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1. *Rome Tribunal, 13 December 1991* 673

A dispute on the validity of an agreement regarding the regulation of succession rights is not excluded from the field of application of the 1968 Brussels Convention because such agreement has the nature of a settlement.

Pursuant to Art. 17 of the 1968 Brussels Convention, Italian courts are not competent to hear a case concerning an agreement regarding a succession when the parties conferred jurisdiction to the courts of another Contracting State.

2. *Corte di Cassazione (plenary session), 13 May 1992 No. 5668* 677

In disputes concerning compensation for damages as a result of torts the place where the obligation arose as per Art. 4 N. 2 of the Code of Civil Procedure may be determined with reference to the place where the harmful event occurred.

In order to determine which harmful event must be dealt with, it is necessary to refer to the objet of the claim as specified in the plaintiff's request.

3. *Corte di Cassazione, 11 July 1992 No. 8469* 104

Pursuant to Art. 20 of the Convention between Italy and Rumania of November 11, 1972 on Judicial Assistance in Civil and Criminal Matters, arbitral awards rendered on the territory of one of the Contracting Parties are recognised and enforced on the territory of the other Party in accordance with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Art. 798 of the Code of Civil Procedure permitting relitigation of the merits when the foreign judgment to be enforced has been rendered by default, in principle may be derogated by international conventions. However, it is not derogated by the 1958 New York Convention which does not exclude nor otherwise regulates this option.

The relitigation of the merits in the course of an action for the enforcement of a foreign arbitral award is not permitted since default of appearance in arbitral proceedings is not possible: in fact such proceedings do not require the filing of a formal writ of summons and an entry of appearance but only the granting of a term to the parties to present their defences after the introduction of the action.

4. *Corte di Cassazione, 19 January 1993 No. 606* 679

Pursuant to Art. 2 No. 2 of the Hague Convention of April 15, 1958, on Recognition and Enforcement of Maintenance Judgments towards Children, maintenance judgments rendered in a Contracting State must be

recognised in the other Contracting States without relitigation of the merits, provided that the defendant has been duly sued before the court.

A term of forty days given to an Italian citizen resident in Italy in order to appear before a Swiss judge is sufficient, notwithstanding the fact that the writ was written in German.

A part of a foreign judgment condemning a father to pay maintenance to his natural child may be enforced in Italy notwithstanding the fact that another part of the same judgment, concerning the judicial ascertainment of the natural paternity is contrary to public policy.

5. *Corte di Cassazione, 2 February 1993 No. 1272* 113

Art. 30 of Law of May 4, 1993, No. 184 on Adoption, when regulating the spouses' petition to adopt «one» foreign minor, utilises this expression in a generic sense and not in a numeric one.

The declaration of the spouses' fitness for the adoption of a foreign minor may be utilised for the enforcement of more than one foreign adoption decision.

6. *Corte di Cassazione (plenary session), 13 February 1993 No. 1820* 116

Pursuant to Art. 3 of the 1968 Brussels Convention, persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of the same Convention.

Pursuant to Art. 8, third paragraph, of the 1968 Brussels Convention, the presence of a branch, agency or other establishment in a Contracting State other than the Contracting State where the insurer is domiciled permits to sue the insurer before the courts of the State where the branch is located only with respect to disputes arising out of operations of such branch.

Italian judges are not competent to hear a case related to a traffic accident occurred to Italian citizens in Spain if the tortfeasor and his insurance company are domiciled in France. The presence of a branch of said insurance company in Italy is irrelevant for this purpose when it has not issued the insurance policy.

7. *Corte di Cassazione, 10 March 1993 No. 2894* 684

Pursuant to Art. 2 of Presidential Decree October 26, 1972 No. 642 on stamp duty, a bill of exchange issued abroad may be used in Italy provided that the acceptance, the backing or the endorsement occurred in Italy or it was delivered, submitted, transmitted, negotiated or acquitted within its territory.

The transfer of a bill of exchange from a foreign bearer to his Italian correspondent for the necessary fiscal and currency exchange formalities may not be deemed to be a negotiation.

As Italy did not make the reservation contained in Art. 10 of the Geneva Convention of June 7, 1930 on the conflict of laws in matters of bills of exchange and promissory notes, the validity of a foreign bill of exchange having the essential features required for bills of exchange issued in Italy is to be recognised without any limitation with respect to non-Contracting States; this is confirmed by Arts. 1 No. 1, 47 and 63 of Royal Decree December 14, 1933 No. 1669.

Italian courts (and not foreign courts) are competent to verify, pursuant to Art. 63, second paragraph, of the Law on Bills of Exchange, the

conditions for the enforcement in Italy of a foreign bill: i.e. the essential features set forth by Arts. 1 and 2 of the Law, the fiscal requirements and the recognition of its enforceability in accordance with the relevant substantive foreign provisions. The Italian judge must ascertain the existence of such conditions on the basis of evidence to be supplied by the parties.

Pursuant to Arts. 63, second paragraph of the Law on Bills of Exchange, and 27 of the Preliminary Provisions to the Civil Code, the intervention of the foreign judge may not be requested even for the application of foreign procedural provisions.

According to Arts. 521 and 487 of the Spanish Commercial Code as interpreted by Spanish courts, the bill of exchange is enforceable against the backer of the acceptor without any preventive ascertainment by the judge.

As Spanish law permits foreigners to be bearers in Spain of a bill of exchange issued in another State and to submit claims before Spanish courts to obtain its enforcement, the reciprocity condition of Art. 16 of the Preliminary Provisions to the Civil Code is fulfilled.

8. *Genoa Tribunal, order 15 March 1993* 158

The Brussels Convention of May 10, 1952, on the Arrest of Ships, which applies also to ships flying the flag of non-Contracting States, does not require the existence of periculum in mora with respect to maritime claims.

Pursuant to Art. 8, paragraph 2 of the 1952 Brussels Convention on the Arrest of Ships and Art. 24 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, Italian Courts are competent to order the arrest of a foreign ship in Italian territorial waters even if the Courts of another State have jurisdiction as to the substance of the matter.

The arrest of a ship belonging to the Republic of Cuba, aimed at guaranteeing a credit towards an entity wholly owned and controlled by such State, is admissible.

9. *Genoa Tribunal, order 21 April 1993* 159

In order to establish whether a maritime claim is subject to Art. 1, paragraph 1, and Art. 3, paragraph 1, of the 1952 Brussels Convention on the Arrest of Ships, it is necessary that such claim be enforceable on a ship; therefore, the credit of the shipowner towards the charterer for the payment of the charter-party is not a maritime claim. Accordingly, a ship flying the flag of a Contracting State may not be arrested to guarantee such credit.

The reservation made by the Republic of Cuba at the time of its ratification of the 1952 Brussels Convention, whereby it declared it would not apply the Convention to warships and public ships proves that a ship owned by a Cuban entity is not to be considered as if it were owned by the State.

There is no periculum in mora, considering the amount of the claim, in the case of the arrest of a ship to guarantee a credit towards the Republic of Cuba.

10. *Corte di Cassazione (criminal), 10 May 1993* 164

In case an international extradition convention, setting forth the conditions for the granting of extradition, does not require expressly or

impliedly an evaluation as to existence of evidence of guilt such evaluation – which instead would be required under Art. 705, first paragraph of the Code of Criminal Procedure in the absence of any conventional provision – is precluded.

11. *Rome Tribunal, 18 May 1993* 755

The Ministerial Decree October 15, 1990, suspending the release of authorisation for carriage of goods to Austria, is not subject to the control of courts as it has a political nature and relates to primary interests of the State.

12. *Turin Court of Appeal, decree 9 June 1993* 154

The fact that the adoption of a minor has been declared in favour of a single prevents the enforcement of the foreign decision in Italy as it is not by itself contrary to public policy (Art. 797 No. 7 of the Code of Civil Procedure).

13. *Corte di Cassazione (plenary session), 15 June 1993 No. 6630* 121

Pursuant to Art. 28 of the 1929 Warsaw Convention on International Carriage by Air, as amended by the 1955 Hague Protocol, an action for damages must be brought, at the option of the plaintiff, in the territory of one of the Contracting Parties either before the court of the domicile of the carrier or the courts of other places where it carries out its activities or before the court at the place of destination.

The issue of jurisdiction must be considered separately from the issue of venue even though certain international conventions determine directly the judge of a particular State competent to hear the case (e.g. Art. 5 Nos. 1, 2, 3, 5, Art. 6 No. 1, Art. 8, second paragraph, Art. 9 of the 1968 Brussels Convention).

For the purpose of establishing jurisdiction, it is sufficient to ascertain that the action has been brought in the State where the place of destination is located, even though the reference to such place contained in Art. 28 of the 1929 Warsaw Convention is to be considered as establishing not only jurisdiction but also the proper venue.

A ruling on jurisdiction is not admissible if the petitioner seeks a decision on the proper venue thus showing that he accepts the jurisdiction of Italian courts in accordance with Art. 4 No. 1 of the Code of Civil Procedure.

14. *Corte di Cassazione, 19 June 1993 No. 6841* 166

In matters relating to international carriage of goods by air, according to Art. 951 of the Navigation Code and Art. 18 of the Warsaw Convention of October 12, 1929, the custody of the goods at the stop-over is part of the carrier's obligations pursuant to the contract of air carriage. Such obligation is fulfilled by delivering the goods to the consignee.

15. *Milan Tribunal, 19 July 1993* 125

For the purpose of Art. 25, second paragraph, of the Preliminary Provisions to the Civil Code, in tort cases, when the action took place in one State and the damages occurred in another State, one should apply the law of the place of damages.

When damages occur in different places and at different times, the

relevant place is the place where the tortious action first affects the plaintiff.

In case a foreign buyer cancels an order of certain products made by an Italian company following the communication by another foreign company claiming that such products breach a copyright, the place of the harmful event is located in Italy where the damaged party is domiciled.

The burden of proving the foreign law (or at least of providing the references of the relevant provisions) lays upon the party invoking the application of such law; failing such proof, the judge must apply Italian law.

16. *Corte di Cassazione, 26 August 1993, No. 9005* 166

Art. 37 of Presidential Decree No. 818 of April 26, 1957 does not compute the period of time passed abroad by Italian workers in countries with which Italy has not stipulated any international convention on social security, in order to avoid that the passing of time prevents them from claiming in sufficient time the pensions to which they are entitled on the basis of their contributions.

EEC legislation allowing the maintenance of contributions already paid does not have any impact on such domestic provision.

17. *Corte di Cassazione, 4 November 1993 No. 10889* 167

Pursuant to art. 18, paragraph 4 of the 1956 Geneva Convention on the International Carriage of Goods by Road, in the case of carriage of perishable goods to be performed in vehicles specially equipped, the carrier is not entitled to claim the benefit of the relief of liability as per Art. 17, paragraph 4 (*c*) when the sender stowed the goods, save that the sender imposed particular loading requirements.

18. *Corte di Cassazione (plenary session), 26 November 1993 No. 11718* 128

Pursuant to Art. 5 of the Code of Civil Procedure, in order to determine the validity of an agreement excluding Italian jurisdiction, entered into by an Italian citizen resident abroad in accordance with Art. 2 of the same Code, one should take into consideration the moment when the action is brought rather than the moment when the agreement was entered into.

Italian judges are competent to hear a case brought against an Italian citizen who was resident abroad at the time of the conclusion of the agreement excluding Italian jurisdiction if he is resident in Italy at the time the action is started.

19. *Corte di Cassazione (plenary session), 26 November 1993 No. 11719* 132

The jurisdiction of Italian Courts in a dispute concerning a commercial agency between an Italian citizen and a German citizen is not to be determined in accordance with Arts. 2 and 4 of the Code of Civil Procedure but with the 1968 Brussels Convention.

Italian Courts are not competent when the commercial contract contains an agreement conferring jurisdiction upon German courts approved in writing by both parties as required by Art. 17 of the Brussels Convention.

20. *Milan Court of Appeal, order 2 December 1993* 702

In case enforcement is sought of a partial award rendered during an arbitration proceeding, it may not be deemed that the proceeding as to

substance is pending for the application of Art. 669-*quinquies* of the Code of Civil Procedure, notwithstanding the fact that the arbitral proceeding may continue.

Art. 669 *ter* of the Code of Civil Procedure on the competence to grant a seizure before the merits of the case are heard does not apply in case of a seizure sought during a proceeding for the enforcement of a foreign judgment. In fact for the purpose of said provision the expression «proceeding on the merits» must be interpreted as including any action with respect to which the provisional measure is functional, thus including an action for the enforcement of a foreign judgment.

21. *Corte di Cassazione, 3 December 1993 No. 12012* 756

In case an Anstalt acts as plaintiff or defendant in a proceeding before Italian courts, the legal relationship between the Anstalt and the person who granted the power of attorney to the lawyer is in general to be presumed; the burden of the proof thereof lies upon the party who objects its inexistence.

22. *Corte di Cassazione (plenary session), 13 December 1993 No. 12263* 693

With reference to an action for the declaration of the non existence of an exclusive agreement, the obligation in question relevant for the application of Art. 5 No. 1 of the 1968 Brussels Convention is the autonomous obligation concerning the conduct of the parties with respect to future long term supply agreements.

If an exclusivity clause is stipulated in favour of the party purchasing the goods, it represents an economic benefit for this party; therefore, the place of performance of such obligation, as per Art. 5 No. 1 of the 1968 Brussels Convention, is normally the place where such benefit arises, i.e. where said party has its place of business.

23. *Corte di Cassazione, 27 December 1993 No. 12815* 168

Pursuant to Art. 21 of the Italian-Yugoslavian Convention on social security of November 14, 1957, the social security agency of the country where the beneficiary is resident must supplement the contributions paid in order to grant the minimum pension in that country in case the insured is entitled to the payment of social security from the agencies of both countries but the aggregate amount of such payment is below the minimum pension in the country of residence.

24. *Milan Court of Appeal, 25 January 1994* 697

A judgment rendered in California, which has been produced in court without the signature of the judge nor any certificate substituting it, may not be enforced in Italy.

Pursuant to Art. 797 No. 2 of the Code of Civil Procedure, a term of thirty days granted to a company with seat in Italy to submit a brief before a court in California is not sufficient.

25. *Milan Court of Appeal, order 25 January 1994 No. 131* 702

In case enforcement is sought of a partial award rendered during an arbitration proceeding, it may not be deemed that the proceeding as to substance is pending for the application of Art. 669-*quinquies* of the Code of Civil Procedure, notwithstanding the fact that the arbitral proceeding may continue.

Art. 669 *ter* of the Code of Civil Procedure on the competence to grant a seizure before the merits of the case are heard does not apply in case of a seizure sought during a proceeding for the enforcement of a foreign judgment. In fact for the purpose of said provision the expression «proceeding on the merits» must be interpreted as including any action with respect to which the provisional measure is functional, thus including an action for the enforcement of a foreign judgment.

26. *Corte di Cassazione, 11 February 1994 No. 1381* 169

In case of an international sale of goods pursuant to Art. 1510 of the Civil Code, the contract of carriage is to be considered an autonomous manner of performance of such sale. Accordingly, the seller is not liable for a breach by the carrier unless otherwise agreed or unless it is proved that he was negligent by not choosing the carrier in accordance with the agreement or with rules of diligence.

27. *Constitutional Court, 24 February 1994 No. 62* 433

Art. 7, paragraphs 12 *bis* and 12 *ter*, of Law of February 28, 1990 No. 39 - as amended by Art. 8, first paragraph of Decree-Law of June 14, 1993 No. 187, confirmed with modifications with Law of August 12, 1993 No. 296 - is not contrary to the principle of equality of Art. 3 of the Constitution nor with Art. 27, third paragraph, of the Constitution concerning the rehabilitating function of criminal penalties, nor with Arts. 10, 79 and 81 of the Constitution in so far as it permits the judge to order, upon request of a non-EEC national or of his legal counsel, the immediate expulsion towards the national State or the State of origin of said non-EEC national who is subject to detention on suspicion or has been sentenced to imprisonment for certain crimes with a final judgment.

28. *Constitutional Court, order 3 March 1994 No. 72* 438

The new provisions introduced by Decree-Law of June 14, 1993 No. 187, confirmed with modifications with Law of August 12, 1993 No. 296 may be relevant in order to construe Art. 7 of Law of February 28, 1990 No. 39 as it provides for a new form of co-ordination of judicial and administrative decisions with respect to the expulsion of non-EEC nationals; the division of power of the different relevant authorities set forth by the first paragraph of Art. 7 (regarding expulsion as a public safety measure) and the other paragraphs of the same (regarding expulsions as an administrative and police measure) must be strictly applied.

29. *Corte di Cassazione (plenary session), 3 March 1994 No. 2077* 169

Limits to the denomination of Italian professional partnerships set forth by Art. 1 of Law dated November 23, 1939, No. 1815 are not contrary to EC Regulation No. 2317 of July 25, 1985, establishing EEIG, which does not affect the application of national legislations on professional activities. Nor such limitations discriminate the aforementioned partnerships with respect to those established in other Member States which are admitted to operate in Italy by virtue of EC Directive No. 77/249 of March 22, 1977.

30. *Milan Tribunal, decree 8 March 1994* 135

Resolutions of companies incorporated abroad which establish or have established one or more permanent branches are no longer subject to registration by the tribunal, but to the mere deposit in the competent companies' register.

31. *Corte di Cassazione, 10 March 1994 No. 2326* 136

In case service of process abroad commenced two days before the publication in the Official Journal of the Constitutional Court's decision of February 2, 1978 No 10 – which declared the illegitimacy of Art. 143, last paragraph of the Code of Civil Procedure with reference to Art. 142 of the same, governing the said service – all formalities already undertaken have no legal effect. Therefore, the writ should have been served again in accordance with the modalities indicated by the Constitutional Court, i.e. as provided for by international conventions or by Presidential Decree of January 5, 1967 No. 200.

32. *Corte di Cassazione, 14 March 1994 No. 2514* 170

Pursuant to the Hague Conventions of April 15, 1958, and October 2, 1973, on the Recognition and Enforcement of Foreign Maintenance Judgments, the respect by the foreign judge of the criteria provided for by Art. 11 of the Hague Convention of October 2, 1973, on the Law Applicable to Maintenance Obligation (i.e., that the needs of the creditor and the resources of the debtor be taken into account in determining the amount of maintenance), is not subject to review by the court competent for the enforcement. In fact, said Article 11 has a substantive nature and both Conventions exclude any review as to the merits of the foreign decision.

33. *Milan Court of Appeal, 18 March 1994* 141

According to Art. 25 of the Preliminary Provisions to the Civil Code, damages originating from the loss of goods carried from Germany to Italy sought by the carrier from the insurer stepped into the shoes of the sender is governed by the common national law of the sender and the carrier. The reference to German law implies the application of the provisions of uniform law in force in Germany as a result of the implementation of the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) in Germany.

According to Art, 31, paragraph 1 *b*, of the CMR Convention, Italian courts are competent with respect to an action for damages against a German carrier when the place designated for delivery is located in Italy. The sender may bring this action subject to the concurring and extraordinary right to sue of the consignee as per Art. 13, paragraph 1.

The carrier's liability may not exceed the limit set forth by the Geneva Protocol of July 5, 1978. The damaged party may not ask for the re-evaluation of its credit as provided for by Italian law in case of breach of contract because these damages are contemplated only by the *lex fori*, whose application would conflict with the nature of international uniform law, which requires an autonomous interpretation.

34. *Milan Court of Appeal, 18 March 1994, No. 485* 440

Art. 4 of Law No. 898 of December 1, 1970, on Divorce, as amended, regulates venue and not jurisdiction; therefore, a foreign divorce judgment rendered on the basis of the residence of the plaintiff may not be enforced in Italy pursuant to Art. 797 No. 1 of the Code of Civil Procedure.

35. *Corte di Cassazione, 23 March 1994 No. 2797* 171

The Convention between Italy and Switzerland on Social Security of December 14, 1962 and the Additional Agreement of July 4, 1969 provide only for the possibility to continue, on a voluntary basis, the payment of

compulsory contributions for disability, old-age and surviving dependants pensions based on contributions paid in Switzerland. This does not derogate to the principle of the Italian social security system whereby one may not compute two separate contributions for the same period and with respect to the same social insurance.

36. *Corte di Cassazione, 25 March 1994 No. 2924* 146

As the 1968 Brussels Convention does not apply to the status or legal capacity of natural persons (Art. 1, paragraph 1), these are governed – pursuant to Art. 56 of the same Convention – by the bilateral conventions listed in Art. 55.

According to the Italian-German Convention of March 9, 1936, on the Recognition and the Enforcement of Judgments, a German decision ascertaining the natural paternity may be enforced in Italy, as it is not contrary to public policy, provided that the foreign judge did not infer the proof of the paternity from the declarations of the mother only.

Art. 5 of the 1936 Italian-German Convention precluding relitigation of the merits prevails over Art. 798 of the Code of Civil Procedure.

37. *Corte di Cassazione, 26 March 1994 No 2984* 148

On the basis of an extensive interpretation of Art. 32, second paragraph of Law May 4, 1983 No. 184, the appeal before the *Corte di Cassazione* is admissible not only against the decree of the Juvenile Court enforcing a foreign adoption measure, but also against the decision of the same Court denying the enforcement.

A foreign adoption measure may be enforced in Italy pursuant to Art. 32 of Law No. 184 of 1983 even if the difference of age between the minor and the couple seeking the adoption exceeds the limit of forty years set forth by Art. 6, second paragraph, provided that such difference of age reflects the biological difference of age between parents and children.

38. *Genoa Court of Appeal, 30 March 1994* 441

When several defendants have been sued on the basis of different causes of action functionally connected, such connection justifies the exercise of Italian jurisdiction. The connection as per Art. 4 No. 3 of the Code of Civil Procedure is relevant only when the action is per se subject to Italian jurisdiction and not when it becomes subject to it as a result of its acceptance by the foreign defendant. Pursuant to Arts. 12 and 12 *bis* of the 1968 Brussels Convention, an agreement conferring jurisdiction on the courts of the place of issuance of a policy, contained in the general conditions of the Italian policy for the maritime insurance of goods and referred to in the insurance contract entered into with an insured domiciled in a Contracting State, is valid: in fact, it results in an agreement on jurisdiction regulated by Art. 17 of the Convention concluded in a form which accords with practices in international trade or commerce.

39. *Constitutional Court, 31 March 1994 No. 109* 444

Art. 281, second paragraph *bis*, of the Code of Criminal Procedure, is illegitimate with reference to Arts. 3, second paragraph, 13 and 16 of the Constitution, in so far as it provides for the automatic prohibition to expatriate in case of issuance of a measure prohibiting to stay in one's abode.

40. *Milan Court of Appeal, 12 April 1994* 385

Art. 801 of the Code of Civil Procedure applies to the enforcement of a Swedish decision declaring the adoption of a foreign minor by two spouses (one Italian and one Swedish).

Art. 29 of Law dated May 4, 1983, No. 184 on Adoption applies only to foreign adoption measures rendered with respect to spouses who are resident in Italy or are both Italian nationals resident abroad.

Pursuant to the decision of the Constitutional Court No. 148 of 1992, a foreign adoption decision is not contrary to public policy, according to Art. 801 of the Code of Civil Procedure, notwithstanding the fact that the difference of age between one adopting parent and the minor exceeds forty years.

41. *Corte di Cassazione, 14 April 1994 No. 3502* 387

For the purpose of enforcing a foreign divorce judgment based on the dissolution of the relationship between the spouses resulting exclusively from their common will, the judge, in order to evaluate its conformity with public policy, cannot control the validity and the value as proofs of the elements of the foreign trial (in this case, pursuant to the Jewish rite, the *ghet*, that is the deed delivered in court by the husband to his wife, who must accept it, to demonstrate the joint will of dissolving the marriage). This applies even when this document is the only means of proof admitted by the foreign law to demonstrate the existence of grounds for divorce.

42. *Rome Court of Appeal, 26 April 1994* 390

A divorce decision of the Regional Rabbinical Tribunal of Tel Aviv can be enforced in Italy, pursuant to Art. 797 of the Code of Civil Procedure, save for the part restricting the wife from remarrying before a certain date with a person named Cohen, as this part is contrary to public policy.

43. *Corte di Cassazione, 4 May 1994 No. 4327* 392

The intermediary authority acting for the enforcement of foreign maintenance judgments, according to the New York Convention dated June 20, 1956 on the recovery abroad of maintenance obligations, is a substitute of the real party in interest. Therefore, the power of attorney that may have been granted by the maintenance creditor does not add any power to such institution; thus it may be qualified as a mere starting formality as it aims at initiating the mechanism provided for by the Convention.

It is not necessary to authenticate the subscription of the power of attorney that may have been granted by the maintenance creditor as Art. 9 of the Hague Convention of April 15, 1958 on the Recognition and the Enforcement of Maintenance Judgments towards Children expressly exempts from legalisation all acts utilised in proceedings in this matters.

44. *Corte di Cassazione, 6 May 1994 No. 4418* 449

An insurance contract entered with the maritime social insurance bodies, as per Art. 291 of the consolidated laws No. 1124 of 1965, by a shipowner of a foreign ship in favour of Italian seamen, is not a compulsory insurance but rather a formal private insurance.

45. *Milan Court of Appeal, 6 May 1994* 447

A Swiss maintenance judgment may be enforced in Italy when it complies with the conditions set forth by the 1973 Hague Convention even

when the action for the payment of some instalments is barred since such Convention admits the partial enforcement of judgments.

46. *Milan Court of Appeal, 13 May 1994* 396

Pursuant to Art. 797 Nos. 2 and 3 of the Code of Civil Procedure, a judgment issued in the Republic of Croatia may not be enforced in Italy if the service of the writ to the defaulting party in accordance with the *lex fori* is not proved, nor the plaintiff has granted the defendant adequate time to defend.

47. *Corte di Cassazione (plenary session), 28 May 1994 No. 5246* 397

When a foreign legal system comprises various legal units, the reference in a jurisdiction agreement to such legal system puts the burden on the plaintiff to establish the territorially competent judge in accordance with the general rules of said legal system.

A clause excluding Italian jurisdiction pursuant to Art. 2 of the Code of Civil Procedure, with respect to the claim submitted by an Italian insurer against a foreign defendant by virtue of the right of subrogation granted by the law, is valid. The exercise of such right produces a special succession in the credit whereby the insurer succeeds in the same substantial and procedural position of the insured party.

48. *Corte di Cassazione (plenary session), 8 June 1994 No. 5565* 402

Italian courts are not competent to hear a labour dispute between the Bari Institute of the *Centre International de Hautes Etudes Agronomiques Méditerranéennes* and an Italian employee in charge of the organisational and decision-making departments, who carries out institutional and public functions of such entity.

Italian courts are not competent when a dismissal is challenged and re-employment is sought together with the award of salaries and damages against an international organisation: in fact, the exam of the legitimacy of the dismissal by the international organisation concerns directly the exercise of its public functions and the claim for damages derives from the ascertainment of such illegitimacy.

Following the Italian reservation to Protocol 2 of the Treaty instituting CIHEAM of May 21, 1962, the immunity of such *Centre* is granted within the same limits applicable to foreign States pursuant to general principles of international law.

There is no principle of international law according to which employment contracts entered into by international subjects with nationals of the host State concern private interests of such international subjects and therefore fall within the jurisdiction of the host State; nor can the existence of this principle be drawn from the 1972 Bale Convention on State immunity or from the 1951 London Convention of the status of NATO armed forces.

The issue of constitutional legitimacy of Law No. 932 of 1965, implementing the Treaty instituting CIHEAM, with reference to Arts. 2, 3 11, 24 and 25 of the Constitution is inadmissible because such Treaty provides for the establishment of an *ad hoc* Commission competent to hear the claims submitted by the employees against the decisions of the *Centre*.

49. *Corte di Cassazione (plenary session), 9 June 1994 No. 5627* 416

Italian courts are competent to hear a labour dispute concerning the indemnities for dismissal without notice and severance payment brought by

an employee resident and domiciled in Italy against a company having its seat in Germany as, pursuant to Art. 5 No. 1 of the 1968 Brussels Convention, the obligation in question had to be performed at the employee's domicile.

50. *Corte di Cassazione (plenary session), 10 June 1994 No. 5640* 417

The tacit acceptance of Italian jurisdiction pursuant to Art. 4 No. 1 of the Code of Civil Procedure derives from any conduct of the defendant in the proceedings incompatible with an exception of lack of jurisdiction. Therefore, Italian courts are competent when the foreign defendant submits exception of procedural nature relating to the nullity of the writ, its service or the non-admissibility of the action.

As a result of the tacit acceptance of Italian jurisdiction, the judge is also competent to hear the other connected actions which have been joined pursuant to Art. 273 of the Code of Civil Procedure.

51. *Milan Court of Appeal, 10 June 1994* 421

Pursuant to Art. 4 No. 2 of the Code of Civil Procedure, Italian courts are competent to hear a claim for damages made by the promisee against the promisor in case of the default of a third party to perform in accordance with the terms of the promise when said promise was made in Italy or when the breach occurred in Italy.

52. *Milan Tribunal, 23 June 1994* 450

Italian courts are competent to hear a dispute concerning the termination of a contract entered into and performed in Italy pursuant to Art. 5 No. 1 of the 1968 Brussels Convention.

53. *Corte di Cassazione, 24 June 1994 No. 6069* 706

In order to determine the applicable law to compulsory insurance, it is necessary to refer to the place where the employee is hired as such insurance is imposed automatically as a result of the employment in Italy.

Italian law applies in case the employee is hired in Italy, even if the performance of his activity is to be carried out abroad; as a result of the application of Italian law, the compulsory insurance covers all the aspects of accidents at work.

54. *Milan Court of Appeal, 24 June 1994* 451

In the context of the enforcement of a Portuguese judgment for the payment of money, the petition for relitigation of the merits pursuant to Art. 798 of the Code of Civil Procedure must be rejected when it is generic and not supported by any concrete objection to the grounds of the plaintiff's enforcement action.

55. *Corte di Cassazione, 27 June 1994 No. 6167* 758

Law of January 8, 1979, No. 8 and Presidential Decree of January 21, 1981, No. 179 regulating the hiring of non-EC artists are a special system of hiring and derogate to the rules set forth by Law of April 18, 1962, No. 230, as they contain special provisions for the solution of conflicts related to employment offers between EC and non-EC workers.

56. *Corte di Cassazione, 28 June 1994 No. 6224* 759

With respect to disability, old-age and surviving dependants pensions, neither Italian law nor EC law admit the voluntary payment of

contributions in case no compulsory payment was made in Italy, irrespective of the fact that compulsory payments were made in another member State. This conclusion is based on the interpretation of Art. 9 No. 2 of Regulation No. 1408 of 14 June 1971, rendered by the EC Court of Justice with its judgments of 27 January 1981 and 20 October 1993. Arts. 1 and 2 of Presidential Decree of 31 December 1971 No. 1432 are not in contrast with Arts. 3 and 38 of the Constitution.

57. *Constitutional Court, 6 July 1994 No. 283* 433

Art. 7, paragraphs 12 *bis* and 12 *ter*, of Law of February 28, 1990 No. 39 - as amended by Art. 8, first paragraph of Decree-Law of June 14, 1993 No. 187, confirmed with modifications with Law of August 12, 1993 No. 296 - is not contrary to the principle of equality of Art. 3 of the Constitution nor with Art. 27, third paragraph, of the Constitution concerning the rehabilitating function of criminal penalties, nor with Arts. 10, 79 and 81 of the Constitution in so far as it permits the judge to order, upon request of a non-EEC national or of his legal counsel, the immediate expulsion towards the national State or the State of origin of said non-EEC national who is subject to detention on suspicion or has been sentenced to imprisonment for certain crimes with a final judgment.

58. *Corte di Cassazione (plenary session), 8 July 1994 No. 6462* 711

Considering that pursuant to Art. 4 No. 3 of the Code of Civil Procedure, Italian courts are competent to hear a claim against a foreign defendant connected to another claim against an Italian defendant, Italian courts are also competent to hear a claim against several defendants when at least one of them is Italian.

59. *Corte di Cassazione (criminal), 8 July 1994* 760

In the Italian criminal system there is no provision sanctioning *per se* a conduct in breach of UN Resolutions. Nor such a provision can be directly inferred from Security Council Resolution No. 713 of 25 September 1991 (embargo against Yougoslavia) as immediately binding upon Italy, even without domestic implementing legislation, on the basis of the general principle of criminal law stated in Art. 25, second paragraph of the Constitution.

60. *Corte di Cassazione (plenary session), 14 July 1994 No. 6581* 716

In the absence of international conventions, the procedural relations between an Italian company and an Austrian company is governed by Italian law as *lex fori* pursuant to Art. 27 of the Preliminary Provisions to the Civil Code.

The place of conclusion of contracts stipulated on the phone is the place where the acceptance becomes known to the offeror, where he acquires immediate and direct knowledge of the acceptance.

Pursuant to Art. 4 No. 2 of the Code of Civil Procedure, Italian court are competent to hear a dispute between an Italian and an Austrian company when the former has received in Italy on the phone the acceptance by the latter, followed by the sending of the contract.

An agreement conferring jurisdiction upon a foreign court, contained in a contract drafted by one of the parties, is not valid as per Art. 2 of the Code of Civil Procedure if it was not expressly signed by the other party.

61. *Corte di Cassazione, 15 July 1994 No. 6652* 719

Art. 25 of the Preliminary Provisions to the Civil Code does not apply to an employment contract entered into by Italian citizens to be performed abroad as it does not imply a choice-of-law issue.

The extraterritorial application of collective agreements is to be ascertained on a case by case basis and is to be recognised to those provisions compatible with a legislative framework different from the national one; such application may be precluded if the parties agreed as to the performance of the contract provided that this agreement grants a level of protection not lower than the one granted by the collective agreements.

62. *Corte di Cassazione, 16 July 1994 No. 6704* 724

The proceedings for the enforcement of judgments rendered in one of the Contracting States set forth by Arts. 31 and following of the 1968 Brussels Convention are ordinary proceedings also as regards the first phase *ex parte* before the court of appeal.

The appeal against the decision authorising the enforcement of the foreign judgment is analogous to the appeal against a summary judgment (*decreto ingiuntivo*) and therefore is subject to the same rules.

Pending an appeal against the decision of the court of appeal on the enforcement of a judgment rendered in another Contracting State, the appellant may specify and amend the appeal within the limits of Arts. 183 and 184 of the Code of Civil Procedure.

During the phase of appeal against the enforcement, only the interested party may raise an objection on the grounds of Arts. 27 and 28 of the Brussels Convention, whereas the judge may not examine them *ex officio*.

63. *Corte di Cassazione, 8 November 1994 No. 9278* 154

The fact that the adoption of a minor has been declared in favour of a single does not prevent the enforcement of the foreign decision in Italy as it is not by itself contrary to public policy (Art. 797 No. 7 of the Code of Civil Procedure).

64. *Corte di Cassazione, 10 November 1994 No. 9383* 729

Only the parties to the foreign proceeding and their successors may bring an action for the enforcement of the foreign judgment.

Those parties who have an interest in the object of the foreign judgment and who expect to obtain favourable effects may intervene in the enforcement proceeding only if the decision may modify a status.

The spouse of one of the parties in the enforcement proceedings may not bring an appeal before the Corte di Cassazione against a judgment enforcing a foreign divorce if neither of the parties in those proceedings appealed.

65. *Corte di Cassazione, 12 November 1994 No. 9554* 732

The decision on the existence of Italian jurisdiction acquires *res judicata* effect only with respect to the proceedings during which it was rendered and it can not be relied upon in other proceedings even though between the same parties and with the same object.

Pursuant to Art. 27 No. 3 of the 1968 Brussels Convention, a judgment rendered in a Contracting State may not be recognised in other

Contracting States if it is irreconciliable with a judgment given in a dispute between the same parties in the State in which recognition is sought.

Pursuant to Art. 27 No. 3 of the 1968 Brussels Convention, a foreign judgment and a judgment of the Corte di Cassazione ruling on jurisdiction are not irreconciliable.

Pursuant to Art. 27 No. 3 of the 1968 Brussels Convention, a foreign judgment and an Italian judgment of first instance which has been appealed and is not yet enforceable are not irreconciliable.

66. *Milan Court of Appeal, 15 November 1994* 425

Pursuant to the Italian-Swiss Convention of January 3, 1933, on Recognition and Enforcement of Judgments, a Swiss judgment on the disavowal of paternity regarding an Italian father and an Italian child may be enforced in Italy provided that the Swiss judge was competent to hear the case and, with respect to public policy, the judgment be based on criteria similar to those taken into consideration in an analogous Italian decision.

67. *Constitutional Court, 17 November 1994 No. 391* 101

In matters related to employment contracts, the issue of constitutional legitimacy of Art. 2 of the Code of Civil Procedure with respect to Arts. 35, 36, 37 and 38 of the Constitution is not admissible: clauses excluding Italian jurisdiction do not permit to determine the law to be applied by the foreign judge and thus the possible contrast with Italian public policy.

68. *Constitutional Court, order 23 November 1994 No. 401* 433

Art. 7, paragraphs 12 *bis* and 12 *ter*, of Law of February 28, 1990 No. 39 – as amended by Art. 8, first paragraph of Decree-Law of June 14, 1993 No. 187, confirmed with modifications with Law of August 12, 1993 No. 296 – is not contrary to the principle of equality of Art. 3 of the Constitution nor with Art. 27, third paragraph, of the Constitution concerning the rehabilitating function of criminal penalties, nor with Arts. 10, 79 and 81 of the Constitution in so far as it permits the judge to order, upon request of a non-EEC national or of his legal counsel, the immediate expulsion towards the national State or the State of origin of said non-EEC national who is subject to detention on suspicion or has been sentenced to imprisonment for certain crimes with a final judgment.

69. *Rome Court of Appeal, decree 28 November 1994* 428

According to Art. 6 of the European Convention on the Adoption of Minors, signed in Strasbourg on April 24, 1967, the law of the Contracting States may provide for the adoption of a minor both by a married couple and by a single.

Since Italy has not made any reservation to Art. 6 of the 1967 Convention on the Adoption of Minors and such provision is self-executing, the Italian judge has the power to grant the adoption to singles also in cases not contemplated by Law of May 4, 1983 No. 184.

70. *Milan Court of Appeal, 20 December 1994* 740

Pursuant to Art. 2, No. 5 of the Italian-Swiss Convention of January 3, 1933, on Recognition and Enforcement of Judgments, the court which rendered a judgment in matters of status is competent provided that the

party was national of that State; or if the defendant was resident in that State or submitted to jurisdiction.

A Swiss judgment declaring the change of sex can not be enforced in Italy when the Swiss court was not competent on the basis of the 1933 Italian-Swiss Convention.

71. *Constitutional Court, 19 January 1995 No. 28* 381

The issue of constitutional legitimacy of Art. 4, first paragraph of Law dated December 30, 1986, No. 943, according to which non-EEC workers legally resident in Italy and employed are entitled to be rejoined by their spouses and non married dependant children, with reference to Arts. 29 and 30 of the Constitution is not founded. In fact, the interpretation that would restrict the beneficiaries of the right of rejoinment to non-EEC immigrants who work as employees, thereby excluding those who work as housekeepers, is not acceptable.

72. *Milan Court of Appeal, 27 January 1995* 742

A partial arbitral award, which separated the proceedings on the various claims brought by the parties, deciding upon some of them and deferring the decision on the others, is not in itself contrary to public policy as per Art. V No. 2 Litt. b of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

The existence of the arbitral clause can not be contested by the party that initiated the arbitral proceeding since the requirement of the «agreement in writing» set forth by Art. II No. 1 of the New York Convention is satisfied.

An arbitral proceeding originating from different and autonomous arbitral clauses, which, upon agreement of all parties, was conducted jointly, is not void.

The fact the arbitrator decided outside the requests of the parties is a mere procedural error that can not be ascertained in the recognition proceedings.

73. *Constitutional Court, order 31 March 1995 No. 106* 433

Art. 7, paragraphs 12 *bis* and 12 *ter*, of Law of February 28, 1990 No. 39 – as amended by Art. 8, first paragraph of Decree-Law of June 14, 1993 No. 187, confirmed with modifications with Law of August 12, 1993 No. 296 – is not contrary to the principle of equality of Art. 3 of the Constitution nor with Art. 27, third paragraph, of the Constitution concerning the rehabilitating function of criminal penalties, nor with Arts. 10, 79 and 81 of the Constitution in so far as it permits the judge to order, upon request of a non-EEC national or of his legal counsel, the immediate expulsion towards the national State or the State of origin of said non-EEC national who is subject to detention on suspicion or has been sentenced to imprisonment for certain crimes with a final judgment.

74. *Constitutional Court, 14 April 1995, No. 129* 438

The new provisions introduced by Decree-Law of June 14, 1993 No. 187, confirmed with modifications with Law of August 12, 1993 No. 296 may be relevant in order to construe Art. 7 of Law of February 28, 1990 No. 39 as it provides for a new form of co-ordination of judicial and administrative decisions with respect to the expulsion of non-EEC nationals; the division of power of the different relevant authorities set

forth by the first paragraph of Art. 7 (regarding expulsion as a public safety measure) and the other paragraphs of the same (regarding expulsions as an administrative and police measure) must be strictly applied.

75. *Rome Court of Appeal, 20 April 1995* 750

Italian courts are not competent to hear a dispute concerning an agreement on the administration of a deceased's estate entered into abroad; however, Italian court are competent with regard to the other claims relating to the same succession of an Italian citizen, be they autonomous or connected to the first dispute.

The lack of jurisdiction on the preliminary claim does not cover other dependent claims.

76. *Rome Court of Appeal, decree 21 April 1995* 753

Pursuant to Art. 21, Litt. *d*, of the Hague Convention on the Taking of Evidence Abroad of March 18, 1970, the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending, provided that such manner is not forbidden by the law of the State where the evidence is taken.

EUROPEAN COMMUNITIES CASES

Acts of Communities institutions: 3, 4, 7, 8, 10, 12, 18.

Brussels Convention of 1968: 6, 11, 14, 17, 18.

Communities institutions: 19.

Communities proceedings: 1, 2.

Competition: 8, 13.

External Relations: 16.

Freedom to provide services: 5.

Harmonisation of national laws: 1.

International judicial assistance: 18.

Preliminary ruling on interpretation: 15.

Privileges and immunities of the Communities: 18.

Prohibition of discrimination: 3.

Treaties and general international rules: 3, 4, 9, 12.

1. *Court of Justice, 17 May 1994, case C-41/93* 505

Any Member State may appeal against the decision with which the Commission authorises a Member State to continue to apply national provisions derogating from the harmonisation measure mentioned by Art. 100 *a* when the decision does not mention the reasons in fact and in law on account of which the Commission considered that all the conditions

contained in Article 100 *a* (4) were to be regarded as fulfilled in the case at point.

2. *Court of Justice, order 29 June 1994, case 120/94R* ..... § 181

Art. 186 of the EC Treaty empowers the Court of Justice to order interim measures with no exceptions or distinctions depending on the nature of the case but it is subject to the requirements of urgency and both factual and legal grounds justifying the adoption of such measures.

3. *Court of Justice, 5 July 1994, case C-432/92*..... 184

A provision in an agreement concluded by the Community with non-member States must be regarded as having direct effect when, taking into account its wording and the purpose and nature of the agreement itself, it contains a clear and precise obligation whose implementation and effects are not subject to the adoption of any subsequent measure.

In accordance with the rules on the interpretation of treaties of the 1969 Vienna Convention on the Law of Treaties major consideration is to be given to the object and purpose of a treaty and to any subsequent practice in its application.

The prohibition of discrimination between nationals or companies of Cyprus imposed by Art. 5 of the Association Agreement of December 19, 1972 between Cyprus and the EEC may not lead to the non-application of fundamental provisions of the same Agreement.

4. *Court of First Instance, order 14 July 1994, case T-584/93* 453

The acts of the European Council are not mentioned by the first paragraph of Article 173 of the EC Treaty as being subject to review by the Community judicature.

Article 31 of the Single European Act expressly excludes the application to the European Council of the provisions of the EC Treaty concerning the jurisdiction of the Community judicature and Article L of the Treaty on European Union confirms this exclusion.

The Treaty on European Union is not an act of a Community institution within the meaning of Articles 4 and 173 of the EC Treaty.

5. *Court of Justice, 9 August 1994, case C-43/93*..... 173

Articles 59 and 60 of the EC Treaty must be interpreted as precluding a Member State from requiring undertakings which are established in another Member State and enter the first member State in order to provide services and which lawfully and habitually employ nationals of non-member Countries, to obtain work permits for those workers from a national immigration authority and to pay the attendant costs, with the imposition of an administrative fine as the penalty for infringement.

6. *Court of Justice, 15 September 1994, case C-318/93*..... 178

The courts of the State in which the consumer is domiciled have jurisdiction in proceedings under the second alternative in the first paragraph of Art. 14 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the 1978 Accession Convention, if the other party to the contract is domiciled in a Contracting State or is deemed under the second paragraph of Art. 13 of that Convention to be so domiciled.

7. *Court of First Instance, order 20 October 1994, case T-99/94* 455

The fact that a directive – which is an act of general application without specific provisions having the character of an individual decision – has replaced a decision does not affect the general and abstract nature of its content and consequently cannot be contested by individuals.

Article 173 of the Treaty does not permit an individual who took part in the preparation of a legislative measure subsequently to institute proceedings against regulations or directives.

8. *Court of First Instance, order 27 October 1994, case T-32/93* 508

It is a condition of an action for the declaration of failure to act as instituted by article 175 of the EC Treaty that the institution concerned should be under an obligation to act; such obligation does not exist with reference to the power to assess compatibility of State measures with the Treaty rules.

Individuals may not put the Commission on notice to act under Article 90(3) of the Treaty, since such action may be taken, depending on the circumstances, by adopting a decision or a directive, a legislative measure of general scope addressed to the member States the adoption of which cannot be required by individuals.

9. *Court of Justice, opinion 15 November 1994, No. 1/94* 460

The Community has sole competence, pursuant to Article 113 of the EC Treaty, to conclude multilateral commercial agreements.

The Community and its member States are jointly competent to conclude the General Agreement on Trade in Services (GATS).

The Community and its member States are jointly competent to conclude the Agreement on trade-related aspects of intellectual property rights, including trade in counterfeit goods (TRIPS).

10. *Court of First Instance, order 29 November 1994, joint cases T-479/93, T-559/93* 479

An individual is not entitled to contest a refusal by the Commission to initiate a procedure against a Member State for failure to fulfil its Treaty obligations, irrelevant of the nature of the infringement of Community law alleged in the case.

The action brought by a natural or legal person for a declaration of failure to act – in that by not initiating infringement proceedings against a Member State, the Commission has failed in breach of the Treaty to take a decision – is inadmissible nor can the Community judicature address orders in this sense to a Community institution.

The Treaty does not provide for any legal remedy enabling natural or legal persons to bring proceedings before the Community judicature on any issue regarding the compatibility of the conduct of the authorities of a Member State with Community law.

11. *Court of Justice, 6 December 1994, case C-406/92* 485

On a proper construction, Article 57 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the 1978 Accession Convention means that, where a Contracting State is also a contracting Party to another convention on a

specific matter containing rules on jurisdiction, that specialised convention precludes the application of the provisions of the Brussels convention only in cases governed by the specialised convention and not in those to which it does not apply.

On a proper construction of Article 21 of the Convention, where two actions involve the same cause of action and some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, the second court seized is required to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties.

On a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.

A subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before the court of a Contracting State, is not an action *in personam* for a declaration that the owner is not liable for alleged damage to a cargo transported by his ship before a court of another Contracting State by way of an action *in rem* concerning an arrested ship, and has subsequently continued both in rem and *in personam*, or solely *in personam* according to the distinctions drawn by the national law of that other Contracting State.

On a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but not identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owner of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

12. *Court of Justice, order 13 January 1995, case C-253/94P* 497

Nor the acts of the European Council nor the Treaty on European Union are mentioned by the first paragraph of Article 173 of the EC Treaty as being subject to review by the Community judicature.

13. *Court of First Instance, 24 January 1995, Case T-114/92*..... 803

With respect to the division of competence between the Commission and national courts in matters of competition, the latter are not bound by a provisional opinion of the former on the applicability of Arts. 85 and 86 of the EC Treaty to an agreement or a concerted practice.

If the consequences of the infringement of competition law occur mainly within the territory of one Member State and the courts or the competent authorities of such Member State have been seized, the

Commission is entitled to reject the denunciation for lack of sufficient Community interest provided that the rights of the party filing the denunciation may be sufficiently protected before the national authorities.

14. *Court of Justice, 7 March 1995, Case C-68-93* 763

On a proper construction of the expression «place where the harmful event occurred» in Article 5(3) of the 1968 Brussels Convention (on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters), the victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State in which the publication is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seized.

15. *Court of Justice, order 23 March 1995, Case 458/93* 770

The request for preliminary ruling on interpretation as per Art. 177 of the EC Treaty is not admissible when the references to the legal and factual issues are not specific enough and their character merely theoretical does not permit to the Court of Justice to provide a useful interpretation of EC law.

16. *Court of Justice, 24 March 1995, opinion No. 2/92* 499

Art. 228 of the EC Treaty applies to agreements in a general sense, i.e. binding agreements between subjects of international law, such as the Third Revised Decision on national treatment modified by the Council of OECD.

The proceedings provided for by Art. 228 of the EC Treaty for the opinion of the Court of Justice applies to any question which may be subject to jurisdictional control as far as it causes uncertainties as to the substantial or formal validity of the agreement in respect to the EC Treaty.

As the national treatment rule, undertaken in the Third Revised Decision of the OECD partially falls outside the scope of Article 113, the Community and the Member States share joint competence to participate in that decision.

Article 235 cannot in itself vest exclusive competence in the Community at international level.

17. *Court of Justice, 28 March 1995, case C-346/93* 773

As the 1982 Civil Jurisdiction and Judgments Act has not rendered the provisions of the 1968 Brussels Convention applicable as such in cases outside the scope of the Convention and as national courts would not be bound to comply to the decision given by the Court of Justice, the Court does not have jurisdiction to give a preliminary ruling concerning a provision of the domestic law of the Contracting State to which the court belongs when said law takes the Convention only as a model and does not wholly reproduce the terms thereof.

18. *Court of First Instance, 29 March 1995, Case T-497/93* 789

All Community institutions must, by virtue of their duty to cooperate in good faith with national courts, respond to requests of said courts such as

an order of attachment of the attachable portion of a Community institution employee's remuneration, arisen out of a private legal relationship between the employee and a third person, which, in accordance with Art. 23, first paragraph of the Staff Regulation, is subject to the applicable national law. The privileges and immunities which the Protocol on the Privileges and Immunities of the European Communities grants to the Communities have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the Communities, whilst, with regard to legal relationships in private law, officials are subject to the national provisions applicable to the legal relationships into which they have entered.

The 1968 Brussels Convention does not apply to the attachment of the attachable portion of the remuneration of an official of the Community requested by a court of Luxembourg to be enforced at the Court of Justice.

The Treaty does not provide for any legal remedy enabling natural or legal persons to bring proceedings before the Community judicature on any issue regarding the compatibility of the conduct of the authorities of a Member State with Community law.

19. *Court of Justice, 30 March 1995, case C-65/93* 797

Inter-institutional dialogue, on which the consultation procedure is based, is subject to the same mutual duties of sincere co-operation as those which govern relations between Member States and the Community institutions: therefore the Parliament cannot bring an action for annulment of a Council regulation on the ground of failure to await Parliament's opinion if the essential procedural requirement of Parliamentary consultation was not complied with because of the Parliament's failure to discharge its obligation to cooperate sincerely with the Council.

FOREIGN COURTS CASES

Privy Council, 15 March 1994 193

Where there are two conflicting foreign judgments rendered by two competent courts not open to challenge on any ground, then the earlier of them in time must be recognised to the exclusion of the later.

Court of Appeal, 25 March 1994 199

For the purpose of applying Art. 21 of the 1968 Brussels Convention on Jurisdiction and the Foreign Judgments, as interpreted by the European Court of Justice, an English Court becomes «definitively» seized only upon service of the writ to the defendant. This rule has no exception: therefore an English Court granting provisional measures may not be deemed to have been definitively seized of the merits of the proceedings.

Privy Council, 18 July 1994 809

As a general rule, an act done in a foreign country is a tort and actionable as such in England, only if it is both actionable as a tort according to English law, and actionable according to the law of the foreign country where it was done.

It is admissible to make an exception to the general rule of double actionability in favour of the law of the country with which a particular

issue between the parties has the most significant relationship with the occurrence and the parties provided that there are clear and satisfying grounds justifying the departing from the general rule.

Such exception may apply not only to enable the plaintiff to rely on the *lex fori* and to exclude the *lex loci delicti*, but also to rely on the *lex loci delicti* if his claim would not be actionable under the *lex fori*.

Said exception is not limited to specific isolated issues but it may apply to the whole claim where all or virtually all the significant factors are in favour of the *lex loci delicti*.

Supreme Court of Canada, 15 December 1994 821

The rule of double actionability, according to which a wrong occurred in a foreign country is governed by the *lex fori* if it is actionable under the *lex fori* and unjustifiable in the country where it was committed, does not apply anymore.

The law generally applicable to torts is the *lex loci delicti*.

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Headquarters Agreement between Italy and the International Development Law Institute (Rome, 28 March 1992-19 July 1993) 215

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