special capacity and it is subject to Art. 23 of the Preliminary Provisions to the Civil Code.

Pursuant to Art. 600 of the Civil Code, the provision of a will by which an Italian nominates as heir a foundation to be constituted in Switzerland has no legal effect if no step has been taken in order to obtain the legal personality for the said foundation - neither in Italy nor in Switzerland - for more than one year from the moment in which the will could have been implemented.

As per Art. 4 No. 2 and No. 3 of the Civil Procedure Code, Italian judges are competent with reference to actions brought in order to obtain the release of a property located abroad and the statement of account of the management of such property, in so far as they concern the succession of an Italian citizen connected with the claim of the goods settled in the will submitted before an Italian judge.

67. *Corte di Cassazione (S.U.), 7 July 1993 No. 7441* 592

According to Art. 4, second paragraph of Law 21 April 1983 No. 123, the ministerial decree rejecting the application for the acquisition of Italian nationality following the marriage with an Italian national cannot be issued after one year from the presentation of such application has elapsed.

The ministerial decree rejecting the application for the acquisition of Italian nationality by the foreign spouse of an Italian national may be issued only if the conditions set forth by Art. 2, paragraph 1 of Law No. 123 of 1983 are not fulfilled. Therefore if the applicant does not fulfil the conditions envisaged by Art. 1 of Law No. 123 of 1983 the ministerial decree rejecting the application may be issued, even after the one-year-term provided for by Art. 4, second paragraph.

After one year from the presentation of the application, the foreigner may ask the ordinary judge to evaluate the fulfilment of the conditions set forth by Art. 1 of Law No. 123 of 1983 and to declare the acquisition of Italian nationality.

68. Corte di Cassazione (S.U.), 7 July 1993 No. 7447 597

The judge seized for the judicial declaration of paternity, as per Art. 274 of the Civil Code, must evaluate the fulfilment of the conditions for the proceedings, such as Italian jurisdiction, and must examine the preliminary questions related to substance, such as those concerning the applicable law and its influence on the possibility of bringing the action.

The principles of international public policy must be inferred from the context of the whole legal system and particularly from the Constitution, which expresses the highest values on which the Italian legal system is based.

According to English law, the mother of the natural child may bring an action for the judicial declaration of the paternity within three years from the birth, but such action can never be brought by the said child even when he comes of age. Such provision is contrary to international public policy (Art. 31 of the Preliminary Provisions to the Civil Code), as it is contrary to the fundamental principles of judicial protection of natural filiation set forth by Arts. 2, 3, 30 and 24 of the Constitution; thus, the Italian judge seized by a British national of age shall apply Art. 270, first paragraph of the Civil Code.

69. Corte di Cassazione, 9 September 1993 No. 9435 607

As for a labour contract between Italian parties carried out abroad, the parties' will not to be subject to the common national law, as per Art. 25, first paragraph of the Preliminary Provisions to the Civil Code, may result also from a tacit behaviour which has continued for a long time.

The expression of the parties' will, as per Art. 25 of the Preliminary Provisions to the Civil Code, does not concern jurisdiction, but only the applicable law. Thus a specific written approval of the clause - as per Art. 1341 of the Civil Code - is not necessary.

With reference to a labour relationship carried out in Argentina, it is not sufficient to invoke generically the application of Italian law in order to obtain the application of the principle of favour towards the employee; this is a principle of international public policy - as per Art. 31 of the Preliminary Provisions to the Civil Code - which prevents foreign rules less favourable to the employee to be applied in Italy.

70. Corte di Cassazione, 17 September 1993 No. 9578 647

The civil marriage of two Italian citizens abroad is immediately valid in Italy, irrespective of the provisions on banns (Art. 115, second paragraph of the Civil Code) and its registration.

71. Corte di Cassazione, 20 September 1993 No. 9618 614

Art. 72 of the Civil Procedure Code provides for that the pubblico ministero can appeal against judgments declaring the enforcement or the non-enforcement of foreign judgments in matrimonial matters, except for those concerning legal separations; this applies both to the pubblico ministero of the same court who pronounced the judgment and to the pubblico ministero of the court who must decide on the appeal.

Pursuant to Art. 331, second paragraph of the Civil Procedure Code, the appeal of the private party against the decision of the Court of Appeal which denied the enforcement of a foreign divorce judgment is nor admissible, if the joinder of the pubblico ministero has not been ordered.

72. *Corte di Cassazione (S.U.), 24 September 1993 No. 9675* 648

As regards the labour relationships between Italian employees and a foreign State, Italian judges are competent - on the basis of the principle of restricted immunity - not only as regards disputes concerning the carrying out of activities merely auxiliary to the institutional functions of the State, but also for disputes submitted by employees whose tasks regard strictly those public functions, if the judgment will only concern the patrimonial aspects of the labour relationship and will not affect or interfere with the said functions.

73. *Corte di Cassazione, 25 September 1993 No. 9725* 135

Pursuant to Art. IV No. 1 litt. c of the Convention between Italy and the United Kingdom of 7 February 1964-14 July 1970 on the Recognition and Enforcement of Judgments - extended to Hong Kong with an exchange of notes of 23-28 February 1977 - a judgment can be enforced in Italy in so far as the losing party has expressly accepted the jurisdiction of the foreign court before the beginning of the proceedings.

A judgment given in Hong Kong cannot be enforced in Italy if the acceptance of the jurisdiction is to be inferred from the mere fact that the agreement, object of the dispute, was entered into in Hong Kong.

74. *Rome Court of Appeal, order 25 September 1993* 323

The question of constitutional legitimacy of Art. 6 of the Strasbourg Convention of 24 April 1967, allowing the adoption of a minor by a single person without any limitation is not manifestly unfounded with reference to Arts. 3, 29 and 30 of the Constitution.

75. *Corte di Cassazione, 13 October 1993 No. 10110* 615

Art. 32 of Law 4 May 1983 No. 184 establishes the functional and exclusive competence of the juvenile court for the declaration of enforcement of foreign adoption measures in Italy.

The fact that the foreign adoption measure does not fulfil the conditions set forth by Art. 31 of Law No. 184 of 1983 - also with reference to the status and to the qualities of the adopters - does not affect the competence of the juvenile court, and it does not imply that the action for the enforcement has to be brought before another judge.

Art. 76 of Law No. 184 of 1983, providing that the Law of 1967 continues to apply to pending actions, refers to actions already brought up before the Italian or the foreign judge.

76. *Corte di Cassazione (S.U.), 18 October 1993 No. 10293* 617

The parties' will which may lead to the application of a foreign law to a maritime labour contract, as per Art. 9 of the Navigation Code, can result from the expressions used in the contract, when referring to typical aspects of a legal system, and from the language in which it is drawn up.

The connecting factor of the nationality of the ship in Art. 9 of the Navigation Code has a residual character.

With reference to a dispute concerning the cancellation of a maritime labour contract, Italian judges are competent, as per Art. 4 No. 2 of the Civil Procedure Code and Art. 603 of the Navigation Code, if the place of

such cancellation is in Italy, at the domicile of the employee where he receives the notice of his dismissal.

77. *Corte di Cassazione (S.U.), 18 October 1993 No. 10294* 620

According to customary practice and to Art. 30 of the Vienna Convention of 18 April 1961 on Diplomatic Relations, the official residence of the ambassador enjoys the same treatment as the seat of the Embassy. Nevertheless, Italian judges are competent with reference to a dispute with a foreign State, concerning the validity of a preliminary contract for the sale of an immovable intended for the ambassador's residence.

For the immunity of a foreign State from Italian jurisdiction, the fact that the diplomatic agent actually is in possession of an immovable is irrelevant in so far as the preliminary sale contract is not implemented through a public deed.

The rules on diplomatic immunities are based on the ratio to avoid disturbances in the carrying out of diplomatic activity; thus Italian judges are competent to hear a dispute regarding the cancellation of a preliminary sale contract, even if it concerns the ambassador's residence, as it may not be considered an instrument for the carrying out of the institutional functions of the foreign State, considering also the fungibility of such property.

78. *Corte di Cassazione, 19 October 1993 No. 10355* 627

Pursuant to Arts. 30 and 32 of Law 4 May 1983 No. 184, the declaration of fitness for adoption must be issued before the date in which the foreign measure to be enforced in Italy is taken.

79. *Corte di Cassazione, 23 October 1993 No. 10557* 628

The action for the enforcement of a foreign judgment is independent both from the action concerning the substantial relationship and from the actio iudicati arising out from the foreign judgment.

The action for the enforcement, which may be brought when the foreign judgment acquires res iudicata effects, is subject to the ten-year limitation period provided for by Art. 2946 of the Civil Code, irrespective of the limitation period to which the right asserted before the foreign judge is subject.

The Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations contains no provision on the proceedings for the enforcement.

The limitation period for the action of enforcement applies also with reference to minors and incapables, except for the cases of suspension provided for by Art. 2942 of the Civil Code.

80. *Corte di Cassazione (S.U.), 25 October 1993 No. 10600* 649

According to Arts. 5 No. 1 of the Brussels Convention of 27 September 1968, 25 of the Preliminary Provisions to the Civil Code and 1510, second paragraph of the Civil Code - which is equal to Art. 19, second paragraph of the uniform law on international sales of 1 July 1964 - the Italian judge is not competent with reference to the action brought for the cancellation of a sale, if the place of delivery of the goods to the carrier by the foreign seller is located abroad, irrespective of a clause «delivered free» in Italy.

81. *Corte di Cassazione, 26 October 1993 No. 10621* 651

Pursuant to Art. 13 of the Geneva Convention of 19 May 1956 on carriage of goods by road (CMR), only the consignee of the goods has the capacity to bring the action of liability against the carrier.

82. *Corte di Cassazione (S.U.), 28 October 1993 No. 10704* 631

As per Art. II of the New York Convention of 10 June 1958 on the Enforcement of Foreign Arbitral Awards, an arbitral clause contained only in the order forms of a party which are not accepted by the other party through letters or telegrams is not valid.

The validity of the arbitral clause cannot be evaluated according to the criteria of Art. 17 of the Brussels Convention of 27 September 1968, as its Art. 1, second paragraph No. 4 excludes arbitration from its field of application.

Pursuant to Art. 5 No. 1 of the 1968 Brussels Convention, the Italian judge is competent with reference to the claim for payment of the goods to be made in Italy at the seller's seat.

Art. 3 of the 1968 Brussels Convention excludes the application of Art. 4 No.1 and No. 2 of the Civil Procedure Code, with regard to a defendant domiciled in a State party to the Convention; thus it can be inferred that in this case Art. 4 No. 3 of the same Code applies.

Pursuant to Art. 4 No. 3 of the Civil Procedure Code, if the Italian judge is competent as regards the action for payment of the goods as per Art. 5 No. 1 of the Brussels Convention of 1968, he is also competent to hear the action for damages arising out of unfair competition for libel, for supposed defects in the goods. In fact the two actions are based on strictly connected circumstances, so that it is expedient to hear and determine them together, as Art. 22 of the said Convention provides for.

For the application of Art. 5 No. 3 of the 1968 Brussels Convention, the place in which the harmful event occurred is considered both the place where the damage arose and the place where the harmful event occurred.

83. *Corte di Cassazione (S.U.), 3 November 1993 No. 10831* 635

Italian judges are not competent to take provisional measures against a foreign company, if the existence of the jurisdiction criteria of Art. 4 No. 3 of the Civil Procedure Code is not proved: that is, either the provisional measure must be carried out in Italy or the relationship to which such measure refers falls within Italian jurisdiction.

84. *Corte di Cassazione (S.U.), 6 November 1993 No. 10999* 653

A party to the proceedings may ask for a preliminary ruling on jurisdiction even if a provisional measure has been given as per Art. 700 of the Civil Procedure Code, or the proceedings on the merits has been stayed because of the submission of a preliminary question of interpretation to the EC Court of Justice as per Art. 177 of the EC Treaty.

85. *Corte di Cassazione, 8 November 1993 No. 11050* 825

Art. 9, second paragraph of the Preliminary Provisions to the Civil Code of 1865 applies to the gift of an immovable located in Italy, carried out abroad in 1935.

Pursuant to Art. 9, second paragraph of the Preliminary Provisions to

the Civil Code, the substance and the effects of gifts are subject to the national law of the donor.

According to Art. 8 of Law 13 June 1912 No. 555, the fact that a person born in Italy by Italian parents is resident in a foreign State is not sufficient to prove that such person lost his Italian nationality.

86. *Venice Court of Appeal, 18 November 1993* 830

Art. 32 of Law 4 May 1983 No. 184 grants the competence for the enforcement of foreign adoption measures to the Juvenile Court for the legitimizing adoption; thus adoption in special cases falls within the competence of the court of appeal.

A foreign measure by which a minor is adopted by the spouse of his mother may be enforced in Italy.

87. *Corte di Cassazione, 19 November 1993 No. 11446* 832

Neither Art. 204 of the Civil Procedure Code nor any other rule of the Italian legal system submits the issuance of a letter of request for the examination of witnesses abroad to the fact that they have already been called before the judge and they refused to appear.

The principle according to which foreign witnesses can be heard by means of a letter of request at their place of residence abroad and within the limits set forth in international treaties can be inferred from Art. 203 of the Civil Procedure Code.

88. *Corte di Cassazione, 24 November 1993 No. 11580* 874

As for the application of the principle set forth by Art. 36 of the Constitution, the adequate pay that is due to Italian seamen on board foreign ships cannot be exactly the same which they would receive by national shipowners: in the Italian legal system there is not a principle of public policy that orders the total observance of national collective agreements, which would hinder the application of the law or the acts of a foreign State.

89. *Venezia Court of Appeal, 10 January 1994* 836

According to Art. 8 No. 1 of Law 13 June 1912 No. 555, if an Italian citizen acquires a foreign nationality voluntarily and establishes or has established his residence abroad, he loses Italian nationality.

The reasons which determined the will to acquire the nationality of a foreign State and the further revocation of the waiver of Italian nationality have no effect on the loss of Italian nationality, as such waiver is requested by the foreign law.

The declaration made in order to reacquire Italian nationality, pursuant to Art.17 of Law 5 February 1992 No. 91, does not imply that the registration of the loss of such nationality as per Art. 8 No. 1 of Law No. 555 of 1912 is annulled.

90. *Milan Tribunal, 14 February 1994* 841

According to Arts. 17 and 18 of the Preliminary Provisions to the Civil Code, Israeli law applies to the legal separation of two Israeli spouses.

As Israeli law does not provide for legal separations, a legal separation cannot be given between Israeli spouses.

Israeli law, which does not provide for legal separations, is not contrary to international public policy as it does provide for divorce.

91. *Milan Tribunal, decree 19 February 1994* 846

A separation by mutual consent between a German wife and an Egyptian husband cannot be homologated by the Tribunal, as their national laws do not provide for legal separation; nevertheless, such laws are not contrary to public policy.

92. *Venice Court of Appeal, 22 February 1994* 847

According to the principle of retroactivity of the judgments of constitutional illegitimacy, the son of an Italian mother, who had lost her nationality owing to marriage, is an Italian citizen since his birth if he is born after 1 January 1948 because of the effects deriving from the judgments 16 April 1975 No. 87 and 9 February 1983 No. 30 of the Constitutional Court.

Art. 219 of Law 19 May 1975 No. 151, allowing Italian women - who became foreigner by marriage - to reacquire their nationality, applies chiefly to women who lost Italian nationality before the Constitution came into force or by virtue of Art. 11 of Law 13 June 1912 No. 555.

93. *Constitutional Court, order 24 February 1994 No. 64* 875

The issue of constitutional legitimacy of Arts. 555, 148, third paragraph and 168 of the Criminal Procedure Code - with reference to Art. 24, second paragraph and Art. 3 of the Constitution, in connection with Art. 5, first paragraph of Law 28 February 1990 No. 39, as well as with Arts. 10 and 11 of the Constitution, and Art. 6 of the European Convention on Human Rights - is manifestly unfounded with reference to the drawing up of the summons to appear in court and of the report of the service in a language understood by the foreign defendant.

94. *Constitutional Court, 3 March 1994 No. 69* 79

Arts. 142, third paragraph, 143, third paragraph and 680, first paragraph of the Civil Procedure Code are contrary to Arts. 3 and 24 of the Constitution and therefore are constitutionally illegitimate in so far as they do not envisage that the service of a seizure abroad is completed, in order to comply with the term fixed therein, with the timely accomplishment of the formalities imposed on the applicant by international conventions and by Arts. 30 and 75 of Presidential Decree 5 January 1967 No. 200.

95. *Milan Tribunal, 24 March 1994* 853

Legal separations between spouses of different nationality are subject to Art. 18 of the Preliminary Provisions to the Civil Code, while divorce is ruled by Art. 17 of the same Provisions; in fact, it can affect the spouses' status.

Art. 1133 of the Iranian Civil Code, according to which «men can divorce from their wives whenever they want», is contrary to the fundamental principles of the Italian legal system as it infringes the principle of equality between the spouses.

Italian law applies to a divorce between an Iranian man and an Italian woman.

96. *Como Tribunal, 5 April 1994* 638

Owing to the coming into force of the Agreement between Italy and China on the Promotion and the Reciprocal Protection of Investments signed in Rome on 20 January 1985, the legal capacity of Chinese citizens resident in Italy is no longer subject to reciprocity (Art. 16 of the Preliminary Provisions to the Civil Code).

Although Art. 2 of the 1985 Agreement between Italy and China allows the nationals of the two States to invest in shares of a company in the territory of the other State, Chinese citizens resident in Italy may subscribe the whole shares of a constituting company and sell such shares afterwards.

97. *Latina Tribunal, order 19 April 1994* 857

As regards provisional measures, Art. 24 of the Brussels Convention of 27 September 1968 admits the jurisdiction of several judges in the contracting States.

Thus, Art. 24 cannot be interpreted, and its application cannot be excluded, through a provision of Italian law - as Art. 669-quater of the Civil Procedure Code, which provides for that the judge competent to hear the merits may also take provisional measures.

Pursuant to Art. 21 of the 1968 Brussels Convention, there is no lis pendens between the action brought in Italy and an application for provisional measures brought in Greece, as the latter ends with a provisional measure that cannot acquire res iudicata effects.

The provisional measure given in a State party to the 1968 Brussels Convention maintains its effects until the decision as to substance and, according to Art. 27 No. 3 of the Convention, it hinders the enforcement of a contrary measure, given afterwards between the parties in another contracting State.

98. *Corte di Cassazione (S.U.), 2 May 1994 No. 4181* 859

With reference to an employment contract between a foreign company and a foreigner, Italian judges are not competent as per Art. 4 No. 1 of the Civil Procedure Code if such foreigner, in spite of his status of legal representative, does not prove the existence of a general power of attorney.

Italian judges are not competent to hear a labour dispute between foreign parties, concerning a relationship arisen and carried out abroad (Art. 4 No. 2 of the Civil Procedure Code), which ceased with the dismissal of the employee resident abroad at that time.

The principle of favour for the employee regards the substance of the labour relationship. The fact that a foreign law may be in contrast with public policy cannot bring within the sphere of Italian jurisdiction a dispute which lays outside its field according to the rules on jurisdiction.

99. *Milan Court of Appeal, 3 May 1994 No. 771* 864

Only the parties in the foreign proceedings have the capacity to ask for the enforcement in Italy of the foreign judgment. In case of death, such capacity can be transferred to the heirs, if the action has pecuniary character.

The heirs of a dead foreigner have the capacity to succeed in the proceedings for the enforcement of a foreign divorce judgment started by the de cuius.

According to Art. 797 No. 7 of the Civil Procedure Code, a Chinese divorce judgment, based on grounds different from those provided for by the Italian law, is not contrary to public policy if such grounds are verified by the foreign judge and they are not left to the free evaluation of the parties.

100. *Milan Court of Appeal, 3 May 1994 No. 772* 867

For the enforcement of a foreign judgment establishing the divorce between two Italian spouses, it is necessary that the application of the foreign law does not infringe the principle of the substantial equality in treatment of every citizen before the law.

A South African judgment of divorce between two Italian spouses cannot be enforced in Italy if it is based on provisions which are different from Italian rules: that is, if the parties, after two years of marriage, have not actually lived separately.

101. *Milan Court of Appeal, 3 May 1994 No. 773* 869

Pursuant to Art. 164 of the Civil Procedure Code, the writ of summons in a proceedings for the enforcement of a foreign divorce judgment is null in so far as the defendant resident abroad - still in default of appearance - has been served with a ten-days-time only; irrespective of the extrajudicial declaration of the defendant not to object to the foregoing enforcement.

102. *Milan Court of Appeal, 3 May 1994 No. 774* 871

Pursuant to Art. 10 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, a divorce judgment given in the Netherlands can be enforced in Italy as the law of that State is based on the same fundamental principles as Italian law and is not contrary to public policy.

The reservation made by Italy to the Hague Convention of 1 June 1970, as per Art. 19 No. 1, applies when both spouses have Italian nationality and it does not apply if one of them has also a foreign nationality.

103. *Constitutional Court, 16 May 1994 No. 183* 319

The question of constitutional legitimacy - with reference to Arts. 3, 29 and 30 of the Constitution - of Art. 2 of Law 22 May 1974 No. 357, in so far as it enforces Art. 6 of the European Convention on Adoption, signed in Strasbourg on 24 April 1967, which allows the adoption of minors even by a single adopter, is not founded.

104. *Constitutional Court, 23 June 1994 No. 253* 555

Art. 669-terdecies of the Civil Procedure Code is constitutionally illegitimate, as it is in contrast with Arts. 3 and 24 of the Constitution, in so far as it does not admit the appeal against the order dismissing the application for provisional measures.

EUROPEAN COMMUNITY CASES

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Treaties and general international rules: 12, 25, 26.

1. *Court of Justice, 17 March 1993 cases C-72/91, 73/91* 436

A system established by a Member State, such as that applicable to the International Shipping Register (ISR), which enables contracts of employment concluded with seamen who are nationals of non-Member countries and have non permanent abode or residence in that Member State to be subjected to conditions of employment and rates of pay which are not covered by that law of that Member State and are considerably less favourable than those applicable to seamen who are nationals of that Member State, does not constitute State aid within the meaning of Article 92(1) of the Treaty; Article 117 of the Treaty does not preclude the application of a system of that kind.

2. *Court of Justice, 21 April 1993 case C-172/91* 425

«Civil matters» within the meaning of the first sentence of the first paragraph of Article 1 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters covers a claim for damage brought before a criminal court against a teacher in a public school who, during a school trip, caused injury to a pupil on account of a culpable and unlawful breach of his duties of supervision, even where this is covered by a scheme of social insurance under public law.

The second paragraph of Article 37 of the 1968 Bussels Convention has to be interpreted as precluding any appeal by interested third parties against the decision given on appeal under Article 36 of the Convention, even where the domestic law of the State in which enforcement is sought allows such parties to appeal.

Non-recognition of a judgment for the reasons set out in Article 27(2) of the Brussels Convention is possible only where the defendant was on default of appearance in the original proceedings. Consequently, that provision may not be relied upon where the defendant entered an appearance for the purposes of Article 27(2) of the Convention where, in connection with a claim for damages which is grafted on to the public action pending before the criminal court, the defendant, through defence counsel of his own choice, replied to the public charges but not to the civil claim, which was also dealt with orally in the presence of his counsel.

3. *Court of Justice, 16 June 1993 case C-325/91* 439

A Commission communication intended to produce its own legal effects is capable of being subject to an application for annulment.

4. *Court of Justice, 13 July 1993 case C-125/92* 432

Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is to be interpreted as meaning that, in the case of an employment contract under which the employee carries out his activities in more than one Contracting State, the place where the obligations which characterizes the contract has been or must be performed, within the meaning of that provision, is where, or from where the employer principally performed his obligations on behalf of his employer.

5. *Court of Justice, 2 August 1993 case C-158/91* 158

The national court must ensure full respect of Article 5 of Council Directive 76/207/EEC 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 and not apply any contrary provision of national law unless application of such a provision is necessary to ensure compliance by the Member State concerned with obligations resulting from a convention concluded prior to the entry into force of the EEC Treaty with non-Member States.

6. *Court of Justice, 2 August 1993 case C-23/92* 159

Article 3(1) and Article 1(*j*) of Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community as codified by Council Regulation (EEC) No. 2001/83 of 2 June 1983 must be interpreted as meaning that the definition of 'legislation' referred to by those articles does not cover the provisions of international conventions on social security concluded between a single Member State and a non-Member State. That interpretation is not affected by the fact that the conventions have been integrated as statute law into a domestic legal order of the Member State concerned.

7. *Court of Justice, 19 January 1994 case C-364/92* 680

Articles 86 and 90 of the EEC Treaty are to be interpreted as meaning that an international organization such as Eurocontrol does not constitute an undertaking within the meaning of those articles.

8. *Court of Justice, 20 January 1994 case C-129/92* 654

The 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, in particular Articles 21, 22 and 23, does not apply to proceedings, or issues arising in proceedings, in Contracting States concerning the recognition and enforcement of judgments given in civil and commercial matters given in non-contracting States.

9. *Court of Justice, 10 February 1994 case C-398/92* 877

Article 7 of the EEC Treaty, read in conjunction with Article 220 of the Treaty and the 1968 Brussels Convention on Jurisdiction and the

Enforcement of Judgments in Civil and Commercial Matters, precludes a national provision of civil procedure which, in the case of a judgment to be enforced within national territory, autorizes seizure only on the ground that it is probable that enforcement will otherwise be made impossible or substantially more difficult, but, in the case of a judgment to be enforced in another Member State, authorizes seizure simply on the ground that enforcement is to take place abroad.

10. *Court of Justice, 3 March 1994 cases C-316/93* 155

The Second Council Directive No. 84/5/CEE of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles must be interpreted as meaning that, before the date of 31 December 1988 laid down by Article 5(2), the provisions of that directive did not create rights for individuals which the national courts must protect.

11. *Court of Justice, 15 March 1994 case C-387/92* 681

A measure by which a Member State grants a tax exemption to public undertakings constitutes State aid within the meaning of Article 92(1) of the Treaty; where it constitutes existing aid, such aid may be implemented as long as the Commission has not found it to be incompatible with the common market.

12. *Court of First Instance, 14 April 1994 case T-10/93* 683

The requirement that every person should undergo a medical examination prior to being recruited as a Community official is in no way contrary to the fundamental principle of respect for private life set out in Article 8 of the European Convention for the Protection of Human Rights, which must be applied within the European Community.

13. *Court of Justice, 19 April 1994 case C-331/92* 684

A mixed contract relating both to the performance of works and to the assignment of property does not fall within the scope of Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts if the performance of the works is merely incidental to the assignment of property.

14. *Court of Justice, order 22 April 1994 case C-87/94 R* 904

For the granting of an order for interim measures it is necessary the existence of circumstances giving rise to urgency and of pleas of fact and law establishing a case for granting the relief sought as well as the balance of the interests at stake.

15. *Court of Justice, 27 April 1994 case C-393/92* 686

A national court which, in a case provided for by law, determines an appeal against an arbitration award must be regarded as a court or tribunal within the meaning of Article 177 of the Treaty, even if under the terms of the arbitration agreement made between the parties that court must give judgment according to what appears fair and reasonable.

16. *Court of Justice, order 16 May 1994 case C-428/93* 659

The Court has no jurisdiction to answer the preliminary ruling put by

the Juge-Commissaire at the Tribunal de Commerce when this judge does not have to apply those rules of law in the winding-up proceeding and the questions referred to the Court do not involve an interpretation of Community law objectively required for the decision to be taken by this judge.

17. *Court of Justice, 17 May 1994 case C-294/92* 663

An action for a declaration that a person holds immovable property as trustee and for an order requiring that person to execute such documents as should be required to vest the legal ownership in the plaintiff does not constitute an action *in rem* within the meaning of Article 16(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

18. *Court of Justice; 17 May 1994 case C-18/93* 687

Article 1(1) of Council Regulation (EEC) No. 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries precludes the application in a Member State of different tariffs for identical piloting services, depending on whether or not the undertaking which provides maritime transport services between two Member States operates a vessel authorized to engage in maritime cabotage, which is reserved to vessels flying the flag of that State.

Article 90(1) and Article 86 of the EEC Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply different tariffs to maritime transports undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory, in so far as trade between Member States is affected.

19. *Court of Justice, 2 June 1994 case C-414/92* 666

Article 27(3) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is to be interpreted as meaning that an enforceable settlement reached before a court of the State in which recognition is sought in order to settle a legal proceedings which are in progress does not constitute a 'judgment given in a dispute between the same parties in the State in which recognition is sought' which, under the Convention, may preclude recognition and enforcement of a judgment given in another Contracting State.

20. *Court of Justice, 9 June 1994 case C-292/93* 671

A claim for compensation for use of a dwelling after the annulment of a transfer of ownership is not included in the matters governed by Article 16(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the Convention of 9 october 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

21. *Court of Justice, 16 June 1994 case C-132/93* 880

Community law does not preclude a national court from examining the

compatibility with its constitution of a national rule which, in a situation unconnected with any of the situations contempleted by Community law, treats national workers less favourably than nationals from other Member States.

22. *Court of Justice, 29 June 1994 case C-135/92* 908

The letter sent by the Commission pursuant to Regulation No. 3929/90, which gives her power to impose penalties on those committing infringements, contains a decision which is of direct and individual concern.

The observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law.

23. *Court of Justice, 29 June 1994 case C-288/92* 675

Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention, is to be interpreted as meaning that, in the case of a demand for payment made by a supplier to his customer under a contract of manufacture and supply, the place of performance of the obligation to pay the price is to be determined pursuant to the substantive law governing the obligation in dispute under the conflicts rules of the court seised, even where those rules refer to the application to the contract of provisions such as those of the Uniform Law on the International Sale of Goods, annexed to the 1964 Hague Convention.

24. *Court of Justice, 14 July 1994 case C-91/92* 883

Article 1(1), Article 2 and Article 5 of Council Directive 85/577/EEC of 20 December 1985, concerning protection of the consumer in respect of contracts negotiated away from business premises, are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given.

In the absence of measures transposing Directive 85/577 within the prescribed time-limit, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court. However, when applying provisions of national law, whether adopted before or after the directive, the national court must interpret them as far as possible in the light of the wording and purpose of the directive.

25. *Court of Justice, 14 July 1994 case C-379/92* 888

The Court may not rule on the question whether the legislation of a Member State is compatible with an international agreement, such as the International Convention for the Prevention of Pollution from Ships, called 'the Marpol Convention', if the Community is not party to that agreement and it does not appear that the Community has assumed, under the Treaty, the powers previously exercised by the Member States in a field to which the agreement applies or that its provisions have the effect of binding the Community.

The provisions of the Treaty concerning the free movement of workers may not be applied to a situation purely internal to a Member State.

National provision of a Member State which imposes technical rules on

maritime transport undertakings established on its territory and operating vessels flying its flag is not contrary to freedom of establishment guaranteed by Articles 52 and seq. of the Treaty.

Italian legislation prohibiting the discharge of harmful substances beyond territorial sea limits only to vessels flying Italian flag is not contrary to EC law; in fact as Italy has not established an exclusive economic zone, under the rules of public international law it may exercise its jurisdiction beyond territorial sea limits only over vessels flying ist flag.

Italian legislation prohibiting the discharge of harmful substances to all vessels without distinction whether carrying products within Italy or to other Member States in Italian territorial waters is not contrary to EC law.

26. *Court of Justice, 9 August 1994 case C-327/91* 173

The act by which the Commission concluded the USA-EEC Agreement regarding the application of their competition laws may be subject to an action for annulment as it is an act which has juridical effects.

The 1991 USA-EEC Agreement on competition is an agreement between an International Organization and a State as per Art. 2 No. 1 lett a, i, of the Vienna Convention 21 March 1986 on the law of treaties between States and International Organizations.

As per Art. 228 of the EC Treaty the Commission is not competent to conclude the 1991 USA-EEC Agreement on competition.

FOREIGN COURTS CASES

Tribunal de Grande Instance de Paris, 20 February 1992 916

As for the infringement of the right to discretion through press, pursuant to Art. 5 No. 3 of the Brussels Convention of 27 September 1968, the judge of the place of issue of the international magazine is competent to hear an application of the plaintiff against the publisher in order to obtain the compensation for damages suffered in different countries.

The judge of one of the States in which such magazine is in circulation is competent only with reference to the compensation for the damages caused to the plaintiff in such State.

Tribunal de Grande Instance de Senlis, 15 September 1992 440

The reference to practices between the parties made by Art. 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matter, as amended by the 1978 Accession Convention, does not release the judge from veryfing that the party against which the agreement is invoked has accepted it. A general reference to general sale conditions which contains such clause is not relevant.

As per Art. 5(1) No. 1 of the 1968 Brussels Convention, the French judge of the place of delivery of the goods is competent to hear a case between the buyer and the seller concerning defects of the goods as well as the claims of the plaintiff against the Italian producer. The fact that the contract between the seller and the producer contains an agreement conferring jurisdiction to the Italian judge is irrelevant.

Swiss Federal Court, 21 December 1992 912

Unlike State immunity, the immunity from jurisdiction of an international organisation does not follow from its international legal

personality, which is not full, but is based on an international agreement between Member States or with the host country.

The distinction between acts performed iure imperii or iure gestionis does not apply to international organisations. As a result, if an international organisation becomes a party to an arbitration clause, it does not automatically lose its immunity. In such case a waiver can follow only from an express declaration, from a provision contained in the seat agreement or when the organisation accepted that the arbitral procedure be governed by municipal law.

Court of Appeals, 2nd Circuit, 20 August 1993 691

Pursuant to 28 USC § 1782 US Federal Judges may grant discovery in the United States for use in a proceeding in a foreign tribunal irrespective of any limit on the discoverability provided for by the law of the foreign jurisdiction.

Bundesverfassungsgericht, 12 October 1993 161

The right granted to the German citizens by Art. 38 of the Basic Law to partecipate, by means of elections, in the legitimation of State power and to influence the implementation of that power can be violated if the exercise of the responsibilities of the German Federal Parliament is transferred so extensively to one of the institutions of the European Union or the European Communities formed by the governments that the minimum, inalienable requirements of democratic legitimation relating to the sovereign power can no longer be complied with.

Art. L of the Treaty on the European Union, which excludes jurisdiction of the Court of Justice for certain matters falling within the Treaty, does not create a gap in the judicial protection, since jurisdiction is excluded only for those provisions of the Treaty which do not authorize the Union to take actions affecting the rights of individuals.

The powers granted to the Council of the European Union in matters relating to common foreign and security policy and to co-operation on justice and home affairs by Title V and VI of the Treaty on the European Union do not contemplate the adoption of acts directly applicable in the Member States binding the individuals.

The principle of democracy does not prevent the Federal Republic of Germany from becoming a membrana of an inter-governmental community which is organized on a supranational basis as long as the legitimation deriving from the people is preserved within such community.

In the European Union the exercise of sovereign powers and functions derives democratic legitimation by peoples of the Member States through national Parliaments and, to a growing extent, through the European Parliament.

The principle of democracy sets a limit to the increase in the powers and functions of the European Communities, since the democratic foundations upon which the Union is based must be extended concurrently with integration, maintaining a living democracy in the Member States while integration proceeds.

Art. 38 of the German Basic Law would be violated if the law which subjects the German legal system to the direct validity and application of the rules of the European Communities does not give a sufficiently precise specification of the assigned rights to be exercised by the European Communities and by the proposed program of integration.

The Treaty on the European Union establishes an inter-governmental community for the creation of an even closer union among the peoples of Europe, which peoples are organized on a State level, rather than a State which is based upon the people of one State of Europe.

The Member States, even after the Treaty on the European Union has entered into force, have the power to terminate their membership, even though the Treaty is concluded for an unlimited period.

Art. F para. 3 of the Treaty on the European Union, stating that the Union provides itself with the means necessary to attain its objectives and carry through its policies, does not empower the Union to determine itself the extent of its jurisdiction (Kompetenz-Kompetenz).

There is no point in the Treaty on the European Union at which it is clear that the contracting parties have agreed to establish the Union as an independent legal entity with a distinct legal personality either in terms of its relationship with the European Communities or of its relationship with the Member States.

The Federal Republic of Germany is not, by ratifying the Treaty on the European Union, subjecting itself to an uncontrollable, unforeseeable process which will lead inexorably towards monetary union, because under the Treaty every further step along this way is dependent either upon conditions being fulfilled which can be foreseen or upon consent from German constitutional bodies.

Tribunal des Prud'hommes de Genève, 15 February 1994 700

The Tribunal des Prud'hommes is competent to hear a case between a foreign State and one of its nationals concerning a labour relationship carried out at the foreign Embassy in Switzerland if such contract has private character.

As for Art. 5 lett. *f* of the Italian-Swiss Convention 14 December 1962 on social security, the staff employed by the chief of the diplomatic mission of one contracting Party in the territory of the other contracting Party is subject to the law of the sending State if it is a national of such State.

There is no customary rule compelling the forum State to exempt foreign States from jurisdiction.

A foreign State does not enjoy immunity from jurisdiction for acts carried out *jure gestionis* concerning relationships arisen or to be performed in Switzerland.

Swiss judges have no jurisdiction on a labour relationship between a foreign State and one of its nationals.

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