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1. *Napoli Tribunal, order 10 July 1999* 645

The issue of constitutional legitimacy of the combined provisions of Arts. 1341, second paragraph, and 1342, second paragraph, of the Civil Code and 4, second paragraph, of Law 31 May 1995 No. 218 with reference to Arts. 3 and 24 of the Constitution is not manifestly unfounded.

2. *Council of State (IV Session), 5 August 1999 No. 1345* 452

Under Art. 2, second paragraph of Law 21 April 1983 No. 123, a foreign spouse who has been convicted to several prison terms, in the aggregate, for more than two years may not acquire the Italian citizenship, even if such convictions are each for terms lasting less than two years.

3. *Corte di Cassazione, 27 October 1999 No. 12077* 158

The recognition of a child by its father, a Tunisian citizen of Muslim religion, may not be prevented by the fact that the latter is a believer of a certain religious creed or by an abstract and unsubstantiated danger that the child be brought within the jurisdiction of another system of law for the following reasons: the minor has acquired the Italian nationality under Art. 1, first paragraph, *litt.* a of Law 5 February 1992 No. 91 by virtue of the earlier recognition by the Italian mother; the relationships between parents and children, under Art. 36 of Law 31 May 1995 No. 218, are governed by the national law of the child; and Art 16, first paragraph of such Law prevents the application of a foreign law whose effects are contrary to public policy.

4. *Corte di Cassazione, 12 November 1999 No. 12538* 651

Under Art. 14 of Law 31 May 1995 No. 218, the judge must ascertain the contents of the foreign law on its own motion.

Under Art. 72 of Law No. 218 of 1995, the provisions of such Law apply to all the proceedings commenced after the date of its entry into force, with the exception of terminated situations, *i.e.* to those finally settled in judicial proceedings or that, anyhow, have entirely produced their effects.

Art. 14 of Law 218 of 1995 applies in the opposition proceedings concerning a judgment declaring the enforcement a foreign arbitral award, brought on basis of the alleged invalidity of the arbitration clause pursuant to Art. 840, third paragraph, No. 1, since it must be deemed a non-terminated situation: the invalidity of such clause may be raised also in said opposition proceedings and the relevant award had not been issued yet at the date such Law entered into force.

5. *Corte di Cassazione, 19 November 1999 No. 12720* 160

Under Art. IX, paragraph 4 of the London Convention of 19 June 1951 on the status of NATO armed forces, the employment relationship of the local status employees of a State belonging to the alliance are subject to the regulations enacted by the employer State, with the sole limit that the employment treatment provided for by such regulations be not worse than that provided for by the host State.

6. *Corte di Cassazione, 27 November 1999 No. 13262* 161

Art. 10, fifth paragraph of Law 4 May 1983 No. 184 on adoption, whereby the decision on whether hearing minors younger than twelve is referred to the prudent appraisal of the court, does not breach Art. 12 of the New York Convention of 20 November 1989 on the rights of the child.

7. *Corte di Cassazione, 29 November 1999 No. 13315* 162

In accordance with Art. 797 No. 4 of the Code of Civil Procedure, a judgment rendered *in absentia* by the California High Court may be regarded as *res iudicata* under the law of the place in which it has been rendered, and hence recognizable, if it may ascertained that the writ of summons has been served in accordance with Section 585 of the California code of civil procedure, since, under Paragraph 1908 of the California procedural law, *in absentia* judgments may become final if the absent party has been allowed to be informed of the existence of the action.

8. *Corte di Cassazione, 1 December 1999 No. 13408* 164

According to Art 12 of Law 31 May 1995 No. 218, Italian law applies to the issue as to whether a judicial action, under Art. 274 of the Civil Code, seeking the establishment of filiation against the natural father is admissible, the law applicable to filiation being irrelevant.

9. *Corte di Cassazione, 3 December 1999 No. 13531* 89

Art. 3 of the Italian-French Convention on the military service, signed in Rome on 28 December 1953, provides that persons holding both the Italian and the French nationality that have completed their military service in one of the two States shall be deemed as having satisfied their military duties also in the other State.

According to the Italian-French Convention on the military service of 1953 as well as to EC rules which exclude any discrimination of the legal position of nationals of the member States, in case a person holding both the Italian and the French nationality has completed his military service in France he must be granted the pension and social security treatment provided for the compulsory military service in Italy under Art. 49 of Law 30 April 1969 No. 153.

10. *Corte di Cassazione (plenary session) 21 December 1999 No. 919* 165

A contingency fee agreement entered into between a foreign citizen and an Italian lawyer may not be characterized as a donation for the purposes of Art. 56 of Law 31 May 1995 No. 218.

11. *Corte di Cassazione, 21 January 2000 No. 671* 92

The burden of proving the existence of the conditions barring the recognition of a foreign arbitration award under Art. V of the New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitration awards lies with the party against whom recognition is sought.

Since the New York Convention of 10 June 1958 does not include *lis alibi pendens* among the conditions barring recognition, the existence in Italy of a case on the same subject matter between the same parties does not prevent the recognition of a foreign arbitration award.

Any novation of the contractual relationship that is the subject matter of a foreign arbitration and the resulting lack of jurisdiction of the arbitration tribunal does not amount to an invalidity of the arbitration agreement for the purposes of Art. V, paragraph 1, *litt.* a of the New York Convention of 10 June 1958.

12. *Rome Court of Appeal, 31 January 2000* 99

By virtue of the retroactive effect (as at 1 January 1948) of the Constitutional Court judgments of 16 April 1975 No. 87 and 9 February 1983 No. 30 (which declared constitutionally illegitimate, respectively, Arts. 10, third paragraph and 1, first paragraph of Law 13 June 1912 No. 555 on Italian

nationality) the children born between 1961 and 1965 from an Italian woman married to a foreigner in 1961 are Italian citizens.

13. *Corte di Cassazione, 8 February 2000 No. 1366* 103

As a result of the Constitutional Court judgments No. 303 of 1996 and No. 283 of 1999, if the refusal of the adoption creates a serious damage to the minor, that may not otherwise be avoided, the age difference between the adopting parents and the child may exceed forty years, notwithstanding the rule laid down in Art. 6, second paragraph of Law No. 184 of 1983, upon condition that such age difference be the same as that usually existing between parents and children.

14. *Corte di Cassazione, 11 February 2000 No. 1505* 454

A personal separation between two US citizens both resident in Italy, to which Art. 31 of Law 31 May 1995 No. 218 does not apply *ratione temporis*, is governed by the laws of the State of New York.

15. *Corte di Cassazione, 14 February 2000 No. 1596* 107

Under Art. 3, *litt.* a of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, not only the transfer, but also the retention of the child is unlawful if it occurs in breach of rights of custody attributed under the law of the State in which the child was habitually resident immediately before the retention.

Since the 1980 Hague Convention is intended to safeguard the custody right of children as a factual situation, any such decision rendered by the judicial authorities of the State in which the child is habitually resident merely have the purpose of documenting a factual situation and it may not, therefore, be reviewed by the courts of other Contracting States on grounds of lack of jurisdiction or venue.

16. *Corte di Cassazione, 14 February 2000 No. 1615* 455

A power of attorney made abroad and granting the power to appear in court does not have to be deposited with a notary or an Italian district notaries' register, whereas the court must ascertain its validity as to form and substance.

17. *Corte di Cassazione, 2 March 2000 No. 2309* 112

Under Art. 13, first paragraph, *litt.* a of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, the judicial authority may refuse the return of the child (that has been removed or retained in another contracting State by the parent who does not have the care of the child) to the parent having the care of the person of the child if it establishes that such parent was not actually exercising the custody rights at the time of removal or retention.

Art. 13, first paragraph, *litt.* a of the 1980 Hague Convention is not based upon the formal withdrawal of the custody rights or of the parental authority, but exclusively upon the parent's failure to exercise the custody rights at the time of removal or retention.

In the absence of a specific definition in the Convention, the notion of the failure to exercise the custody rights must be construed as the failure to take care of the physical and moral needs of the child.

The exercise of the custody rights by the parent to whom they have been attributed is a necessary requirement for qualifying as unlawful the abduction or the retention of the child.

18. *Corte di Cassazione, 7 March 2000 No. 2535* 116

Since the existence of one of the circumstances which, under Art. 13 of the Hague Convention of 25 October 1980 of the Civil Aspects of International Child Abduction, render ineffective the obligation to return the child may be demonstrated also on the basis of simple information, the return of the minor may be refused if the existence of such circumstances has been adequately evaluated also through psychological inquiries.

19. *Corte di Cassazione (plenary session), 10 March 2000 No. 57* 120

Italian courts have no jurisdiction over a dispute between an Italian company and a German company in which the former alleges the fraudulent conduct of the latter (the signing in Germany of an «impossible» construction contract and its fraudulent termination and the exercise of first demand bank guarantees) since, in accordance with Art. 5 No. 3 of the Brussels Convention of 27 September 1968, the event giving initially rise to the damage occurred in Germany.

20. *Corte di Cassazione, 17 March 2000 No. 3100* 456

The action promoted by the principal seeking, under Art. 6 *septies* of the Paris Convention of 20 March 1883, the transfer in its own name of a trademark registered by its agent is inadmissible if no proof is given of the existence of the agency relationship at the time the registration was made.

21. *Constitutional Court, order 22 March 2000 No. 76* 741

The issue of the constitutional legitimacy – raised with reference to Art. 3 of the Constitution – of Arts. 117, fourth and fifth paragraphs, 130, second paragraph, 136, seventh paragraph and 142, ninth paragraph of the Legislative Decree 30 April 1992 No. 285, that, with respect to the applicable sanctions, assimilate foreign non-EU citizens residing in Italy who have held the Italian driver licence for less than three years (even if they have held a valid foreign licence for more than three years) to a neo-licensed Italian driver, is manifestly unfounded.

22. *Corte di Cassazione, 22 March 2000 No. 3365* 389

A New York State judgment in which the court, the defendant having remained inactive, has deemed as proven the allegations upon which the plaintiff had based its claims, which does not set forth the reasons for the decision and which holds a shareholder personally liable for the conduct of the corporation is not contrary to Italian public policy and must hence be enforced in Italy pursuant to Art. 797 of the Code of Civil Procedure. The mere difference existing between domestic law and the foreign law rules on burden of proof does not, in fact, amount to a conflict with public policy; Art. 797 of the Code of Civil Procedure does not provide for the requirement that the foreign judgment contains the reasons upon which it is based, which is not a fundamental principle on the right of the defence; and, in certain instances, the principle of the limited liability of shareholders of corporations suffers exceptions also under Italian law.

23. *Milan Tribunal, order 30 March 2000* 1016

The assertion by a real estate company of its unwillingness to enter into lease contracts with non-EU citizens constitutes an act of discrimination based on race, ethnic group, citizenship or religion, in respect of which the court, at the instance of the party, may order to bring the discrimination to an end and award

damages, including non-patrimonial damages, under Art. 44 of Legislative Decree 25 July 1998 No. 286.

24. *Corte di Cassazione (plenary session), 3 April 2000 No. 84* 395

For the purposes of the application of Art. 5 No. 1 of the Brussels Convention of 27 September 1968, in circumstances in which the distributor's breach of its obligation to forward buy orders is the basis of the producer's action seeking the termination of the distribution agreement, the place of performance of the obligation must be deemed, under Art. 1182, first paragraph, of the Civil Code, to be the place in which the producer has its place of business.

25. *Corte di Cassazione (plenary session), 3 April 2000 No. 86* 398

Under Art. 6 No. 1 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over an action for damages in respect of an event occurred in another member State if one of the defendants is domiciled in Italy and it is conceivable that such defendant may be held liable for such event.

26. *Corte di Cassazione (plenary session), 5 April 2000 No. 103* 401

Under Art. 4 No. 2 of the Code of Civil Procedure, Italian courts have no jurisdiction over an action for damages in respect of personal injuries suffered as a result of a street accident occurred abroad.

27. *Rome Court of Appeal, 12 April 2000* 126

Art. 67 of Law 31 May 1995 No. 218 provides that, if the recognition of a foreign judgment is resisted or challenged, any interested party may request the court of appeal of the place in which the judgment must be enforced to ascertain the existence of the conditions for the recognition.

Under Art. 67 of Law No. 218 of 1995 the court of appeal of the place in which the judgment must be entered in the civil status register or deleted therefrom is competent.

Under Art. 64, *litt.* b of Law No. 218 of 1995 (and under Art. 65) a foreign divorce judgment may not be recognized in Italy if in the foreign proceedings an irremediable breach of the rights of defence has occurred, and the deletion of the entry of the foreign judgment in the civil status register must therefore be ordered.

28. *Milan Court of Appeal, 18 April 2000* 1018

The Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods is an integral part of the Italian legal system, and the conflict of laws provisions contained therein, as per its Art. 7, have a so-called universal reach since, in relation to the subject-matter they regulate, they replace entirely the corresponding domestic conflict of laws provisions, irrespective of whether the law they declare to be applicable is the law of a contracting State.

29. *Vicenza Tribunal, 27 April 2000* 130

Under Art. 16 of the preliminary provisions to the Civil Code, the right of a foreigner to claim damages for the death of a relative from the latter's employer is subject to the condition of reciprocity, because such claim is not based upon the fundamental right to life and personal safety, but is brought *iure proprio* in order to obtain relief in respect of a prejudice personally suffered.

Since the condition of reciprocity under Art. 16 of the preliminary

provisions to the Civil Code amounts to a *quaestio facti*, as a condition for the application of Italian law, and does not fall within the scope of application of Art. 14 of Law 31 May 1995 No. 218 (which concerns the ascertainment of the foreign law that may be applicable to the case), the burden of the proof on the existence of reciprocity lies with the foreigner that alleges it.

30. *Corte di Cassazione, 4 May 2000 No. 5583* 403

The condition of reciprocity provided for by Art. 16 of the preliminary provisions to the Civil Code only applies to the merits of the claim brought by the foreigner, and does not affect the question of the jurisdiction of the court seized of the action.

The question as to whether the foreign law satisfies the condition of reciprocity is not subject to the *jura novit curia* principle, but is a matter of burden of proof, and is not, consequently, subject to appeal to the Corte di Cassazione on issues of law.

31. *Bari Court of Appeal, 11 May 2000* 135

In the event in which a foreign judgment is not complied with, or its recognition is challenged, under Art. 67 of Law 31 May 1995 No. 218 the competence of the court of appeal extends to the ascertainment of the conditions required for the recognition and enforcement in Italy of such judgment.

In order to recognize a foreign judgment, Art. 64, *litt.* b of Law No. 218 of 1995 requires that the writ of summons be brought to the knowledge of the defendant in accordance with the laws of the place in which the proceedings were held, and that the fundamental rights of defence have not been breached.

Art. 71 of Law No. 218 of 1995, as to service of writs of summons before foreign authorities, permits the service to be made pursuant to the formalities required by the foreign authority to the extent they are compatible with the principles of Italian law, and, in any event, provides that the writ may delivered to the addressee who voluntarily accepts its delivery.

32. *Constitutional Court, order 19 May 2000 No. 149* 742

The issue of the constitutional legitimacy of Art. 201 of Legislative Decree 30 April 1992 No. 285 – raised with reference to Art. 3 of the Constitution –, in that it provides for different time limits for the service of administrative sanctions to foreign residents owning motor vehicles registered under the EE series (360 days) and to Italian residents (150 days), is manifestly unfounded. The procedure laid down in the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is not applicable to the service of such administrative sanctions since these fall within the field of administrative law.

33. *Corte di Cassazione, 24 May 2000 No. 6779* 407

Under Art. 4 of the Hague Convention of 25 October 1980 of the Civil Aspects of International Child Abduction, in order to order the return of the minor to the parent's State or to the State of the foster person or body seeking such return, the habitual residence of the child must always be ascertained with reference, exclusively, to the date immediately preceding its entry into the State to which the return of the minor is requested; any previous habitual residence of the minor is irrelevant.

34. *Constitutional Court, 31 May 2000 No. 161* 743

The issue of the constitutional legitimacy of Art. 11, eight and ninth

paragraphs, of Law 6 March 1998 No. 40, that became Art. 13, eight and ninth paragraphs, of Legislative Decree 25 July 1998 No. 286 – raised with reference to Art. 24 of the Constitution – in that it provides for short time limits both for the appeal against the expulsion order and for the decision on the merits of the proceedings, are not admissible. The issue of the constitutional legitimacy of Art. 13, eight, ninth and tenth paragraphs of Legislative Decree No. 286 of 1988 – raised with reference to Art. 24 of the Constitution – in that it does not allow a stay of the enforcement of the expulsion order if such order has been appealed, is unfounded. The question of the constitutional legitimacy – raised with reference to Arts. 3, 10, 24 and 113 of the Constitution and the Geneva Convention of 28 July 1951 on the *status* of refugee – of the combined provision of Art. 7, third paragraph, of Law Decree 17 May 1996 No. 269 (not confirmed by Parliament) and Art. 1 of Law 9 December 1996 No. 617 (confirming the effects produced by the Law Decree), according to which the expulsion order must be appealed within seven days, is partly inadmissible and partly unfounded.

35. *Corte di Cassazione, 9 June 2000 No. 7877* 409

The marriage between an Italian national and an Israeli national, made in Italy under the Hebrew religious rite, and hence in breach, under Art. 26 of the preliminary provisions to the Civil Code, of Law 24 June 1929 No. 1159 on the marriages of religions other than the Roman catholic religion, is null and void for reasons of form; it must however be deemed as existing by virtue of the possession of status under Art. 131 of the Civil Code, thus amending any formal flaw.

36. *Corte di Cassazione, 15 June 2000 No. 8163* 655

An action seeking to obtain a negative declaratory judgment stating that a foreign arbitral award is not enforceable in Italy is not admissible.

37. *Corte di Cassazione (plenary session), 19 June 2000 No. 448* 415

Under Art. 3 of the Hague Convention of 15 June 1955 on the law applicable to the international sale of goods, the law applicable to an international sale of goods for the purposes of Art. 5 No. 1 of the Brussels Convention of 27 September 1968 is the law of the place of habitual residence of the seller. The Brussels Convention of 27 September 1968 is applicable to a case related to a non-contracting State by virtue of the reference made to it by Art. 3, second paragraph of Law 31 May 1995 No. 218.

Under Art. 5 No. 1 of the Brussels Convention of 27 September 1968, in respect of the sale of an industrial plant to be assembled and installed in the country of the buyer, the place of performance of the obligation to deliver the good, in the light of the nature of the object of the sale and of the contractual provisions, is the place in which the assembly of the plant must be performed.

Under Art. 5 No. 1 of the Brussels Convention of 27 September 1968, if the judicial action is based upon two obligations, one being the obligation to pay the price and the other the obligation to assemble an industrial plant, and the place of performance of the latter (which is the characteristic obligation of the contract) is situated abroad, Italian courts do not have jurisdiction on the whole case.

38. *Gorizia Tribunal, 22 June 2000* 140

Since Art. 3, second paragraph of Law 31 May 1995 No. 218 makes reference to the criteria applicable to venue, under Art. 4, first paragraph of Law 1 December 1970 No. 898 Italian courts have jurisdiction over a divorce

case if the foreign claimant is resident in Italy and the foreign respondent is resident abroad.

Under Art. 31 of Law No. 218 of 1995, Irish law must be applies to the divorce of two Irish nationals since it is their common national law.

39. *Reggio Emilia Tribunal, 3 July 2000* 970

According to Art. 5 No. 1 of the Brussels Convention of 27 September 1968, the Italian judge is not competent to hear a case between an Italian and a Swiss company if the obligation to deliver the goods, as per Art. 31 *a* of the Vienna Convention of 11 April 1980, was accomplished at the seat of the carrier in the United Kingdom.

Art. 6 No. 2 of the 1968 Brussels Convention does not apply in a case in which the defendant does not contest the existence of Italian jurisdiction in order to render Italian courts competent over a warranty action and thereby attracting a third party before it, thus excluding the jurisdiction of the court which would be competent in his case.

Italian courts have no jurisdiction on an action on a warranty against an English company if none of the criteria set forth in Arts. 2 and 6 No. 2 of the 1968 Brussels Convention is applicable.

40. *Corte di Cassazione (plenary session), order 4 July 2000 No. 81* 421

Since the special proceeding for a ruling on jurisdiction before the Corte di Cassazione provided for by Art. 41 of the Code of Civil Procedure has not been qualified as an appeal by the amendment to Art. 367 of the Code of Civil Procedure, it may no longer be promoted once a judgment denying jurisdiction has been rendered in the case.

41. *Vigevano Tribunal, 12 July 2000 No. 405* 143

The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 applies to an international sale contract entered into between a company established in Germany and a company established in Italy. Such convention is a special convention in respect of the Hague Convention of 15 June 1955 on the law applicable to the international sale of goods.

Since the reference to Italian law made by the parties to a dispute concerning an international sale of goods may not be held as an implied intention to exclude the application of the Vienna Convention, the court, in accordance with the *iura novit curia* principle, must identify the applicable rules.

Issues relating to defects of the goods are governed by Arts. 35 *et seq.* of the Vienna Convention.

The issue of the apportionment of the burden of proof between the parties, though it is not expressly regulated by the 1980 Vienna Convention, must be decided, under its Art. 7, second paragraph, in accordance with the general principles of the Convention itself.

42. *Milan Tribunal, 17 July 2000* 659

Under Art. 24 of Law 31 May 1995 No. 218, the existence and the contents of personality rights are governed by the national law of the individual concerned.

Due to the possible lack, in the foreign law of the individual, of provisions contemplating the right to change sex, the Italian judge can evaluate the petition filed to that effect in accordance with Italian law, by virtue of public policy considerations as per Art. 16 of Law No. 218 of 1995.

43. *Constitutional Court, order 20 July 2000 No. 313* 747

The issue of the constitutional legitimacy of Art. 19, second paragraph *litt. c* of Legislative Decree 25 July 1998 No. 286 – raised with reference to Art. 3 of the Constitution – in that it does not prohibit the expulsion of a non-EU citizen living *more uxorio* with an Italian citizen, is manifestly unfounded.

44. *Udine Tribunal, order 21 July 2000* 974

In case of an application for interim relief seeking to prevent a foreigner from demanding payment under a bank guarantee, the notion of the enforcement in Italy of the interim measure provided for by Art. 10 of Law 31 May 1995 No. 218 must not be interpreted in the sense that it is necessary to determine the place of performance of the negative obligation imposed by the judge through the interim measure; it must be construed in a broader sense, whereby it includes every situation in which the non-compliance with the interim measure negatively affects the sphere of interests of a person linked with Italy.

Under Art. 10 of Law No. 218 of 1995, Italian courts have jurisdiction in respect of an application for an injunction prohibiting to demand payment under a bank guarantee if Italian courts have jurisdiction on the merits of the case if the unlawful conduct upon which the application is based has effects in Italy as per Art. 5 No. 3 of the Brussels Convention, incorporated by reference by Art. 3, second paragraph of Law No. 218 of 1995.

45. *Florence Juvenile Court, decree 31 July 2000* 662

Under Arts. 4, 8, 9 and 10 of the Luxembourg European Convention of 25 May 1980 on the Recognition of Decisions concerning Custody of Children, the repatriation of a child must be ordered whenever, according to Art. 10 *litt.* b, there is no serious prejudice for him.

46. *Corte di Cassazione (plenary session), 3 August 2000 No. 530* 1019

Military training activities carried out by the United States of America on the Italian territory are exempt from Italian jurisdiction since, for the purposes of the rules on restricted immunity, regard must be had exclusively to the objective nature of the activity carried out by the foreign State – i.e. to the fact that such activity has been carried out in the exercise of sovereign powers – irrespective of the fact that it may harm or endanger the personal safety and health of Italian citizens.

47. *Corte di Cassazione (plenary session), 3 August 2000 No. 531* 423

Notwithstanding the repeal of Art. 37, second paragraph of the Code of Civil Procedure by virtue of Art. 73 of Law 31 May 1995 No. 218, the special proceeding for a ruling on jurisdiction before the Court of Cassation may still be promoted because Art. 41 of the Code of Civil Procedure incorporates such provision by reference, and because Art. 11 of Law 31 May 1995 No. 218 does not materially alter the existing rules on the ascertainment of the jurisdiction of Italian courts.

Italian courts have no jurisdiction over an employment relationship with the Multinational Force and Observers (M.F.O.) since Art. 8 of the headquarters agreement of 12 June 1982 between such organization and Italy confers to the former such immunity through a conventional rule which prevails upon the so called restricted immunity customary international law rule.

48. *Corte di Cassazione, 7 August 2000 No. 10360* 1023

If the Court of Appeal did not render any decision on the existence of the condition of reciprocity laid down in Art. 16 of the Preliminary Provisions to the

Civil Code, on which the Tribunal had already decided, the judgment of the Court of Appeal may not be challenged before the *Corte di Cassazione* for violation of law.

Though under Art. 17, fourth paragraph, of the Geneva Convention of 19 May 1956 on the International Carriage of Goods by Road the falling of the freight from a moving vehicle is included among the risks in respect of which a presumption applies which excludes the carrier's liability, it may be possible to prove that the fall and the resulting damages to the goods are due to the carrier's negligence.

49. *Corte di Cassazione, 8 September 2000 No. 11870* 428

Art. 4 of the Consolidated Law on immigration and the treatment of foreigners, enacted pursuant to Legislative Decree 25 July 1998 No. 286, allows entry in the territory of the State exclusively to foreigners having a valid passport or equivalent document, and requires that entry must be made through the frontier crossings that have been expressly established; the fact that the foreigner, before re-entering the country, has left it after having applied for a residence permit, is irrelevant because the granting of such permit, under Art. 5 of such Consolidated Law, is tied to the regular entry in the State as provided in its Art. 4.

Arts. 2 and 10, second paragraph of the Constitution, under which human rights are granted also to foreigners, are based upon the premise that the foreigner who invokes their protection has respected the laws of the State.

50. *Milan Tribunal, 11 September 2000* 666

Under Art. 5 No. 1 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction in respect of a summary injunction (*decreto ingiuntivo*) for the payment of invoices payable by the purchaser, a French company, to the seller, an Italian company, since the place for the payment of the price, determined pursuant to Art. 57 of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, is located in Italy at the creditor's domicile.

Although the Constitutional Court has declared that the question of constitutional legitimacy of Art. 633, last paragraph of the Code of Civil Procedure, raised with reference to Art. 10 of the Constitution, is manifestly unfounded, such provision, concerning the service abroad of a summary injunction (*decreto ingiuntivo*), is contrary to the principles of the European Community concerning the free movement of goods, services and capital and amounts to an unlawful discrimination under Art. 6 of the EC Treaty.

51. *Corte di Cassazione, 15 September 2000 No. 12181* 430

Under Arts. 27 and 28 of the Lugano Convention of 16 September 1988, its Art. 21 on *lis alibi pendens* does not come into consideration on issues of recognition and enforcement of foreign judgments.

By virtue of Art. 72 of Law 31 May 1995 No. 218, the rules on recognition and enforcement of foreign judgments are applicable to judgments rendered before the entry into force of its title IV if the *exequatur* proceeding has begun after such date.

Under Art. 27 No. 1 of the Lugano Convention of 16 September 1988, a Swiss judgment prohibiting a commercial activity deemed to amount to unfair competition is not contrary to public policy.

Under Art. 27 No. 1 of the Lugano Convention of 16 September 1988 a Swiss judgment ordering the payment of a «procedure indemnity» is not contrary to public policy.

52. *Corte di Cassazione, 19 September 2000 No. 12398* 980

Under Art. 64 *litt. a* of Law 31 May 1995 No. 218, a foreign judgement may be recognised in Italy if the judge who rendered it was competent according to the principles underlying the jurisdictional criteria set forth in the Italian legal system.

Art. 6, first paragraph, No. 2 of the Brussels Convention of 27 September 1968 (as previously Art. 4 No. 3 of the Code of Civil Procedure) exclusively refers to the so-called *garanzia propria*, i.e. the cases in which the main action and the ancillary action have the same *causa petendi*, and the cases in which an objective connection exists among the *causae petendi* of the respective claims.

Since the Hague Convention of 5 October 1961 abolishing the requirement of legalisation has substituted such legalisation with the *Apostille*, the ancillary requirement of a certified translation provided for by Art. 17, third paragraph of Law 4 January 1968 No. 15 has also ceased to be in force.

The production of a foreign judgment in respect of which the requirement of legalisation has been abolished is valid and effective, as far as the enforcement proceedings is concerned, even if it is not accompanied by a certified translation.

53. *Corte di Cassazione, 19 September 2000 No. 12411* 675

Under Art. 13, first paragraph *litt. d* of Law 5 February 1992 No. 91, an Italian national who has lost her *status civitatis* as a consequence of her marriage to a foreign husband, reacquires such *status* one year after she establishes her residence in Italy, unless she has expressly waived it.

54. *Corte di Cassazione, 13 October 2000 No. 13648* 987

Under Art. 832, first paragraph of the Code of Civil Procedure, an arbitration procedure contemplated by a contract a «significant or substantial» part of whose obligations (and not necessarily the preponderant or main part of them) must be performed abroad can be characterised as an international arbitration. Whether certain obligations may to be considered a significant or substantial part of the contract in which the arbitration clause is contained must be inferred from the economic and social function of the contract itself and from the common will of the parties.

55. *Constitutional Court, order 18 October 2000 No. 428* 645

Under Art. 3, first paragraph of Law 31 May 1995 No. 218, as well as under the second paragraph of the same Art. 3, Italian courts have jurisdiction over an action for damages arising from the delay in the redelivery of goods, brought against a foreign marine carrier that has a shipping agent in Italy empowered to appear in court on its behalf pursuant to Arts. 77 of the Code of Civil Procedure and 287 of the Navigation Code, since the obligation in question was supposed to be, and has been, performed in Italy by the defendant, who was not domiciled in a Contracting State of the 1968 Brussels Convention.

There is no inequality of treatment between the clauses derogating from the territorial competence of the courts (to which Arts. 1341, second paragraph and 1342, second paragraph, apply) and the clauses derogating from Italian jurisdiction, in respect of which a specific approval in writing is not required, since, while in the first case the need of protecting the weaker party must prevail, in the second case the consideration of international needs comes into play, which the legislature, in its discretion, may well consider prevailing.

The issue of constitutional legitimacy of the combined provisions of Arts. 1341, second paragraph, and 1342, second paragraph, of the Civil Code and 4, second paragraph, of Law 31 May 1995 No. 218 – raised with reference to Arts. 3 and 24 of the Constitution – is manifestly unfounded.

56. *Corte di Cassazione (plenary session), 27 October 2000 No. 1141* 678

Under Art. 5 No. 3 of the Lugano Convention of 16 September 1988, which on this point is identical to the corresponding provision of the Brussels Convention of 27 September 1968, Italian courts have no jurisdiction in respect of a claim for damages arising from a libel if the publisher is not established in Italy and the publication is not distributed there.

57. *Corte di Cassazione, 11 November 2000 No. 14662* 684

Under Art. 31 of the preliminary provisions to the Civil Code, a foreign law – chosen by the parties pursuant to Art. 25, first paragraph of the preliminary provisions to the Civil Code to govern a contract of employment to be performed abroad – which does not provide for any severance payment to the employee is not conflicting with the public policy, which, according to its most recent interpretation, is formed by principles that are generally accepted in the *comitas gentium* and can be inferred from international conventions.

58. *Corte di Cassazione (plenary session), 15 November 2000 No. 1179* 689

The action brought by an Italian company in order to assert the liability of certain German companies and individuals arising from a conduct referable to a contract entered into by the parties is not included in the notion of «delict or quasi-delict» laid down in Art. 5 No. 3 of the Brussels Convention of 27 September 1968, since such conduct can not be characterised as an intentional offence committed by third parties. It follows that Italian courts have no jurisdiction thereon.

59. *Corte di Cassazione, 16 November 2000 No. 14860* 693

In respect of a non-administered arbitration, the reference *per relationem imperfectam* to an arbitration clause contained in the general conditions of a standard form contract (concerning the supply of hides) may qualify as an enforceable arbitration agreement if the parties had knowledge of such clause; art. II of the New York Convention of 10 June 1958 does not foreclose this conclusion.

The failure to specify the place of arbitration, which can be chosen at a later moment by the arbitrators and which can be determined through the subsidiary criterion set forth in Art. 810 of the Code of Civil Procedure, does not render invalid or unenforceable a clause providing for non-administered arbitration.

60. *Genoa Tribunal, 20 November 2000* 698

Under Art. 72 of Law 31 May 1995 No. 218, the notion of «terminated situations» refers to situations that were subject to the regulatory framework of the repealed conflict of laws provisions, which determined the formation and consolidation of the legitimate expectations of the parties and, accordingly, does not only refer to those that are finally settled in judicial proceedings, but also those that, anyhow, have already entirely produced their effects.

61. *Corte di Cassazione, 22 November 2000 No. 15062* 703

The retroactive effect of the Constitutional Court judgments on nationality No. 87 of 1975 and No. 30 of 1983 is not subject to the general limit of terminated situations since those judgments affect the legal regulation of the *status civitatis*, which, *per se*, is always actionable, at least until a final declaratory judgement, which is apt to foreclose the said retroactive effect, has been rendered.

By virtue of the constitutional judgments No. 87 of 1975 and No. 30 of 1983, from the date of entry into force of the Constitution, the Italian nationality must be recognised also to the women who lost it, under Art. 10, third paragraph

of Law 13 June 1912 No. 555, for marrying a foreigner before that date, and to the children of an Italian mother who did not acquire it because they were born before 1 January 1948.

62. *Corte di Cassazione, 22 November 2000 No. 15078* 716

The qualification as a dentist, obtained in Syria by a Syrian citizen, must be recognised in Italy since the agreement between Italy and the United Arab Republic of 30 January-28 May 1958, to which Syria declared to succeed with note dated 7 June 1966, provides for the application of the principle of reciprocity to the exercise of the medical profession, and there is no doubt – notwithstanding the opposite opinion of the Ministry of Health – that dentistry falls within the boundaries of the medical profession.

63. *Corte di Cassazione (plenary session), 23 November 2000 No. 1200* 994

Under Art. 11 of Law 31 May 1995 No. 218, a foreign defendant can not contest the jurisdiction of Italian courts if he has accepted it both expressly, through a clause in the contract, and tacitly, for he only raised such objection in the proceedings after having lodged the statement of defence.

64. *Corte di Cassazione (plenary session), 27 November 2000 No. 1209* 996

Italian courts have jurisdiction over the actions brought by the contractor, an Italian company, against the principal, a German company, the engineer in charge of supervising the works, a German national resident in Germany, and the director of the German company, an Italian national resident in Italy, seeking damages arising from the fraudulent conduct concurrently held by the defendants, since, under Art. 6 No. 1 of the Brussels Convention of 1968, in proceedings with a plurality of defendants, all the defendants may be sued in the courts of the place where any one of them has its domicile.

65. *Corte di Cassazione, 29 November 2000 No. 15295* 722

The Law 19 January 1994 No. 64, implementing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, lays down, in its Art. 7, an *in camera* proceeding for the review of the applications for the return of the child which is simplified and characterised by very short time limits.

Under Art. 7, third paragraph of Law No. 64 of 1994, the Juvenile Court must reach a decision on the return of the child within thirty days from the receipt of the application for the return (transposed into the public prosecutor's petition), and the extreme shortness of the time for appearance assigned to the other parent is wholly irrelevant.

66. *Corte di Cassazione (plenary session), 22 December 2000 No. 1328* 1003

Under Art. II, second paragraph of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, in a case in which the carrier contests the jurisdiction vis-à-vis the endorsee of a bill of lading on the ground that the dispute must be referred to foreign arbitration, the arbitration clause is enforceable only if it is specifically referred to in such bill of lading; a general reference in said bill of lading to a different document containing such clause does not suffice.

67. *Corte di Cassazione, 3 January 2001 No. 52* 1005

The issue of constitutional legitimacy of Art. 13*bis* of the Consolidated Law on Immigration and on the Condition of Foreigners, approved with Legislative Decree 25 July 1998 No. 286, in that it does not permit an appeal on the merits against the decision of the judge of first instance on the challenge brought

against the expulsion order, is manifestly unfounded since the ordinary second instance appeal on the merits, contrary to the appeal on questions of law, is not dictated by provisions of the Constitution.

The issue of constitutional legitimacy of Art. 2, sixth paragraph of Legislative Decree No. 286 of 1998, in that it permits a concise translation of the decisions concerning the entry and the expulsion of foreigners, is manifestly unfounded, since the subsequent judicial proceedings available to foreigners adequately guarantee their defence, and there is no conflict with the 1950 European Convention on Human Rights.

The issue of constitutional legitimacy of Art. 13 of Legislative Decree No. 286 of 1998, whereby the expulsion order must be appealed before the ordinary courts within five days, is manifestly unfounded, since the right of defence is not compromised because foreigners may promote the appeal even personally, and may, thereafter, obtain legal aid or otherwise be assisted by a public defender.

68. *Corte di Cassazione, 10 January 2001 No. 283* 726

A foreign decision (in the present case, a Hong Kong judgment) that placed into judicial liquidation a company having its registered offices in that country, and that has not been recognised pursuant to Art. 797 of the Code of Civil Procedure, can not have any effect in Italy. It follows that the petition filed by the judicial receiver claiming the invalidity of a deferment of credit is inadmissible for lack of *locus standi.*

The provisions of Law 31 May 1995 No. 218 on the recognition of foreign judgments do not apply to proceedings commenced before that Law entered into force (31 December 1996).

69. *Milan Court of Appeal, 23 January 2001* 1008

An action brought by a trustee in bankruptcy seeking the performance of an obligation arisen before the declaration of bankruptcy falls within the scope of application of the Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters of 16 September 1988.

Under Art. 5 No. 1 of the Lugano Convention of 16 September 1988, Italian courts have jurisdiction over a dispute for the payment of the price of an international sale of goods if the seller has its place of business in Italy, since under Art. 57, first paragraph of the Vienna Convention of 11 April 1980 on the International Sale of Goods, unless otherwise agreed, the obligation to pay the price must be performed at the place of business of the seller.

70. *Corte di Cassazione (plenary session), 29 January 2001 No. 37* 440

The action promoting the special proceeding for a ruling on jurisdiction before the Court of Cassation in the course of a case brought before an Italian court by a Belgian company against an Italian company is inadmissible if the defendant has raised a *lis alibi pendens* objection in relation to a claim brought before a Belgian court, and the Italian court has omitted to ascertain the merits of the objection and the question as to whether it is the court second seized for the purposes of Art. 21 of the Brussels Convention of 27 September 1968; such action, in fact, is not available for the ascertainment of the *lis alibi pendens* objection but against the decision through which the court has stayed the proceedings.

71. *Corte di Cassazione, 7 February 2001 No. 1732* 443

According to Art. 840, third paragraph of the Code of Civil Procedure, a foreign arbitration award whose proceedings has been commenced after the commencement of another arbitration procedure based on the same arbitration clause may not be recognized if the agreement between the parties

clarifies that they intended to establish one, and only one, arbitration proceedings.

72. *Corte di Cassazione (plenary session), 8 February 2001 No. 47* 1014

Under Art. 32 of Law 31 May 1995 No. 218, Italian courts have jurisdiction over a divorce action brought by an Italian spouse against the foreign spouse by virtue both of the criterion of the Italian citizenship of the plaintiff and of the criterion of the celebration of the marriage in Italy.

The fact that a provision of Italian private international law renders a foreign law applicable to the case does not also confer jurisdiction to the courts of such foreign State.

73. *Constitutional Court, 22 March 2001 No. 73* 951

The openness of the Italian legal system towards the rules of international customary law and of international treaty law is subject to the limits arising from the Constitution, even when the Constitution itself confers to such rules a specific legal effect.

The provisions of international treaty law that lack a specific basis in the Constitution have in the Italian legal system the effect conferred to them by the act whereby they are implemented.

The European Convention on the Transfer of the Sentenced Persons, signed in Strasbourg on 21 March 1983, in the light of its Arts. 9 and 10, makes the enforcement of the criminal sentence subject to the applicable provisions of the administering State, by subjecting it to the specific measures provided for by such State.

The issue of constitutional legitimacy of Art. 2 of Law 25 July 1988 No. 334, implementing the European Convention of 1983 – raised with reference to Arts. 2, 3, first paragraph, 25, second paragraph, 27, third paragraph and 32, first paragraph of the Constitution – is unfounded.

74. *Central Commission for practising health professionals of the Ministry of Health, 2 May 2001* 716

As stated by the *Corte di Cassazione* in the decision 22 November 2000 No. 15078, the qualification as a dentist, obtained in Syria by a Syrian citizen, must be recognised in Italy since the agreement between Italy and the United Arab Republic of 30 January-28 May 1958, to which Syria declared to succeed with note dated 7 June 1966, provides for the application of the principle of reciprocity to the exercise of the medical profession.

75. *Milan Criminal Tribunal, 30 May 2001* 733

A person standing accused in criminal proceedings, who has the title of German *Rechtsanwalt* and has exercised in Italy the profession of *avvocato* without having obtained the recognition of such title in Italy, must be discharged on the grounds that the no crime has been committed. In fact, Legislative Decree No. 115/92 on the admission to the exercise of the profession of *avvocato* by the corresponding professionals of other EC Member States – which makes the recognition in Italy of the title obtained in another State subject to an exam aimed at ascertaining the professional knowledge and skills of the individual – is in conflict with the EC Directive No. 89/48 and, therefore, must not be applied, since the principle whereby criminal prosecution is mandatory does not apply to cases to which EC law is directly applicable. *EUROPEAN COMMUNITIES CASES*

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1. *Court of Justice, 11 November 1999, case C-179/98* 766

A member of the family of a migrant worker of Moroccan nationality, where that worker has acquired the nationality of his host Member State before the date on which the said member of his family began to live with him there and applied for a social security benefit under the legislation of that State, cannot rely on Article 41(1) of the Co-operation Agreement between the European Economic Community and the Kingdom of Morocco signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978, as a ground for invoking that worker's Moroccan nationality for the purposes of obtaining the benefit of the principle of equal treatment in the field of social security laid down in that provision.

Such a member of the family of a Moroccan migrant worker, where that worker also has the nationality of the host Member State, could invoke his Moroccan nationality for the purposes of the application of Article 41(1) of the Agreement, solely on the basis of the law of the Member State concerned, which it is for the national court alone, however, to interpret and apply in the proceedings before it.

The term «members of the family», within the meaning of Article 41(1) of the Agreement, of a Moroccan migrant worker extends to relatives in the ascending line of that worker and of his spouse who live with him in the host Member State.

2. *Court of Justice, order of the President 26 November 1999, case C-192/98* 1041

The question whether a body may refer a question to the Court falls to be determined on the basis of criteria relating both to the constitution of that body and to its function. Thus, a national body may be classified as 'a court or

tribunal' within the meaning of Article 177 of the Treaty when it is performing judicial functions, but when exercising other functions – of an administrative nature, for example – it cannot be recognised as such.

It follows that in order to establish whether a national body, entrusted by law with different categories of function, is to be regarded as a court or tribunal within the meaning of Article 177 of the Treaty, it is necessary to determine in what specific capacity it is acting within the particular legal context in which it seeks a ruling from the Court. For the purposes of that analysis, no relevance is to be attributed to the fact that, when otherwise configured, the body concerned falls to be classified as a court or tribunal for the purposes of Article 177 of the Treaty (even the same entity whose status is in issue, when it is exercising powers other than those in the context of which the reference was made).

The Italian Corte dei Conti (Court of Auditors) is not performing a judicial function – and cannot therefore make a reference to the Court of Justice – when, in the context in which reference is made, it is exercising its powers of ex post facto review which is an administrative role consisting in the evaluation and verification of the results of administrative action.

3. *Court of Justice, 10 February 2000, case C-340/97* 770

A Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey.

Article 14(1) of Decision No 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State.

4. *Court of Justice, 11 April 2000, case C-356/98** 776

Legislation of a Member State which requires spouses of migrant workers who are nationals of other Member States to have resided in the territory of that Member State for four years before they become entitled to apply for indefinite leave to remain and to have their applications considered, but which requires residence of only 12 months for the spouses of persons who are present and settled in that territory and are not subject to any restriction on the period for which they may remain there, does not constitute discrimination contrary to Article 7(2) of Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers within the Community.

* The case number published in the text must be read «C-356/98» instead of «C-357/98».

5. *Court of Justice, 25 May 2000, case C-424/98* 476

By limiting the means of proof that may be relied upon, and in particular by providing that certain documents must be issued or certified by the authority of a Member State, and by, first, requiring students who are nationals of other Member States and who are seeking recognition of their and their families' right of residence in Italy pursuant to Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students to guarantee to the Italian authorities that they have resources of a specific amount; secondly, as regards the means to be used for that purpose, by not clearly leaving such students the choice between a declaration and such alternative means as are at least equivalent; and, finally, by not allowing the use of a declaration where a student is accompanied by members of his family, the Italian Republic has failed to fulfil its obligations under Council Directive 90/364/EEC of 28 June 1990 on the right of residence, Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, and Directive 93/96.

6. *Court of Justice, 6 June 2000, case C-281/98* 479

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.

7. *Court of Justice, 4 July 2000, case C-424/97* 481

Community law does not preclude a public-law body, in addition to the Member State itself, from being liable to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law.

In order to determine whether there is a serious breach of Community law, within the meaning of the case-law of the Court, account must be taken of the extent of the discretion enjoyed by the Member State concerned. The existence and the scope of that discretion must be determined by reference to Community law and not by reference to national law.

The competent authorities of a Member State may make the appointment, as a social security scheme dental practitioner, of a national of another Member State who is established in the first Member State and authorised to practise there but has none of the qualifications mentioned in Article 3 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, conditional upon his having the linguistic knowledge necessary for the exercise of his profession in the Member State of establishment.

8. *Court of Justice, 13 July 2000, case C-412/98* 458

Title II of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, is in principle applicable where the defendant has

its domicile or seat in a Contracting State, even if the plaintiff is domiciled in a non-member country. It would be otherwise only in exceptional cases where an express provision of that convention provides that the application of the rule of jurisdiction which it sets out is dependent on the plaintiff's domicile being in a Contracting State.

The rules of special jurisdiction in matters relating to insurance set out in Articles 7 to 12 a of that convention do not cover disputes between a reinsurer and a reinsured in connection with a reinsurance contract.

9. *Court of Justice, 13 July 2000, case C-456/98* 486

Council Directive 86/653/EEC of 18 December 1986 on the co-ordination of the laws of the Member States relating to self-employed commercial agents precludes national legislation which makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register. The national court is bound, when applying provisions of domestic law predating or postdating the said Directive, to interpret those provisions, so far as possible, in the light of the wording and purpose of the Directive, so that those provisions are applied in a manner consistent with the result pursued by the Directive.

10. *Court of Justice, 14 September 2000, case C-238/98* 488

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) is to be interpreted as meaning that where, in a situation not regulated by a directive on mutual recognition of diplomas, a Community national applies for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, the competent authorities of the Member State concerned must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules.

11. *Court of Justice, 26 September 2000, case C-443/98* 468

A national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189.

12. *Court of Justice, 9 November 2000, case C-357/98* 1044

Articles 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health must be interpreted as meaning that a decision adopted by the authorities of a Member State refusing a Community national, not in possession of a residence permit, leave to enter its territory cannot be classified as a «decision concerning entry» within the meaning of Article 8 thereof in a case such as that at issue in the main proceedings where the person concerned was temporarily admitted to the territory of that Member State, pending a decision following the enquiries required for the investigation of her case, and therefore

resided for almost seven months in that territory before that decision was notified to her, since such a national must be entitled to the procedural safeguards referred to in Article 9 of Directive 64/221.

13. *Court of Justice, 9 November 2000, case C-381/98* 167

Articles 17 and 18 of Council Directive 86/653/EEC of 18 December 1986 on the co-ordination of the laws of the Member States relating to self-employed commercial agents, which guarantee certain rights to commercial agents after termination of agency contracts, must be applied where the commercial agent carried on his activity in a Member State although the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country.

14. *Court of Justice, 14 December 2000, joint cases C-300/98 and C-392/98* 171

Where the judicial authorities of the Member States are called upon to order provisional measures for the protection of intellectual property rights falling within the scope of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement), the Court of Justice has jurisdiction to interpret Article 50 of the TRIPs Agreement.

In a field to which the TRIPs Agreement applies and in respect of which the Community has already legislated, the judicial authorities of the Member States are required by virtue of Community law, when called upon to apply national rules with a view to ordering provisional measures for the protection of rights falling within such a field, to do so as far as possible in the light of the wording and purpose of Article 50 of the TRIPs Agreement.

In a field in which the Community has not yet legislated and which consequently falls within the competence of the Member States, the protection of intellectual property rights, and measures adopted for that purpose by the judicial authorities, do not fall within the scope of Community law. Accordingly, Community law neither requires nor forbids that the legal order of a Member State should accord to individuals the right to rely directly on the rule laid down by Article 50(6) of the TRIPs Agreement or that it should oblige the courts to apply that rule of their own motion.

Article 50 of the TRIPs Agreement leaves to the Contracting Parties, within the framework of their own legal systems, the task of specifying whether the right to sue under general provisions of national law concerning wrongful acts, in particular unlawful competition, in order to protect an industrial design against copying is to be classified as an 'intellectual property right within the meaning of Article 50(1) of the TRIPs Agreement.

15. *Court of Justice, 14 December 2000, case C-344/98* 181

Where a national court is ruling on an agreement or practice the compatibility of which with Articles 85(1) and 86 of the EC Treaty (now Articles 81(1) EC and Article 82 EC) is already the subject of a Commission decision, it cannot take a decision running counter to that of the Commission, even if the latter's decision conflicts with a decision given by a national court of first instance. If the addressee of the Commission decision has, within the period prescribed in the fifth paragraph of Article 173 of the EC Treaty (now, after amendment, the fifth paragraph of Article 230 EC), brought an action for annulment of that decision, it is for the national court to decide whether to stay proceedings pending final judgment in that action for annulment or in order to refer a question to the Court for a preliminary ruling.

16. *Court of First Instance, order 9 January 2001, case T-149/00* 1047

Under the combined provisions of Article 238 EC and Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities, as amended, the Court of First Instance has jurisdiction to give judgment at first instance in disputes relating to contractual matters brought before it by natural or legal persons only pursuant to an arbitration clause.

In the absence of an arbitration clause granting it jurisdiction, the Court of First Instance cannot adjudicate, in an action for annulment, on what is in fact a claim concerning the performance of a contract concluded by the Commission; to do so would be to extend its jurisdiction beyond the limits placed by Article 240 EC on the disputes of which it may take cognisance, since that article specifically gives national courts or tribunals ordinary jurisdiction over disputes to which the Community is a party.

17. *Court of Justice, 11 January 2001, case C-1/99* 748

Where, in regulating internal situations, domestic legislation adopts the same solutions as those adopted in Community law so as to provide for one single procedure in comparable situations, it is clearly in the Community interest that, in order to forestall future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply.

Article 243 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is to be interpreted as meaning that it is for national law to determine whether a trader must initially lodge an appeal before the customs authority or whether he may appeal directly to the judicial authority.

Article 244 of Regulation No 2913/92 is to be interpreted as meaning that it confers the power to suspend implementation of a contested decision exclusively on the customs authorities. However, that provision does not limit the power of the judicial authorities seised of a dispute pursuant to Article 243 of that regulation to order such suspension in order to comply with their obligation to ensure the full effectiveness of Community law.

18. *Court of Justice, 20 February 2001, case C-192/99* 191

In order to determine whether a person is a national of the United Kingdom of Great Britain and Northern Ireland for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term «nationals» which replaced the 1972 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term «nationals», annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities.

19. *Court of Justice, 8 March 2001, joint cases C-397/98 and C-410/98* 491

It is contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC) for the tax legislation of a Member State, such as that set forth by the English Income and Corporation Taxes Act 1988, to afford companies resident in that Member State the possibility of benefiting from a taxation regime allowing them to pay dividends to their parent company without having to pay advance corporation tax where their parent company is also resident in

that Member State but to deny them that possibility where their parent company has its seat in another Member State.

Where a subsidiary resident in one Member State has been obliged to pay advance corporation tax in respect of dividends paid to its parent company having its seat in another Member State even though, in similar circumstances, the subsidiaries of parent companies resident in the first Member State were entitled to opt for a taxation regime that allowed them to avoid that obligation, Article 52 of the Treaty requires that resident subsidiaries and their non-resident parent companies should have an effective legal remedy in order to obtain reimbursement or reparation of the financial loss which they have sustained and from which the authorities of the Member State concerned have benefited as a result of the advance payment of tax by the subsidiaries, and that said remedy must not render practically impossible or excessively difficult the exercise of rights conferred by Community law.

20. *Court of Justice, 15 March 2001, case C-165/98* 755

Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) do not preclude a Member State from requiring an undertaking established in another Member State which provides services in the territory of the first State to pay its workers the minimum remuneration fixed by the national rules of that State; the application of such rules might, however, prove to be disproportionate where the workers involved are employees of an undertaking established in a frontier region who are required to carry out, on a part-time basis and for brief periods, a part of their work in the territory of one, or even several, Member States other than that in which the undertaking is established. It is consequently for the competent authorities of the host Member State to establish whether, and if so to what extent, application of national rules imposing a minimum wage on such an undertaking is necessary and proportionate in order to ensure the protection of the workers concerned.

21. *Court of Justice, order 5 April 2001, case C-518/99* 762

An action for rescission of a contract for the sale of land and consequential damages is not within the scope of the rules on exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property under Article 16(1) of the Convention of 27 September 1968 between the Member States of the European Economic Community on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the accession of the Hellenic Republic.

22. *Court of Justice, order 2 May 2001, case C-307/99* 1052

Articles I and XIII of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the Agreement establishing the World Trade Organisation, approved on behalf of the European Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994, are not such as to create rights which individuals may rely on directly before a national court in order to oppose the application of the second subparagraph of Article 18(1) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas, as amended by Council Regulation (EC) No 1637/98 of 20 July 1998.

23. *Court of Justice, order 29 May 2001, case C-1/00 SA* 1054

The request for the authorization to enforce at the Commission's premises a distraint of an amount of money due by the European Community to the destrainee must be rejected in case it would imply a change of destination of funds expressly assigned by the Community to the development co-operation policy; the satisfaction of different specific interests, though legitimate, falls outside such policy.

24. *Court of Justice, order of the President 30 May 2001, case C-334/97 R EX* 1056

Article 244 EC states that the judgments of the Court of Justice are to be enforceable under the conditions laid down in Article 256 EC; the second paragraph of Article 256 EC provides that enforcement is to be governed by the rules of civil procedure in force in the State in the territory of which it is carried out and the last paragraph of Article 256 EC specifies that enforcement may be suspended only by a decision of the Court of Justice, but that the courts of the country concerned are to have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

The Commission is under no obligation, for the purpose of ensuring the enforcement of a judgment delivered under an arbitration clause and related to the fulfilment of obligations of a contractual nature binding the Commission and a territorial unit in accordance with Italian law, to follow the procedure laid down in Article 228 EC which is applicable in the event of non-compliance with a judgment by which the Court of Justice has found that a Member State has failed to fulfil an obligation under the Treaty.

25. *Court of Justice, 14 June 2001, case C-191/99* 1027

Articles 2(c) and (d), final indent, and 3 of the Second Council Directive (88/357/EEC) of 22 June 1988 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC permit a Member State to levy insurance tax on a legal person established in another Member State in respect of premiums which that legal person has paid to an insurer, also established in other Member State, to cover the business risks of its subsidiary or sub-subsidiary established in the Member State making the levy. It makes no difference if the legal person which paid the premiums and the legal person whose business risks are covered are two companies in the same group linked by a relationship other than that of parent and subsidiary company.

In interpreting «policy-holder» or «Member State in which the risk is situated» for the purposes of Article 2(d), final indent, of Directive 88/357, the way in which the premium relating to the risk insured is invoiced or paid within a group of companies is immaterial.

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