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1. *Venice Court of Appeal, order 21 February 1996* 175

Following the interpretation of the Art. 39 of the Brussels Convention of 27 September 1968 – regarding provisional measures – made by the Court of Justice, it must be excluded that, in the opposition proceedings as per Art. 36, a request for suspension of the enforceability of the disputed measure may be granted.

2. *Catanzaro Court of Appeal, order 25 March 1996* 799

Pursuant to Art. 839 of the Code of Civil Procedure, the decree whereby the president of the tribunal makes a foreign arbitration award enforceable in Italy has immediate effect.

Pursuant to Art. 649 of the Code of Civil Procedure, the fact that the party seeking enforcement of the decree whereby the president of the tribunal has granted recognition to a foreign arbitration award has no assets in Italy and is subject to enforcement proceedings in respect of a debt owed to an Italian company are sufficient grounds for staying the enforcement of the decree.

3. *Trieste Court of Appeal, order 24 June 1996* 393

A seizure is granted towards an Austrian subject who is obliged to pay a sum of money to the plaintiff, also Austrian, pursuant to a loan agreement,

should the *fumus boni iuris* be recognised in the certified copy of the notary deed and the *periculum in mora* in the pending in Austria of numerous enforcement proceedings.

4. *Constitutional Court, order 29 July 1996 No. 328* 179

The question of constitutional legitimacy of Art. 7, first and fourth paragraphs of the law-decree dated 30 December 1989 No. 416, confirmed, with modifications, with Law dated 28 February 1990 No. 39, regarding the expulsion of non-EC citizens is clearly unfounded, with reference to Arts. 2, 3, 10, 13, 25, 27, 30, 31 e 97 of the Constitution.

5. *Corte di Cassazione, 9 August 1996 No. 7377* 180

Pursuant to Art 25, first paragraph of the Preliminary Provisions to the Civil Code, Italian law is applicable to a labour contract to be performed abroad, entered into between an Italian bank and a foreigner, if, on one side, the contract provides for the application of contractual rules typical of the Italian legislation and is drawn up in Italian and, on the other side, the plaintiff has neither submitted any of the circumstances to exclude the application to the contract of Italian law, nor introduced the proof of the foreign legislation which he assumes applicable and different from Italian legislation.

6. *Corte di Cassazione (plenary session), 1 October 1996 No. 8588* 181

Since Art. IX of the London Convention of 19 June 1951 on the statute of the armed forces allows the Italian State to exercise its own jurisdiction towards personnel employed by the Marine Navy Exchange with the purpose of satisfying the local needs of civil manpower, in order to provide an effective protection to the employer-employee relationship as per Art. 18 of Law dated 20 May 1970 No. 300, the Italian courts must carry out an investigation on the character of economisation of the business management carried out by such an institution.

7. *Corte di Cassazione (criminal), 4 October 1996* 450

Since, pursuant to Art. 697, first paragraph and others of the Code of Criminal Procedure, the purpose and the contents of extradition consist exclusively in putting a subject present in the domestic territory at the disposal of a foreign State, the physical availability of the subject to be extradited is the first and essential requirement of the extradition, without which the proceedings would not have their typical *petitum*.

8. *Milan Court of Appeal, 29 October 1996* 128

Pursuant to Art. 56 of the Lugano Convention of 16 September 1988 on the jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, the Convention is not applicable to the recognition in Italy of a judgement rendered on 2 July 1993 by the Austrian Court of Commerce. The Italo-Austrian Convention of Rome dated 16 November 1971 applies. Because, pursuant to Art. 8 of the ItaloAustrian Convention of 16 November 1971, the enforcement of a foreign judgement is regulated by the law of the State to which the request for the enforcement has been made, an Austrian default judgement is open to review as to the merit pursuant to Art. 798 of the Code of Civil Procedure; however this review as to the merit will have a negative outcome if no objection has been raised nor any preliminary requests have been formulated in the Italian proceedings.

9. *Corte di Cassazione, 6 November 1996 No. 9643* 185

Pursuant to Art. 15 of the Convention on travel contracts of 23 April 1970 (CCV) signed in Brussels on 23 April 1970 in conjunction with Art. 1681 of the Civil Code, a travel agency is liable for the damages suffered by a person using a transport service during a tourist trip, unless it proves that the person to whom the execution of the transport was entrusted adopted all suitable measures to avoid the damage.

10. *Milan Court of Appeal, 26 November 1996* 131

The prohibition of instituting a legal action in Italy pursuant to Art. 31, second paragraph of the Geneva Convention of 19 May 1956 regarding the international carriage by road contract (CMR) is not applicable, should there be a cause pending in Turkey instituted previously between the same parties and on the same object, because the possible Turkish judgement would not be recognised in Italy; in fact, the recognition is forbidden by Art. 19 No. 5 of the Convention between Italy and Turkey signed in Rome on 19 August 1926 on judicial protection and reciprocal assistance in civil and criminal procedural matters, according to which a decision rendered by judges in one State can be recognised within the territory of the other State if, at the time of notification of the request of *exequatur*, there is no other controversy already pending between the same parties and on the same object before the authority of the State to which the request has been made.

11. *Corte di Cassazione, 28 November 1996 No. 10585* 187

The principle of proportionality between sanction and liability, as expressed by the Court of Justice of the European Community, concerns the effects of the normative acts of the member States on juridical situations provided for by Community law, but is not relevant when the invalidity of an internal rule is inferred because it would fix a disproportionate sanction with respect to a conduct imposed by a Community regulation.

12. Corte di Cassazione, 28 November 1996 No. 10587 451

The registration of an appellation of origin pursuant to Art. 2 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, which was not subject to any opposition within a year pursuant to Art. 5 No. 3, grants to its owner a presumption of legitimacy which also encompasses the case of subsequent generalisation, with the consequence that the party that relies upon the absence of requirements for the action must provide the proof thereof, without the possibility of falling back on general knowledge.

13. *Turin Tribunal, 10 December 1996* 394

Art. 4, second paragraph of the Law on Italian citizenship dated 5 February 1992 No. 91 provides for the attribution of Italian citizenship to a foreigner born in Italy, who has lived there legally without interruptions until reaching majority and who declares the wish to acquire it within a year of this date.

Art. 1 of the Regulation implementing the Law on citizenship, approved with Presidential Decree dated 12 October 1993 No. 572, requires, for the purpose of legal residence, the registered residence, affecting in an unacceptable way on the rights granted by the law of 1992.

Even admitting that Art. 1 of Presidential Decree 572 of 1993 validly integrates the concept of legal residence with the requirement of validity in the registers, the Minister of the Interior may only demand this requirement since this regulation came into force.

14. *Corte di Cassazione (plenary session), 12 December 1996 No. 11088* 453

An agreement conferring jurisdiction to German courts, contained in a distribution agreement entered into between a German and an Italian company is enforceable, in accordance with Art. 17 of the Brussels Convention of 27 September 1968, which permits derogation of the jurisdiction in favour of another court of a contracting State.

15. *Milan Court of Appeal, 12 December 1996* 400

Pursuant to Art. 797 of the Civil Procedure Code, an injunction against an Italian company to pay a fee owed by it to a French lawyer, which has been issued by the President of an Order of French lawyers and which has then been enforced with an order of the President of the *Tribunal de Grande Instance* must be enforced in Italy as it is an order which has a decision-making content issued by a body to which the French legal system attributes, in specific cases and with certain purposes, jurisdictional powers.

16. *Corte di Cassazione, 17 December 1996 No. 11278* 136

The power – duty of the Ministry of Interior to substitute a minor as real party in interest in proceedings, pursuant to Art. 4 of the New York Convention of 20 June 1956 on the recovery of maintenance credits from abroad, is not considered bound either to changes in the above mentioned legal representation or to its cessation due to the coming of age of the minor.

Pursuant to the Hague Convention of 15 April 1958 on the enforcement of judgements regarding the obligation of maintenance credits for minors, the action for the enforcement of a foreign judgement regarding the obligation of maintenance credits for minors is not subject to the statute of limitation.

Among international agreements regarding the declaration of enforcement of the constituent judicial title of maintenance credit, the related proceedings include, apart from the initial judgement, the successive jurisdictional acts regarding such credit, independently of their *nomen juris*.

17. *Milan Court of Appeal, 10 January 1997* 140

Although the partial enforcement of a foreign judgement (whether by virtue of a consolidated principle or following the ratification of various international conventions) is admissible in the Italian legal system, pursuant to Art. 797 of the Code of Civil Procedure the order of an American judge regarding the payment of a sum of money as compensation of damages cannot be enforced unless the decision which verified the relative liability has been contemporarily submitted to the Court of Appeal.

18. *Catanzaro Court of Appeal, 13 January 1997* 800

A party who intends to bring an appeal against the recognition of a foreign arbitration award is not required to serve, along with the decree of the president of the tribunal that makes the award enforceable, also the application made by the party seeking enforcement since, in this field, Art. 649 of the Code of Civil Procedure is not applicable by analogy.

The fact that the person acting for a company lacked the necessary powers is a matter pertaining to the existence of the company's intention to contract, rather than to the capacity of the company or of the person acting on its behalf; hence, pursuant to Art. 840, third paragraph, no. 1, of the Code of Civil Procedure, the alleged invalidity of an arbitration clause must be judged according to the law to which the parties have submitted it (in this instance, Swiss law).

In a matter concerning the recognition of a foreign arbitration award, the

Court of Appeal may not take into account alleged breaches of the rules of the arbitration procedure, nor alleged irregularities of the award, since these are not matters that may bar recognition under Art. 840 of the Code of Civil Procedure.

The fact that the authorities of the country where an arbitration procedure has taken place, or where the award was made, did not issue an *exequatur* does not preclude the recognition and enforcement in Italy of the award since Art. 840 of the Code of Civil Procedure merely requires that the award be binding between the parties; this requirement does not imply the enforceability of the award, for which an application may be made in any country where the interested party wishes to begin enforcement proceedings.

19. *Corte di Cassazione, 18 January 1997 No. 507* 145

With reference to Arts. 30, 3 and 24 of the Constitution, the question of constitutional legitimacy regarding the Law dated 15 January 1994 No. 64 which implemented the Hague Convention of 25 October 1980 on the international removal of minors is inadmissible, considering that this last aims towards the effective protection of the minor against the illicit behaviour of relatives, independently of the control of merit made by the authorities of the State to which the request has been made.

Pursuant to Art. 7 of the Law No. 64 of 1994, the Juvenile Court of the place in which the minor is found is the venue which provides for the restoration of custody.

20. *Corte di Cassazione, 23 January 1997 No. 701* 150

The maintenance rights of a minor may not be waived. This principle is also found in the procedure of enforcement of foreign judgements, pursuant to the Hague Convention of 15 April 1958 on the enforcement of judgements regarding maintenance obligations towards minors, which attributes to the intermediary authority the role of substitute of the actual creditor without the need of power of attorney by such creditor.

The abandonment of a claim by the Italian Ministry of Interior, which is the intermediary authority, in proceedings for the enforcement of a foreign judgement concerning maintenance obligations (brought in following a settlement agreement between divorcees) does not imply the withdrawal of the action, nor does it preclude the reproposal of the request.

21. *Corte di Cassazione, 30 January 1997 No. 944* 455

Since the Sovereign Military Order of Malta is a legal entity under International Law, even in the absence of the governmental authorisation required by Art. 17 of Civil Code, the private act by which it accepts an inheritance, subsequently devolved to the property of a Commenda *ad hoc* incorporated, is enforceable, since the institutional aims of such organisation are always and exclusively sought through this kind of public bodies.

22. *Milan Court of Appeal, 7 February 1997* 153

The legal capacity of requesting the enforcement of a foreign judgement belongs exclusively to those who were parties in the proceedings before the foreign court and, in case of death, it may be passed on to the heirs only if the dispute regards merely economic issues.

Heirs of a deceased spouse who wish to obtain a modification of the married status of the surviving spouse and the consequent exclusion from the succession have no legal capacity in a proceedings for the enforcement of a foreign divorce decree.

23. *Constitutional Court, 10 February 1997 No. 27* 596

By virtue of Art. 75 of the Constitution the petition for a referendum on the partial repeal of Presidential Decree 9 October 1990 No. 309 on Drugs is inadmissible because the ensuing repeal of the administrative sanctions applicable to anyone who imports, acquires or otherwise possesses certain drugs for his own personal use would be irreconcilably conflicting with the rules laid down in the Vienna Convention of 20 December 1988 on Unlawful Dealing in Drugs as well as with the rules laid down in the New York Convention of 30 March 1961 on Drugs and in its Geneva Amendment Protocol of 25 March 1972, thereby breaching Italy's international obligations.

24. *Corte di Cassazione, 11 February 1997 No. 1239* 601

The provisions of Law 31 December 1986 No. 943 – whereby the Ministry of Labour and Social Security shall enact decrees to regulate the procedures for the placement of non-EU workers and (Art. 6) the régime applicable to Italian workers on placement and direct placement shall be extended to non-EU workers – and the provisions of Law 28 February 1990 No. 39 – whereby a residence permit granted for working reasons enables non-EU workers to enter into any working contracts on the basis of the same régime applicable to national workers – do not justify a complete equivalence of treatment of non-EU workers and national workers with reference to placement, which is a premise for extending to non-EU workers also the rules on direct placement.

25. *Rome Tribunal, 13 February 1997* 602

The analysis of Art. 10 of the Constitution, which directly recognizes the right of asylum for political reasons (which is a different and wider notion than the *status* of refugee, and which is a matter that undoubtedly falls within the competence of the judiciary) reveals that this provision is not self-executing so that, in the absence of implementing legislation, it is impossible to establish such right and protect it judicially.

26. *Corte di Cassazione, 14 February 1997 No. 451* 604

A divorce ruling adopted by a Swiss court may be recognized in Italy if the requirements laid down in the Hague Convention of 1 June 1970 on Recognition of Divorce and Separation are fulfilled.

27. *Constitutional Court, 3 March 1997 No. 58* 107

The question of constitutional legitimacy – with reference to Arts. 24, second paragraph, 25, first paragraph and 112 of the Constitution concerning – Arts. 1 and 2 of Law dated 30 January 1963 No. 300 concerning the authorisation for the ratification and execution of the European Convention on Extradition, signed in Paris on 13 December 1957, with respect to Arts. 8 and 9 of the said Convention, is unfounded since the above mentioned Art. 8, which is usually directed towards the contracting States and does not operate directly in the internal legal system of these, limits itself to allowing the State to which the request has been made the possibility to refuse extradition, if it has a criminal proceedings underway for the same act against the subject for whom the extradition request has been made. Art. 705, first paragraph of the Code of Criminal Procedure remains therefore fully applicable; pursuant to this Article, in the circumstances indicated, where there are no international conventions which provide differently, extradition is not allowed.

The rule set forth by Art. 705, first paragraph of the Code of Criminal Procedure, was introduced in tribute to the principle *ne bis in idem*, although it has not yet become a rule of general International Law, neither has it been

unconditionally accepted in the international conventions which refer to it (i.e. the Brussels Convention of 25 May 1987), is nevertheless the tendentious principle to which the international legal system aspire today.

28. *Corte di Cassazione, 10 March 1997 No. 2134* 156

Pursuant to Art. 8 No. 1 of the Law dated 13 June 1912 No. 555, he who voluntarily acquired foreign citizenship and transferred his residence abroad lost Italian citizenship.

An ex-Italian citizen who did not exercise the right of reacquiring Italian citizenship under Arts. 13 and 17 of the Law dated 5 February 1992 No. 91 must be considered a foreign citizen (and therefore does not have the right to vote), irrespective of the late registration of this loss in the Italian registers of citizenship.

29. *Corte di Cassazione, 24 March 1997 No. 2581* 403

Art. 9 of the Maritime Code, according to which a maritime labour contract is regulated by the national law of the ship, is partially derogated by Art. 4 of Law No. 135 of 1977, due to the speciality of this last provision.

The issue of an embarkation authorisation for an Italian worker on a foreign ship, provided for by Art. 4 of the Law No. 135 of 1997, does not exempt the ship's agent from the responsibility of granting to the worker the social-security treatment assured by the principles which inspire Italian labour legislation.

30. *Milan Tribunal, 7 April 1997* 408

By virtue of the retroactive effect of the constitutional court judgement dated 16 April 1975 No. 87, which declared the illegitimacy of Art. 10, third paragraph of the Law dated 13 June 1912 No. 555, such provision (which provided for the automatic loss of an Italian woman's citizenship upon marriage to a foreigner) is no longer applicable even to marriages celebrated in 1950.

Art. 219 of Law dated 19 May 1975, No. 151 pursuant to which a woman who has lost Italian citizenship through marriage may reacquire it with an appropriate declaration, attributes a purely declaratory and not constitutive nature to such act.

By virtue of the retroactive effect of the constitutional court judgement dated 9 February 1983 No. 30, which declared the illegitimacy of Art. 1, first paragraph of Law No. 555 of 1912 (which did not provide for the attribution of citizenship to children who are Italian on their mothers' side), children born from a mother who is Italian citizen and has not lost this status notwithstanding her subsequent marriage with a foreigner are Italian citizens *iure sanguinis*.

31. *Corte di Cassazione, 18 April 1997 No. 3335* 415

A previous declaration of suitability for international adoption with respect to the foreign decision to be enforced is not required (and therefore such declaration may follow its issue, but must precede the enforcement of the same decision), provided that it emerges that the foreign residence of the adoptive parents was not preordained to obtain the foreign decision and subsequently to bring a *fait accompli* before the Italian judge.

32. *Milan Court of Appeal, 29 April 1997* 419

Pursuant to Art. 5 No. 4 of the Hague Convention dated 2 October 1973 on the recognition and the enforcement of foreign judgements concerning maintenance obligations, the recognition and the enforcement may be denied if the foreign decision is inconsistent with a decision pronounced between the

same parties and on the same object, both in the State to which the request has been made and in another State.

A Swiss separation decree cannot be enforced, in the part stating the maintenance in favour of a child, if, previously to the proposal of the separation demand in Switzerland and the relative decision, a decision of an Italian court has been pronounced which establishes as per Art. 148 of the Civil Code during the marriage the maintenance payment in favour of the child.

33. *Corte di Cassazione (plenary session), 6 May 1997 No. 3957* 605

Italian courts have jurisdiction in respect of a dispute between a foreign government and an ecclesiastical corporation concerning title in a church because, on the basis of the settlement agreement previously entered into between the foreign government and the Italian government, it is apparent that the former has acted, within the Italian system of law, in a private law capacity.

34. *Corte di Cassazione, 20 May 1997 No. 4470* 608

The principle of the primacy of the interest of the minor, laid down in the judgment of the Constitutional Court of 24 July 1996 No. 303 on age difference between adopters and adoptee, must be applied to adoption proceedings that are still pending since the persons seeking adoption have lodged their appeal against the decree whereby the Juvenile Court has refused the declaration of fitness for adoption before the judgment of the Constitutional Court was rendered.

35. *Corte di Cassazione, 22 May 1997 No. 4548* 609

Any discrimination between Italian citizens and non-EU nationals on the legal régime of labour relationships is devoid of any grounds in the Constitution as well as in statutory legislation since non-EU nationals that are legally resident in Italy enjoy, pursuant to Art. 1 of Law 31 December 1986 No. 943, «*full equality of rights and equality of treatment*» as Italian workers. Consequently, subject to certain specific exceptions, such as that provided for by Art. 6, second paragraph, of Law No. 943 of 1986, and subject to the constitutional provision that reserves to Italian nationals certain professional positions in the civil service, non-EU workers enjoy the right to direct placement in all the other instances in which it is permitted by Art. 11 of Law 29 April 1949 No. 264, and equally benefit from the rules on day placements under Art. 23, third paragraph, of Law 28 February 1987 No. 56.

36. *Corte di Cassazione, 24 May 1997 No. 4636* 612

According to the provisions set forth in Arts. 12, 13 and 14 of the Brussels Convention on Travel Contracts of 23 April 1970 (CCV), tourist travel companies are responsible both for the performance of the agreement, even if it had been entrusted upon their own agents or contractors, and for the provision of transport services, housing facilities or of any other services related to the tour or the stay, if the latter have been undertaken directly by the company itself, unless they can prove that they have adopted all the precautions that were necessary in each particular instance.

37. *Lecco Tribunal, 5 June 1997* 881

Under Art. 17 of the Brussels Convention of 27 September 1968, a jurisdiction agreement contained in the general terms of contract drafted by one party and set forth in an order that was not accepted in writing by the other party, but merely performed by it, is not valid. The jurisdiction of the

court must therefore be determined in accordance to Art. 5 No. 1: on the basis of Art. 59 of the Hague Convention of 1 July 1964 on the International Sale of Goods, in respect of an action seeking the payment of the price of goods, the place of performance of the obligation in question is the domicile of the seller.

38. *Varese Tribunal, 5 June 1997* 425

In a dispute in which two Italian citizens resident in Switzerland are summoned, the Lugano Convention of 16 September 1988 on jurisdiction and recognition and enforcement of judgements on civil and commercial matters applies.

Pursuant to Arts. 2, 4, and 5 No. 1, No. 2 and No. 4 of the 1988 Lugano Convention, Italian jurisdiction does not exist with reference to a request for the repayment of a sum of money when this derives from a contractual liability action, if the obligation in question should have been carried out in Switzerland, or when it derives from a tort liability action, if the harmful event occurred in that State, or from compensation of damages or repayment due to crime, if the crime of embezzlement and receiving was committed in that State.

39. *Corte di Cassazione (plenary session), 9 June 1997 No. 5130* 429

Regarding the effectiveness in Italy of a foreign proceeding of adoption, should the age difference between adoptive parents and children not have been checked in the preliminary phase of the proceedings (which concludes with a decree of fitness for adoption as per Art. 30), this must be undertaken by the Juvenile Court which issues the definitive pronouncement as per Art. 32 of Law dated 4 May 1983 No. 184.

The age difference requirement, as per Art. 6 of Law No. 184 of 1983, must be calculated in days and not in solar years, even following the modification caused by the constitutional court judgement of 24 July 1996 No. 303.

A foreign pre-adoptive placement proceedings do not necessarily result in adoption, despite the fact that Art. 33, first paragraph of Law No. 184 of 1983 requires, for the purpose of the effectiveness of a foreign adoption proceedings, the existence of such a period of placement.

40. *Trieste Court of Appeal, 10 June 1997* 562

Pursuant to the Italian-Austrian Convention of 16 November 1971 on Recognition and Enforcement of Judgments in Civil and Commercial Matters, an Austrian judgment ordering the payment of a sum of money may be enforced in Italy if all the conditions required by the Convention are satisfied; in particular, enforcement is not barred by the fact that the writ of summons and the judgment itself have not been served upon the parties in an Italian version, because this requirement is not foreseen by the Convention, nor is Art. 3 of the Hague Convention of 1 March 1954 on Civil Procedure applicable to the case.

41. *Corte di Cassazione, 20 June 1997 No. 5550* 566

For the purposes of the recognition of a foreign ruling on adoption, the Juvenile Court may not, outside those instances contemplated by Art. 32 of Law 4 May 1983 No. 184, review the substance of the foreign decision (in this instance, the truthfulness of the date of birth of the minor whose adoption is sought).

Art. 6, second paragraph, of Law No. 184 of 1983, on the age difference between adopter and adoptee, must now be integrated with the *ius superveniens* set forth in the Constitutional Court ruling No. 303 of 1996.

42. *Constitutional Court, 26 June 1997 No. 203* 118

Art. 4, first paragraph of the Law dated 30 December 1986 No. 943 provides for the right to be joined by the spouse and unmarried minors of non-EC nationals resident in Italy and employed, capable of ensuring normal living conditions for the above mentioned relatives.

Art. 4, first paragraph of Law No. 943 of 1986 is constitutionally illegitimate insofar as it does not provide, in favour of a non-EC national the right to reside in Italy to join an underage child resident in Italy together with the other parent even if these parents are non married.

43. *Milan Tribunal, 14 July 1997* 568

Art. 24 of Law 31 May 1995 No. 218 provides that the existence of personality rights and the prerogatives afforded therefrom are governed by national law.

The request of a surgical operation intended to change the sex of the applicant must be accepted – on grounds of public policy pursuant to Art. 16 of Law No. 218 of 1995, which take into account in particular the need to protect the freedom and the dignity of the person – even though the national law does not regulate this field.

44. *Corte di Cassazione, 17 July 1997 No. 6562* 433

Pursuant to Arts. 72, 73 and 74 of Law dated 31 May 1995 No. 218 and Art. 10 of law-decree dated 23 October 1996 No. 544, Art. 797 of the Code of Civil Procedure has been repealed since 31 December 1996, and such law applies only to proceedings instituted after such date.

Art. 797 No. 6 of the Code of Civil Procedure provides that the proceedings established before the national judge prevails in the event that it is instituted before the judgement to be enforced becomes *res iudicata*.

In the event that the proceedings before the national judge are instituted after the foreign judgement pronounced between the same parties and on the same object becomes *res iudicata*, such proceedings may continue their own course, since any situation of *lis pendens* and any prejudicial connection is excluded.

An Italian divorce decree does not depend in any way on the enforceability of the foreign decree regulating as *res iudicata* the relationship between the parties; if the objection to *res iudicata* is not raised in the Italian proceedings, the possible contrast between such decrees may be solved through the appeal for revocation pursuant to Art. 395 No. 5 of the Code of Civil Procedure and repeal of the subsequently pronounced decree.

45. *Corte di Cassazione, 24 July 1997 No. 6927* 883

Art. 32 of Law 4 May 1983 No. 184 provides that the competence of the Juvenile court does not depend on whether the minor has been abandoned.

46. *Corte di Cassazione, 25 July 1997 No. 6975* 437

The habitual residence of the defendant, referred to by Art. 1 of the Convention between Italy and France of 3 June 1930 regarding the recognition and the enforcement of judgements as a base for jurisdiction of the foreign court, implies a residence established with serious and definitive intention.

The provision contained in Art. 72, second paragraph, of Law 21 May 1995 No. 218, stating that proceedings which are pending are decided by the Italian judge if the facts and the rules determining the jurisdiction occur during the proceedings, concerns the proceedings which are pending before an Italian

judge and not foreign proceedings which lead to judgements for which the enforcement in Italy is required.

Since both Art. 797 No. 5 of the Code of Civil Procedure and Art. 1 No. 5 of the 1930 Convention between Italy and France refer exclusively to «judgements» and «decisions», the enforcement of a French judgement pronouncing the dissolution of the marriage and also containing ancillary orders is not prevented by a subsequent Presidential order, which also contains visiting rights and maintenance obligations towards the minor child.

47. *Corte di Cassazione, 1 August 1997 No. 7151* 570

Pursuant to the 1968 Brussels Convention, an appeal against the enforcement in Italy of a foreign judgment must be allowed where the party seeking enforcement has failed to produce the required documents also in the appeal proceedings, notwithstanding the fact that the documents referred to in Arts. 46.1 and 47.1 had already been produced along with the enforcement application in the previous phase of the procedure.

48. *Corte di Cassazione, 9 August 1997 No. 7444* 574

The review of the substance of a foreign judgment granting maintenance is forbidden because Art. 798 of the Code of Civil Procedure has been superseded by Art. 6 of the Hague Convention of 2 October 1973 on Recognition and Enforcement of Foreign Judgments on Maintenance Obligations.

A foreign judgment granting maintenance in favour of a natural child may be recognized in Italy – irrespective of any review of the point of the judgment dealing with affiliation – because the judgment is an autonomous decision on proprietary rights and because the question as to whether the point of the judgment dealing with affiliation is conflicting with public policy is irrelevant for the purposes of the recognition of the point concerning maintenance.

49. *Corte di Cassazione, 13 August 1997 No. 7556* 884

The Brussels Convention of 25 August 1924 on the Unification of certain Rules on Bills of Lading is not applicable to an action brought on the basis of the obligation underlying the bill of lading against the true carrier, that was different from the carrier indicated in the bill of lading.

50. *Corte di Cassazione, 2 September 1997 No. 8383* 810

When a juvenile court, pursuant to Arts. 29 *et seq.* of Law 4 May 1983 No. 184, declares a foreign adoption decision enforceable in Italy as pre-adoption custody, then the *status* of adopted child is granted by virtue of the ruling issued by the Italian court at the end of the pre-adoption custody.

Considering that the adoption decision under Art. 32 of Law 4 May 1983 No. 184 directly instututes the relevant status, and does not merely declare the recognition of the foreign decision, it follows that the birth certificate of a minor, issued by a foreign authority on the basis of the adoption, may not, under Art. 17 of the Preliminary Provisions to the Civil Code, be granted immediate enforcement nor may it be directly entered in the Italian register of births.

The birth certificate of a minor, issued by a foreign authority on the basis of the adoption, may serve as evidence also in the light of the minor's interest that his former identity be kept secret, which is a founding principle of the Italian law on adoption.

51. *Corte di Cassazione (plenary session), 9 September 1997 No. 8768* 816

Italian courts have no jurisdiction over a labour dispute between the *Ecole française* of Rome and an Italian employee if the action is not limited to requests

of a monetary nature, but also seeks the ascertainment of the right to a better career position on the basis of the activities *de facto* carried out by the employee, and therefore implies decisions that encroach upon the employer's public law organization.

52. *Venice Court of Appeal, 9 September 1997* 885

Under the rules governing *in camera* proceedings, in accordance in particular to Art. 742 of the Code of Civil Procedure and to Art. 67 of Law 31 May 1995 No. 218, an application for the reversal or the stay of the enforcement of a Court of Appeal decree that has established that a foreign judgment did meet the conditions required for recognition and enforcement, is inadmissible.

53. *Genoa Tribunal, 11 September 1997* 576

The exclusive jurisdiction on companies' resolutions vested in the courts of the State where the company has its seat by virtue of Art. 16 of the 1968 Brussels Convention, does not apply to the incidental determination of the issues of the existence and of the validity of a shareholders' resolution authorizing a derivative action against the directors of a company.

An action promoted against subjects that are resident in Italy is subject to Italian jurisdiction because Art. 3, second paragraph, of Law 31 May 1995 No. 218 makes a reference to the jurisdiction rules used in the 1968 Brussels Convention, also in respect of defendants that are not domiciled in the territory of a contracting State.

Pursuant to Art. 25 of Law 31 May 1995 No. 218, the preliminary issue of the existence and validity of a shareholders' resolution authorizing a derivative action against the directors of a company having its seat in Curaçao, in the Dutch Antilles, is governed by the law of that country, since the company's incorporation has taken place there.

In order to give effect to the rule laid down in Art. 14 of Law 31 May 1995 No. 218, whereby *iura aliena novit curia,* the case must be brought back before the judge-rapporteur, so as to allow him to consult adequate sources of information on the foreign law that is applicable to the matter.

For the purposes of Art. 72 of Law 31 May 1995 No. 218, a derivative action against the directors of a company for their conduct of the business of the company in 1990 and 1991 may not be held as having become spent before the entry into force of that Law because the directors' liability, if any, may not be deemed exhausted until any request for compensation has been satisfied.

54. *Lucca Tribunal, 23 September 1997* 818

Pursuant to Art. 4, no. 2, of the Code of Civil Procedure, Italian courts have jurisdiction over a dispute concerning the succession of an Italian citizen opened in Italy, regardless of the fact that he also had another nationality; Italian courts would equally have jurisdiction under Arts. 3 and 50 of Law 31 May 1995 No. 218.

Pursuant to Art. 23 of the Preliminary Provisions to the Civil Code, the succession of an Italian citizen is governed by Italian law also if the assets of the estate are located abroad; the fact that the deceased also had another citizenship is irrelevant for this purpose.

Since under Art. 26 of the Preliminary Provisions to the Civil Code a will is formally valid if it is deemed valid by the *lex loci actus*, a will made in the USA must be deemed valid as to its form if proof of its validity may be inferred from other factual evidence in case the «*probate*» document is not available.

Under Art. 11 *et seq.* of the Hague Convention of 1 July 1985 on the Law

Applicable to Trusts and to their Recognition, a trust made by an Italian citizen under a USA state law must be recognized in Italy even if Italian law governs the succession of the settlor.

In accordance to Art. 15 of the 1985 Hague Convention, the sole remedy available to the heir who is entitled by law to a share of the deceased's estate is an action seeking the amendment of those clauses of the will that, by placing the estate under the trustee's exclusive control, breach his reserved share.

55. *Corte di Cassazione (plenary session), 24 September 1997 No. 9380* 826

The notion of domicile that is relevant for the application of Art. 4, no. 1, of the Code of Civil Procedure is that contemplated by Art. 43 of the Civil Code, also when the domicile of a foreign defendant must be ascertained.

For the purposes of Art. 4, no. 1, of the Code of Civil Procedure, the domicile of choice is determined exclusively by the intention of the person concerned, and its effect is consequently limited to those matters in respect of which the choice has been made.

Under Art. 4, no. 2, of the Code of Civil Procedure, Italian courts have jurisdiction in respect of an action seeking the payment of a sum of money on the basis of a cheque, drawn upon an English bank, that bore no indication of the place of issue. As such cheque is void under Law 21 December 1933 No. 1736, the action may not be based upon the obligation stemming from the cheque but must rather be qualified as being based upon the underlying contractual obligation, and the underlying obligation had to be performed in Italy pursuant to Art. 1182, third paragraph, of the Civil Code.

56. *Corte di Cassazione, 29 September 1997 No. 9554* 886

Under Art. 4 No. 1, of the Code of Civil Procedure, the establishment of the jurisdiction of the court is a different matter from the validity of the writ of summons or of its service, that conversely impinges only upon the validity of the *in ius vocatio* (in this instance, Italian courts had jurisdiction over a foreign subject having an authorized agent in Italy even if the writ of summons was addressed to the foreign principal and served personally upon him).

57. *Corte di Cassazione, 15 October 1997 No. 10090* 831

Under Art. 7 of Law 15 January 1994 No. 64, that has implemented the Hague Convention of 25 October 1980 on International Abduction of Minors, the Juvenile court of the place where the minor is situated is competent over applications seeking the redelivery of the minor to the parent from whom he has been abducted.

Under Arts. 16 and 17 of the 1980 Hague Convention, a domestic court seized of a request for the separation of spouses does not lack jurisdiction on the application for the custody of the minor, but rather must postpone any decision on that matter until a ruling on the redelivery of the minor has been rendered.

Under Art. 13 of the 1980 Hague Convention, the burden to prove the alleged risks that may preclude the redelivery of the minor lies with the person or institution that objects to the redelivery.

58. *Corte di Cassazione (plenary session), 12 November 1997 No. 11150* 836

In the absence of specific provisions in the protocol of 17 April 1957 on the statute of the Court of Justice of the European Communities, in order to properly construe the meaning and the scope of the immunity granted to the judges of the Court, resort must be had to the rules on diplomatic immunity.

Under Art. 32, third paragraph, of the 18 April 1961 Vienna Convention on Diplomatic Immunities and Diplomatic Relations, if a diplomatic agent begins an

action, he is then estopped from invoking immunity from jurisdiction in respect of any counterclaim or cross appeal that is directly linked to the subject matter of the initial action.

59. *Corte di Cassazione, 15 November 1997 No. 11328* 841

Under Art. 13 of the Hague Convention of 25 October 1980 on International Abduction of Minors, the court may refuse to order redelivery of the minor if it has ascertained that the latter opposes redelivery and that, in view of the minor's age and maturity, it is appropriate to take into account his own position.

The person who has abducted the minor does not have a right to request the latter's examination as a means of evidence.

60. *Constitutional Court, 21 November 1997 No. 353* 391

The question of constitutional legitimacy of Art. 7, second paragraph of the law-decree dated 30 December 1989 No. 416, confirmed with modifications with Law dated 28 February 1990 No. 39 which provides for the expulsion from national territory of non-EC nationals who violate provisions for the admission and the residence without discriminating against more distressing human cases, with regard to Art. 3 of the Constitution, is unfounded. In fact the State cannot abdicate from the unavoidable duty of guarding its frontiers and the rules established in function of an ordered migratory flux and of an adequate reception must therefore be respected, and not evaded or even derogated from time to time with evaluations of a substantially discretionary nature, since these are aimed at defending the national community and, at the same time, at protecting those who have observed the rules and who could be subject to damage from the tolerance of illegal situations.

61. *Corte di Cassazione, 22 November 1997 No. 11696* 844

According to its Art. 43, the Hague Convention of 25 October 1980 on International Abduction of Minors enters into force for those States that ratify it or accede to it after that its international entry into force, on the first day of the third month after the deposit of the instrument of ratification.

For the purposes of the entry into force of the 1980 Hague Convention for Italy, Art. 2 of Law 15 January 1994 No. 64 implementing the Convention, makes direct reference to its Art. 43.

According to its Art. 35, the 1980 Hague Convention applies exclusively to unlawful abductions or failures to redelivery that have occurred after its entry into force in a contracting State and is not applicable to instances of abduction that have begun before its entry into force and have continued thereafter.

The 1980 Hague Convention does not apply to the abduction of a minor which occurred in the USA in the period between the adoption of the Italian law ratifying the Convention and the deposit of the Italian instrument of ratification, even if the effects of the abduction continue after the entry into force of the Convention for Italy.

62. *Milan Tribunal, 11 December 1997* 854

The implicit acceptance of the jurisdiction of a foreign court is not equal to the agreement to exclude Italian jurisdiction, that is the fundamental requirement for the application of Art. 4, second paragraph, of Law 31 May 1995 No. 218.

In the absence of a specific statutory provision on this matter, the jurisdiction conferred upon a foreign court through agreement under Art. 4, second paragraph, of Law No. 218 of 1995, is not an exclusive jurisdiction but

rather a concurrent jurisdiction that does not preclude an action before an Italian court, unless there is conclusive evidence that the parties' intention was different.

Although Art. 7, first paragraph, of Law No. 218 of 1995 – whereby the proceedings may be stayed if a *lis alibi pendens* objection «*is raised*» – leads one to rule out the possibility of a stay at the court's own motion, it does not seem to bar the plaintiff in the domestic action from raising a *lis alibi pendens* objection; this solution seems neither incompatible with the text of the provision, nor inconsistent with the system devised in Law No. 218 of 1995 in order to deal with problems raised by internationally concurrent jurisdictions.

Under Art. 7, third paragraph, of Law No. 218 of 1995, the domestic court may stay the proceedings on the ground that an action on a related preliminary point is pending abroad if the decision on the action of which it is seized depends upon the resolution of the proceedings before the foreign court (that thus represents the logical antecedent of the domestic action), provided however that an *ex ante* evaluation based on the conditions set forth in Art. 64 of Law No. 218 of 1995 leads to the conclusion that it may not be excluded that the final decision on the foreign action shall have effects in the Italian system of law.

63. *Corte di Cassazione, 23 December 1997 No. 13015* 160

Art. 5 No. 1 (rather than Art. 5 No. 5) of the Brussels Convention dated 27 September 1968 must be applied to a dispute between a principal and an agent company as regard to a relationship of self employment and not to relationship of subordination or dependency.

The special *forum*, indicated by Art. 5 No. 1 of the 1968 Brussels Convention where the obligation inferred in question has been or must be performed, must be chosen according to the provisions of substantial law applicable pursuant to the private international law of the acting judge.

For the purpose of identifying the jurisdiction, reference must be made to Art. 25, first paragraph of the Preliminary Provisions to the Civil Code, and not to the provisions contained in Law 31 dated 31 May 1995 No. 218, if the proceedings were instituted before the latter came into force (as per Art. 72 of such law).

Art. 5 No. 1 of the Brussels Convention is applicable in cases where questions of positive assessment have been inferred as well as negative assessments or convictions.

Italian jurisdiction does not exist with respect to a dispute relating to a contract of a commercial agency pursuant to which the services of the agent were carried out and the severance payment should have been made in Denmark.

64. *Corte di Cassazione, 13 January 1998 No. 206* 865

Although the rules of the Italian-Austrian Convention of 30 June 1975, supplementing the Hague Convention of 1 March 1954 on Civil Procedure, allow service by mail, and although the modes of delivery contemplated therein are those set forth by the internal regulations of the country of destination, an Italian court may neither adopt nor apply provisions that are contrary to Italian public policy.

The principles underlying the doctrine of the proper appearance of the parties are a constituent part of Italian public policy; under such principles, the proper appearance of the parties requires that the fundamental need of the establishment of an adversarial system between the opposing parties be safeguarded either by virtue of the direct connection between the plaintiff and the defendant that is created by the service of the summons, or through its delivery to persons that are «specifically indicated» by reason of a certain relationship with one of the parties which is deemed appropriate by the system of law of the country of destination.

65. *Rome Tribunal, order 22 January 1998* 443

Pursuant to Art. 10 of Law dated 31 May 1995 No. 218, Italian jurisdiction exists with respect to a seizure requested by a company which has its office in Luxembourg against an *Anstalt* which has its office in Liechtenstein if the decree is to be enforced in Italy, irrespective of the fact that the contract in force between the parties contains an arbitral clause which submits to a foreign arbitration the jurisdiction for the merit of the cause.

A seizure can be granted *inaudita altera parte*, should the *fumus boni juris* be established pursuant to applicable English law and the *periculum in mora* exist due to the specific provisions applicable to *Anstalt* which imply an objective difficulty in attacking the corporate assets of the company abroad.

66. *Constitutional Court, 5 February 1998 No. 10* 124

An Italian court, when declaring the fitness of an international adoption pursuant to Art. 30 of the Law dated 4 May 1983 No. 184, may also make reference to the age difference between the adoptive parents and child as provided in Art. 6 of the same Law.

The question of constitutional legitimacy of Arts. 6 and 30 of Law No. 184 of 1983 raised with reference to Arts. 2, 3, 10 and 31 of the Constitution is unfounded.

67. *Milan Court of Appeal, 6 February 1998* 582

Since Italy is a party to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, the legal institution of trust itself may not be deemed unlawful with reference to a trust governed by English law.

An Italian exporter may not bring an action against Nigeria if – after a moratorium on payments to foreign subjects enacted following a currency crisis – the Nigerian central bank has rescheduled all its foreign debt trough the emission of notes guaranteed by Nigeria's government and has adopted a trust deed that is binding upon all foreign creditors.

The public policy rule, set forth in the old Art. 31 of the Preliminary Provisions to the Civil Code and now in Art. 16 of Law 31 May 1995 No. 218, is intended to safeguard those very fundamental principles that have shaped and influenced our system of law in view of certain public interests, and is there to avoid that the foreign law applicable to the matter may give rise to effects that are incompatible with those principles.

The granting to the trustee, pursuant to an English law trust deed, of the exclusive authority to seek enforcement measures against the issuer and the guarantor upon maturity of the notes, is not contrary to Italian public policy.

The provisions set forth in Arts. 1341 and 1342 of the Civil Code are not mandatory in an international context for the purposes of the 1980 Rome Convention as they do not lay down positive precepts with a detailed content.

For the purposes of Directive 93/13/EEC on unfair terms in consumer contracts, an undertaking, irrespective of whether it is a person or a legal entity, that accepts – in the context of a negotiation among creditors drawn from several countries – a proposal made by a public entity of a central government on the rescheduling of its foreign debt, may not be qualified as a consumer.

68. *Venice Court of Appeal, 6 February 1998* 166

The principle of retroactivity for judgements of constitutional illegitimacy does not apply only in the case of juridical situations which are concluded, and as

such situations may not be repealed or regulated differently through a ruling which is irrespective of the provision which has been declared unconstitutional.

Following the declaration of constitutional illegitimacy of Art. 10, third paragraph of the law on citizenship dated 13 June 1912 No. 555, an Italian citizen who married a foreigner before the constitutional court judgement never lost his original citizenship.

The children of the citizen, born before the declaration of constitutional illegitimacy of Art. 1 No. 1 of Law No. 555 of 1912 acquired Italian citizenship at birth.

To a declaration of «recovery» of Italian citizenship made by a citizen married to a foreigner, provided for by Art 219 of the Law dated 19 May 1975 No. 151, only the declaratory function of *status civitatis* may be attributed, this being necessary for registration in the registers of citizenship and for the consequent exercise of the rights inherent to this *status*.

69. *Milan Court of Appeal, 20 March 1998* 170

Pursuant to Art. 72, second paragraph of the Law dated 31 May 1995 No. 218, which is a general rule with respect to Art. 8, first paragraph of the same law, pending proceedings are decided by the Italian judge if, as well as the facts, the provisions which determine the jurisdiction arise in the course of the proceedings.

Art. 3, second paragraph of Law No. 218 also regulates the jurisdiction when the defendant is not domiciled within the territory of a contracting State, should it deal with one of the matters included in the scope of the Brussels Convention of 27 September 1968.

On the subject of special jurisdiction as per Art. 3, second paragraph of Law No. 218, the interpretative principle expressed by the Court of Justice of the European Community must be recalled, according to which – for the purpose of the application of Art. 5 No. 1 of the 1968 Brussels Convention – reference must be made to the contractual obligation, the non-performance of which is claimed.

Italian jurisdiction exists with respect to a dispute brought by an Italian company against a Hong Kong company, should the former demand to the Italian court the declaration of its right to the restitution of an advance payment made for the purchase of goods not delivered by the latter within the expected time.

International sales are regulated by the Hague Convention of 15 June 1955, irrespective of a possible reference – by this last – to the law of a non-contracting State.

Pursuant to Art. 3 of the 1955 Hague Convention, in the absence of a choice of the applicable law made by the parties, the sale is regulated by the domestic law of the country where the seller has his habitual residence.

Pursuant to Art. 14, second paragraph of Law No. 218, the judge, should he not be able to ascertain the contents of the foreign law (in this case: the Hong Kong law), applies Italian law.

Pursuant to Art. 1, first paragraph, of the Vienna Convention dated 11 April 1980 on contracts of international sales of goods, this applies, as well as when the parties have their headquarters in the contracting States, when the rules of private international law lead to the application of the law of a contracting State.

70. *Milan Court of Appeal, 24 March 1998* 869

The system of rules set forth by Arts. 839 and 840 of the Code of Civil Procedure, introduced by Law 5 January 1994 No. 25, is intended to establish a

procedure that may implement the principle whereby it is presumed that a foreign arbitration award may be recognized, that is one of the principles underlying the New York Convention of 10 June 1958 on Recognition and Enforcement of Foreign Arbitral Awards.

A party to the foreign arbitration procedure who did not appeal against the decree enforcing the foreign arbitration award in Italy may not benefit from the appeal brought by another party to the arbitration proceedings.

The domestic or foreign nature of the arbitration must be ascertained on the basis of the intention of the parties.

The court of appeal, seized of an appeal under Art. 840 of the Code of Civil Procedure against a decree on the recognition of a foreign arbitral award, may not review the reasoning of the arbitrators on the question as to whether the conditions for the application of Art. 1226 of the Civil Code on the award of damages were fulfilled.

71. *Constitutional Court, order 26 March 1998 No. 80* 557

The issue of constitutional legitimacy – with reference to Arts. 3, 24 and 41 of the Constitution – of Art. 633, last paragraph, of the Code of Civil Procedure is manifestly unfounded because, although a summary injunction (*decreto ingiuntivo*) cannot be sought when the injunction must be served upon the defendant abroad, the creditor may nevertheless promote his claim through the ordinary causes of action and may seek interim relief.

72. *Milan Court of Appeal, 27 March 1998 No. 898* 588

Under Art. 10, first paragraph, of Law 23 December 1996 No. 649, Arts. 769 et seq. of the Code of Civil Procedure are repealed with effect from 31 December 1996 only.

A ruling of a Philippine Court that sanctions the separation between an Italian husband and a Filipino wife on the basis of a sort of approval of an arrangement reached between the parties before a public notary which, while regularizing a *de facto* separation also provides for the maintenance of their children, must be characterized as an act of voluntary jurisdiction.

On the recognition of foreign act of voluntary jurisdiction, Art. 801 of the Code of Civil Procedure refers to Arts. 796 and 797 of the Code of Civil Procedure, but not also to Art. 799, which governs the incidental determination of the question of recognition.

In a matter concerning the enforcement of maintenance obligations owed to the children by one parent on the basis of a separation agreement approved by Filipino court, the foreign court's approval may not be recognized *incidenter tantum*, but only by way of principal action; furthermore, any interim measures that may have already been ordered on the basis of the *incidenter tantum* recognition of the approval must be dissolved.

73. *Constitutional Court, order 26 May 1998 No. 188* 559

A court that puts forward two alternative views on the interpretation of Law 30 December 1986 No. 943 concerning the treatment of immigrant workers from non-EU countries, implementing ILO Convention No. 143 of 24 June 1975 – a first view, deemed consistent with the Constitution, which would allow non-EU immigrant workers to enrol in the work placement rolls provided for by Law 18 April 1968 No. 482 (concerning special placement lists for the compulsory engagement of the disabled) even if they are not expressly contemplated; and a second view, deemed inconsistent with the Constitution, which denies them access to such lists – is bound to resolve its own doubts by choosing an interpretation that, among those that are compatible

with the text of the relevant provision, takes into account the Constitution provisions.

The issue of constitutional legitimacy – with reference to Arts. 2, 3, and 10 of the Constitution – of Arts. 1 et seq. of Law 30 December 1986 No. 943, is manifestly unfounded because it has not been raised in respect of legislative provisions that have been autonomously interpreted by the court that requested the ruling.

74. *Venice Tribunal, order 29 May 1998* 594

Art. 3 of the Brussels Convention of 10 May 1952 on Seizure of Ships, that allows the seizure of ships belonging to third parties in respect of maritime credits pertaining to the same ships, is not applicable in relation to ships flying the flag of a non-contracting State (in this instance, Malta).

According to Art. 6 of the Maritime Code, guarantees on a ship are governed by the law of the ship (in this instance, Malta Law).

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 12, 17.

Brussels Convention of 1968: 8, 15,18.

Community law: 2.

Community proceedings: 4.

External relations: 1.

Freedom of movement of persons: 6, 7.

Freedom of movement of goods: 3.

Liability of member States: 5, 9, 10, 11.

Preliminary ruling on interpretation: 13, 16.

Prohibition of discrimination: 6, 14.

Social policy: 5.

1. *Court of Justice, 27 February 1997, case C-177/95* 189

Article 1(1)(c) and (d) of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) prohibits not only the actual entry of commercial traffic into the territorial sea of the Federal Republic of Yugoslavia but also conduct occurring in international waters which gives good reason to believe that the vessel concerned is on course for that territorial sea for the purposes of commercial traffic.

A domestic provision which, in the event of an ascertained breach of any of the prohibitions laid down in Article 1of the Regulation, prescribes confiscation of the cargo carried by one of the means of transport indicated in the second paragraph of Article 10 of the Regulation is compatible with the Regulation, in particular with Article 10 thereof.

2. *Court of Justice, 20 March 1997, case C-96/95* 195

It is settled law that the transposition of a directive into national law does not necessarily require its provisions to be formally incorporated verbatim in express, specific legislation; a general legal context may, depending on the content of the directive in question, be adequate for the purpose, provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts.

3. *Court of Justice, 20 March 1997, case C-352/95* 202

Article 7 of the First Council Directive (89/104/EEC) of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as precluding application of a national rule in Member State A under which the owner of a trade mark may prevent importation of a product protected by the mark where the product has been manufactured in a non-member country, it has been imported into Member State B by the owner of the mark or by another company in the same group as the owner of the mark, it has been lawfully acquired in Member State B by an independent trader, who has exported it to Member State A, it has not been processed and the packaging has not been changed, apart from the addition to the label of certain information to comply with the requirements of the legislation of the Member State of import, and the trade mark rights are held in Member States A and B by the same group.

4. *Court of Justice, 21 March 1997, case C-95/97 (order)* 212

The term 'Member State', for the purposes of the institutional provisions and, in particular, those relating to proceedings before the courts, refers only to government authorities of the Member States of the European Communities and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have.

5. *Court of Justice, 22 April 1997, case C-66/95* 214

Article 6 of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security does not require that an individual should be able to obtain interest on arrears of a social security benefit such as invalid care allowance, when the delay in payment of the benefit is the result of discrimination prohibited by Directive 79/7. However, a Member State is required to make reparation for the loss and damage caused to an individual as a result of the breach of Community law. Where the conditions for State liability are fulfilled, it is for the national court to apply that principle.

6. *Court of Justice, 5 June 1997, joined cases C-64/96, C-65/96* 207

A national of a non-member country married to a worker having the nationality of a Member State cannot rely on the right conferred by Article 11 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community when that worker has never exercised the right to freedom of movement within the Community.

7. *Court of Justice, 17 June 1997, joined cases C-65/95, C-111/95* 457

On a proper construction of Article 8 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the

movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, where under the national legislation of a Member State remedies are available in respect of acts of the administration generally and different remedies are available in respect of decisions concerning entry by nationals of that Member State, the obligation imposed on the Member State by that provision is satisfied if nationals of other Member States enjoy the same remedies as those available against acts of the administration generally in that Member State.

On a proper construction of Article 9 of Directive 64/221, the three cases mentioned in Article 9(1) (namely «where there is no right of appeal to a court of law, or where such appeal may be only in respect of the legal validity of the decision, or where the appeal cannot have suspensory effect») apply equally as regards Article 9(2), that is to say, where the decision challenged is a refusal to issue a first residence permit or a decision ordering expulsion adopted before the issue of such a permit.

A national of a Member State against whom an initial decision refusing entry into another Member State has been made on grounds of public order or public security has a right of appeal under Article 8 of the directive and, if appropriate, a right to obtain the opinion of an independent competent authority in accordance with Article 9 of the directive, with respect to a fresh decision taken by the administrative authorities on an application made by him after a reasonable time has elapsed since the last decision prohibiting him from entering the country.

8. *Court of Justice, 3 July 1997, case C-269/95* 466

The first paragraph of Article 13 and the first paragraph of Article 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, must be interpreted as meaning that a plaintiff who has concluded a contract with a view to pursuing a trade or profession, not at the present time but in the future, may not be regarded as a consumer.

The courts of a Contracting State which have been designated in a jurisdiction clause validly concluded under the first paragraph of Article 17 also have exclusive jurisdiction where the action seeks in particular a declaration that the contract containing that clause is void.

9. *Court of Justice, 10 July 1997, joined cases C-94/95, C-95/95* 613

Retroactive application in full of the measures implementing Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer enables the harmful consequences of the belated transposition of that Directive to be remedied, provided that the Directive has been properly transposed. However, it is for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper application in full of the measures implementing the Directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the Directive with the result that such loss must also be made good.

10. *Court of Justice, 10 July 1997, case C-261/95* 622

Community law, as it stands at present, does not preclude a Member State from requiring any action for reparation of the loss or damage sustained as a

result of the belated transposition of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer to be brought within a limitation period of one year from the date of its transposition into national law, provided that that procedural requirement is no less favourable than procedural requirements in respect of similar actions of a domestic nature.

11. *Court of Justice, 10 July 1997, case C-373/95* 630

In making good the loss or damage sustained by employees as a result of the belated transposition of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, a Member State is entitled to apply retroactively to such employees belatedly adopted implementing measures, including rules against aggregation or other limitations on the liability of the guarantee institution, provided that the Directive has been properly transposed. However, it is for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper application in full of the measures implementing the Directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the Directive with the result that such loss must also be made good.

12. *Court of First Instance, 10 July 1997, case T-227/95* 920

Where the Commission adopts a single decision covering several infringements, each of this decisions must be treated as a bundle of individual decisions and is binding in its entirety on the addressee, who may bring an action for annulment under Article 173; in this case the Community judicature has before it only the elements of the decision which relate to that addressee whilst the unchallenged elements of the decision relating to other addressees do not form part of the subject-matter of the dispute.

The meaning of the obligation imposed on the Commission by Article 176 of the Treaty to take «the necessary measures to comply with the judgment» requires the concerned institution to consider, pursuant to a request made within a reasonable period, whether it needs to take measures in relation not only to the successful parties but also to the addressees of that act who did not bring an action for annulment. In fact, where the effect of a judgment of the Court of Justice is to set aside a finding that Article 85(1) of the Treaty was infringed, on the ground that the concerted practice complained of was not proved, it would be inconsistent with the principle of legality for the Commission not to have a duty to examine its initial decision in relation to another party to the same concerted practice based on identical facts.

13. *Court of Justice, 17 July 1997, case C-28/95* 888

The Court of Justice has jurisdiction under Article 177 of the EC Treaty to interpret Community law where the situation in question is not governed directly by Community law but the national legislature, in transposing the provisions of a directive into domestic law, has chosen to apply the same treatment to purely internal situations and to those governed by the directive, so that it has aligned its domestic legislation to Community law.

14. *Court of Justice, 2 October 1997, case C-122/96* 894

The first paragraph of Article 6 of the EC Treaty must be construed as precluding a Member State from requiring provision of security for costs by a national of another Member State who is also a national of a non-member country, in which he is resident, where that national, who is not resident and has no assets in the first Member State, has brought proceedings before one of its civil courts in his capacity as a shareholder against a company established in that Member State, if such a requirement is not imposed on its own nationals who are not resident and have no assets there.

15. *Court of Justice, 9 October 1997, case C-163/95* 900

Article 29(1) of the 1989 Accession Convention to the 1968 Brussels Convention on jurisdiction and the enforcement of judgments must be interpreted as meaning that where proceedings involving the same cause of action and between the same parties are pending in two different Contracting States, the first proceedings having been brought before the date of entry into force of 1968 Brussels Convention between those States and the second proceedings after that date, the court second seised must apply Article 21 of the latter Convention if the court first seised has assumed jurisdiction on the basis of a rule which accords with the provisions of Title II of that Convention or with the provisions of a convention which was in force between the two States concerned when the proceedings were instituted, and must do so provisionally if the court first seised has not yet ruled on whether it has jurisdiction. On the other hand, the court second seised must not apply Article 21 of the 1968 Brussels Convention if the court first seised has assumed jurisdiction on the basis of a rule which does not accord with the provisions of Title II of that Convention or with the provisions of a convention which was in force between those two States when the proceedings were instituted.

16. *Court of Justice, 16 October 1997, joined cases C-69/96, and C-79/96* 907

When it issues an opinion in the context of an extraordinary petition, the Consiglio di Stato constitutes a court or tribunal for the purposes of Article 177 of the EC Treaty.

17. *Court of Justice, 12 May 1998, case C-170/96* 911

The Court has jurisdiction to review the content of an Act, adopted by the Council on the basis of Article K.3(2) in the light of Article 100c of the EC Treaty, in order to ascertain whether it affects the powers of the Community under that provision and to annul it if it appears that it should have been based on Article 100c of the EC Treaty.

The phrase «when crossing the external borders of the Member States» which figures in Article 100c(1) of the EC Treaty, construed in the light of Article 3(d) of that Treaty, refers, in the case of an airport, to the crossing of those borders at a border control point, permitting the holder of the visa to enter and to move within the internal market whilst the airport transit visa is concerned with the situation of a passenger arriving on a flight from a third country and remaining in the airport of the Member State in which the aircraft landed in order to take off in the same or another aircraft bound for another third country. Consequently, the Action of 4 March 1996, adopted by the Council on the basis of Article K.3 of the EC Treaty does not fall within the ambit of Article 100 C n. 1.

18. *Court of Justice, 19 May 1998, case C-351/96* 915

Article 21 of the 1968 Convention on jurisdiction and the enforcement of

judgments, as amended by the 1978 Accession Convention of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the 1982 Accession Convention of the Hellenic Republic, is not applicable in the case of two actions for contribution to general average, one brought by the insurer of the hull of a vessel which has foundered against the owner and the insurer of the cargo which the vessel was carrying when it sank, the other brought by the latter two parties against the owner and the charterer of the vessel, unless it is established that, with regard to the subject-matter of the two disputes, the interests of the insurer of the hull of the vessel are identical to and indissociable from those of its insured, the owner and the charterer of that vessel.

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1. *US District Court Southern District of New York, 14 November 1997* 473

An object of cultural and arthistic value must be forfeited if a false statement relating to its country of origin was provided in the US Custom forms or if it may be considered smuggled and exported in pursuant to the country of origin's Law on the Protection of Objects of Artistic and Historic Interest.

2. *High Court of Justice, Chancery Division, 30 January 1998* 637

The sale of Parma ham sliced and packaged outside the Parma's region, though in breach of Italian Law No. 26 of 13 February 1990 and of Ministerial Order No. 253 of 15 February 1993, does not constitute a breach of Council Regulation No. 2081/92 establishing a system for the registration and supervision of Community-protected designations of origin, for this refers solely to production, processing and preparation and not to further *marketing* activities.

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