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1. *Rome Tribunal, 19 March 1994* 136

Pursuant to Art. 8 No. 1 of Law 13 June 1912 No. 555 on Nationality, the Italian national of Jewish religion has not lost the Italian nationality, not having voluntarily acquired a foreign nationality, in case he was forced to emigrate in Palestine to escape from racial persecutions, to acquire

- Palestinian nationality to avoid being considered national of an enemy country, and, finally, to acquire Israeli nationality at the end of World War II.
2. *Lombardia Regional Administrative Tribunal, 18 April 1994* 285
 Art. 2 No. 2 of Law 21 April 1983 No. 123 on Nationality provides that the foreign spouse of an Italian national sentenced by an Italian court to a term of imprisonment of over two years for any crime other than a political crime is prevented from acquiring Italian nationality. As such preclusion is the direct effect of the sentence – set forth by Art. 77 of the Criminal Code – it is necessary to evaluate the sanction imposed for each individual crime: thus the various penalties imposed may not be cumulated.
3. *Milan Court of Appeal, 28 April 1994* 90
 A judgment creditor rendered in Switzerland on 19 February 1992 may be enforced in Italy provided that the requirements set forth by the 1988 Lugano Convention, substituting the bilateral Convention of 3 January 1933, are fulfilled.
4. *Rome Tribunal, 14 June 1994* 349
 Art. 3 No. 2 litt. e of Law 1 December 1970 No. 898 does not apply if the Italian spouse has obtained a divorce abroad against the foreign spouse.
5. *Milan Court of Appeal, 19 July 1994* 91
 The decree of the Court of Appeal enforcing in Italy a Swiss judgment pursuant to the 1988 Lugano Convention must be revoked if it was issued and filed prior to the entry into force of the Convention.
 The Court of Appeal before which an appeal against the decision authorizing enforcement of a foreign judgment is lodged pursuant to the Lugano Convention (not applicable in the circumstances) is competent to enforce the said judgment in accordance with the Code of Civil Procedure. In fact, the respect of rights of defence of the parties is guaranteed by the proceedings for the appeal against enforcement.
 Pursuant to Art. 2 No. 2 of the Italian-Swiss Convention of 3 January 1933 on Recognition and Enforcement of Judgments, the court that issued the decision to be enforced was competent if the defendant accepted such competence with an express declaration concerning specific disputes unless the parties are domiciled in the State in which enforcement is sought.
 Following Ministerial Decree of 27 April 1990, a foreign judgment creditor for breach of contract is not contrary to public policy even though the said contract was contrary to Italian currency regulations at the time it was concluded.
6. *Constitutional Court, order 20 July 1994, No. 323* 138
 The issue of constitutional legitimacy of Art. 669-terdecies, first paragraph of the Code of Civil Procedure, with reference to Arts. 3 and 24 of the Constitution, is manifestly inadmissible since this provision was declared unconstitutional with decision No. 253 of 1994.
7. *Rome Tribunal, order 22 July 1994* 139
 Law 31 October 1988 No. 471 permitting the enrolment in the Dentists' Register of the graduates in medicine, admitted to practice but

- not specialized, is contrary to EC Directives 25 July 1978 No. 686 and No. 687, regardless of the term to enrol, and therefore may not be applied.
8. *Milan Court of Appeal, 26 July 1994* 140
- Pursuant to Art. V No. 1 litt. b of the 1958 New York Convention, an arbitral award rendered in Bulgaria may not be enforced in Italy unless it is proved that the party against whom the award is invoked was duly informed of the appointment of the arbitrator or of the arbitral proceedings. To this end, the belated submission of a letter with which the secretary of the arbitral panel informs the company of the date of the hearing is not sufficient.
9. *Corte di Cassazione, 17 August 1994 No. 7423* 350
- The non-authorized incorporation of a foreign company abroad by an Italian citizen is different from creating the appearance that goods or assets located in Italy belong to a foreign entity: the former may be characterized as a breach of administrative law, sanctioned by Art. 5, first paragraph, of Decree 6 June 1956 No. 476 now repealed, and may concur with the latter which is provided for and punished as a crime by Art. 1 *bis* of the same Decree.
10. *Corte di Cassazione, 1 September 1994 No. 7609* 351
- Notwithstanding the fact that Art. 7 of the Convention between Italy and France against double taxation of 19 October 1958 provides that the profits resulting from the management of an air carrier from one Contracting State to the other is not liable to taxes, a French air carrier having a permanent establishment in Italy is in principle subject to taxation and therefore is obliged to present the income tax declaration even if it is negative.
11. *Genoa Criminal Tribunal, order 9 September 1994* 141
- According to Art. 13, first paragraph, of Law 28 February 1990 No. 39, the indictment of the crime provided for by Art. 7 *bis* of said law may not be applied also to EC nationals since the rules regarding their expulsion are more favourable than those set forth for non-EC nationals.
12. *Corte di Cassazione, 15 October 1994 No. 8419* 142
- In matters of maintenance obligations, the Hague Convention of 15 April 1958 - which was not modified in this regard by the 1973 Convention - permits the independent enforcement of any foreign decision condemning to the payment of maintenance, even if it is other than a judgment, regardless from any ascertainment on the filiation. A relitigation of the merit is admissible only in case of breach of due process.
13. *Corte di Cassazione (plenary session), 10 November 1994 No. 9350* 144
- A dispute concerning the belated or timely exercise of the option rights between the contracting parties has contractual nature and therefore is subject to Art. 5 No. 1 of the 1968 Brussels Convention.
14. *Corte di Cassazione, 10 November 1994 No. 9384* 145
- The prohibition set forth by Art. 114, first paragraph, of the consolidated laws on private insurance (Presidential decree 13 February 1959 No. 449) concerning mediation for the underwriting of risks abroad

- includes the intermediation carried out both on a professional and on an occasional basis, as well as the individual mediation: in fact, the second paragraph of said Art. 114 implies that the crime is committed also through a mediation having as object a single contract.
15. *Corte di Cassazione (plenary session), 11 November 1994 No. 9417* 352
 Italian courts are competent to hear an action relating to the bankruptcy of a company having its seat in Italy at the time of the filing for bankruptcy. Pursuant to Art. 5 of the Code of Civil Procedure, the subsequent transfer of the seat abroad is irrelevant.
16. *Corte di Cassazione (plenary session), 18 November 1994 No. 9752* 97
 Pursuant to Art. 5 (1) of the 1968 Brussels Convention, the place of performance of the obligation in question is to be determined in accordance with private international law of the seized judge.
 The place of performance of the obligation of a commercial agent to return the amounts cashed from the clients and not paid to the principal is the domicile of the creditor, i.e. the principal, in accordance with Art. 1182, third paragraph, of the Civil Code.
17. *Corte di Cassazione, 30 November 1994 No. 10238* 353
 Pursuant to Art. 31 of the Preliminary Provisions to the Civil Code, the public policy principle of favour for the worker operates with respect to foreign law regardless of the connecting factor adopted in accordance with Art. 25 of same Provisions.
18. *Puglia Regional Administrative Tribunal, 6 December 1994 No. 484* 354
 The mere attempt to introduce goods in Serbia territorial waters represents *per se* a breach of the embargo against the Federal Republic of Yugoslavia, as per Decree 15 May 1993 No. 144, ratified with amendments by Law 16 July 1993 No. 230, with reference to EC Regulation No. 990 of 26 April 1993 and ECCS Decision No. 235 of 26 July 1993, as well as Security Council Resolution No. 820 of 17 April 1993.
19. *Corte di Cassazione (plenary session), 13 December 1994 No. 10620* 577
 According to Art. 17 of the 1968 Brussels Convention, a contractual clause whereby the parties agreed to submit all dispute to the courts of the seat of the plaintiff is valid.
20. *Rome Tribunal, 21 December 1994* 578
 The action concerning the loss of Italian nationality is not time-barred. Pursuant to Art. 8 No. 1 of Law 13 June 1912 No. 555 on Nationality (which applies also after the entry into force of Law 5 February 1992 No. 91), the Italian citizen who voluntarily acquires a foreign nationality and establishes his residence abroad loses Italian nationality.
21. *Corte di Cassazione, 30 December 1994 No. 11297* 99
 In order to enforce a right on the basis of a situation declared by a foreign judgment it is not necessary to ask for the enforcement of the said judgment if the action does not aim to the recognition of such situation in Italy.
 It is not necessary to enforce in Italy, even through a «*delibazione incidentale*» (Art. 799 of the Code of Civil Procedure), a Swiss judgment

declaring the separation of Italian spouses in order to obtain from Italian courts a divorce judgment.

22. *Corte di Cassazione, 20 January 1995 No. 637* 102

In order to enforce in Italy a foreign arbitral award rendered in accordance with the 1958 New York Convention, Art. V of the same is to be applied and not Art. II, which regulates the exclusion of jurisdiction of the courts of the Contracting States and the conditions for the jurisdiction of the foreign arbitrator.

According to Art. V of the 1958 New York Convention, the enforcement of the foreign arbitral award is mandatory provided that (i) the Italian court does not ascertain *ex officio* that the dispute was not arbitrable or the award is contrary to public policy, or that (ii) the party interested in contesting the enforcement does not give evidence of the invalidity of the arbitration clause, according to the law of the State in which the award was rendered, or of the existence of impediments against the recognition or enforcement.

In the proceedings for the enforcement of an arbitral award pursuant to the 1958 New York Convention, the party against whom enforcement is sought has the burden of proving that it has not been duly informed of the appointment of the arbitrators and the arbitration proceedings or that it was unable to arrange for his defence.

23. *Naples Tribunal, decree 12 January 1995* 580

Pursuant to Art. 16 of the Preliminary Provisions to the Civil Code, the incorporation of a company by foreigners as well as the participation of foreign natural or legal persons to an Italian company are subject to reciprocity.

24. *Corte di Cassazione (plenary session), 25 January 1995 No. 892* 107

Italian courts are not competent to hear an action relating to an international sale of movable goods brought by the Italian buyer against the Greek seller, non-domiciled nor having an agent in Italy, aimed at recovering an amount of money as reduction of the purchase price as (i) the Greek company has not submitted to the Italian jurisdiction, (ii) the contract was stipulated in Greece, and thus the conditions set forth by Art. 4 Nos. 1 and 2 of the Italian Code of Civil Procedure are not fulfilled, and (iii) Art. 5 No. 1 of the 1968 Brussels Convention is not applicable since the place of performance of the obligation in question – as per Art. 19 of the 1964 Hague Convention and, lacking a contrary stipulation of the parties, Art. 1510, second paragraph, of the Civil Code – coincides with the place of delivery of the goods to the carrier, which took place in Greece.

25. *Corte di Cassazione (plenary session), 27 January 1995 No. 1000* 109

As regards the acquisition of Italian nationality as a result of marriage, the right of the foreign spouse is to be considered a mere interest (*interesse legittimo*) only with respect to the discretionary power of the Administration to evaluate the existence of security reasons (Art. 3, first paragraph, No. 3 of Law 21 April 1983 No. 123).

After the expiry of the one-year-term from the filing of the application for the acquisition of the nationality (Art. 4, second paragraph, of Law No. 123 of 1983), if the nationality has not been granted or the application has

been rejected on the ground of lack of the other requirements, the interested party has the right to the issuance of the decree.

In this case, the foreign spouse may act in court in order to obtain a judgment establishing the nationality.

26. *Corte di Cassazione, 27 January 1995 No. 1012* 111
 Pursuant to Art. 72, fourth paragraph, of the Code of Civil Procedure, the *pubblico ministero* at the court of appeal has the power to appeal against judgments relating to the enforcement of decisions in matrimonial causes except those concerning legal separation of spouses.
 The service of the appeal in Cassazione against a judgment of the court of appeal is legally irrelevant if such service was effected upon the attorney general before the Corte di Cassazione and not upon the attorney general before the court of appeal.
27. *Corte di Cassazione, 3 February 1995 No. 1271* 581
 Art. 5 of Law 9 December 1977 No. 903 prohibiting night work for women in manufacturing companies may not be applied because it is contrary to the principle of equal treatment between women and men in labour conditions as set forth by EC Council Directive 9 February 1976 No. 76/207/CEE given that the deadline for its implementation has expired and that the directive has been deemed sufficiently precise and unconditional to be invoked by individuals before national courts.
28. *Constitutional Court, 13 February 1995 No. 34* 584
 Art. 7 *bis* of Decree 30 December 1989 No. 416, ratified with amendments by Law 28 February 1990 No. 39 - providing that a foreigner, against whom an act of expulsion has been issued and who has not the necessary travel documentation and does not require from the competent diplomatic or consular authority the issuance of such documents, is subject to criminal sanctions - is constitutionally illegitimate. In fact, it does not comply with the principle *nullum crimen sine lege* set forth in Art. 25, second paragraph of the Constitution, and it breaches the rights of defence granted by Art. 24 of the Constitution.
29. *Corte di Cassazione (plenary session), 14 February 1995 No. 1572* 113
 Reciprocity as per Art. 4 No. 4 of the Code of Civil Procedure cannot be invoked in case of an *actio pauliana* in winding up proceedings promoted by a trustee with respect to a payment to a company having the seat in San Marino since San Marino laws exclude such *actio pauliana* in domestic actions (Art. 3 of Law 15 November 1917 No. 17).
 Art. 11 of the Convention between Italy and San Marino dated 31 March 1939 provides for reciprocity in general terms and thus it is not suitable as a basis of jurisdiction pursuant to Art. 4 No. 4 of the Code of Civil Procedure.
 As per Art. 4 No. 2 of the Code of Civil Procedure, Italian courts are competent to hear an *actio pauliana* in winding up proceedings promoted by a trustee with respect to a payment to a company having the seat in San Marino since this action regards an obligation to pay (*rectius*: to return), which, pursuant to Art. 1182, third paragraph, of the Civil Code, is to be fulfilled at the creditor's domicile, i.e. at the trustee's seat in Italy.

30. *Corte di Cassazione, 18 February 1995 No. 1740* 586
 Pursuant to Art. 13, first paragraph, of the Convention between Italy and Switzerland of 14 December 1962 on social security, in case of a professional disease which can be indemnified both according to Italian and Swiss law, the benefits are granted on the basis of the law of the Party on whose territory was last performed the activity which may have caused such disease.
31. *Corte di Cassazione (plenary session), 21 February 1995 No. 1880* 117
 In case of a claim based on different obligations, in order to determine the obligation in question pursuant to Art. 5 No. 1 of the 1968 Brussels Convention, it is necessary to consider the main or the characteristic obligation.
 In a dispute relating to an agency contract in which the principal claimed the payment of the amounts due by the agent following the ascertainment of the indemnity to be paid in connection with the termination of the contract, the main obligation is the payment of the indemnity.
32. *Milan Juvenile Court, 21 February 1995* 287
 Pursuant to Art. 4 of the Civil Code, Italian courts are competent in a proceeding related to the recognition of a child by the father when the foreign mother, appearing in court, pleads on the merit.
 Pursuant to Art. 17 of the Preliminary Provisions to the Civil Code, the recognition of a foreign child by the Italian father is governed by the national law of the child.
 Pursuant to the law of Republic of El Salvador, the voluntary recognition by the father is not subject to any limitation or control, nor to the consent of the mother, who first recognized the child.
33. *Corte di Cassazione, 27 February 1995 No. 2275* 121
 Arts. 4 and 5 of EC Directive No, 85/577 of 20 December 1985, providing for the so-called right of cancellation of the consumer having negotiated contracts away from the business premises of the seller, may not be invoked in relations between individuals prior to the implementation of the Directive.
 The entry into force pending the action of Decree 15 January 1992 No. 50 implementing the Directive, does not affect the merits of the case as it may not apply to pre-existing legal relationships.
34. *Brescia Court of Appeal, 4 March 1995* 587
 A divorce judgment, rendered in Belgium with respect to an Italian national and a Belgian national, may be enforced in Italy when it complies with the conditions set forth by the bilateral convention of 6 April 1962 on the recognition and enforcement of judgments.
35. *Corte di Cassazione, 8 March 1995 No. 2718* 124
 Pursuant to Art. 7 No. 3 of the Italian-Austrian Convention of 16 November 1971 on the Recognition and Enforcement of Judgments, a judgment by default may not be recognised if the defendant did not have notice of the proceedings in sufficient time to arrange for his defence.
 The term of 30 days to appear in court, granted by the Austrian judge

to the defendant having his seat in Italy and a legal counsel in Austria, is sufficient.

Art. 12 of the 1971 Convention, which provides for that the courts of one of the Contracting States must decline jurisdiction if before the courts of the other Contracting State is pending a proceeding between the same parties and with the same *petitum*, regulates only *lis alibi pendens* and it may not apply to *continenza* and related actions.

36. *Corte di Cassazione, 10 March 1995 No. 2788* 290

Pursuant to Art. 17, first paragraph, of the Preliminary Provisions to the Civil Code, the action for the judicial declaration of paternity, brought before Italian courts by a French national against an Italian national, is subject to both national laws.

Art. 340-4 of the French Civil Code, providing a two-year-term for the action for the judicial declaration of paternity starting from the becoming of age, is not contrary to public policy.

37. *Milan Tribunal, 11 March 1995* 129

Pursuant to Art. 4 No. 4 of the Code of Civil Procedure, Italian courts are competent with regard to a divorce proceeding between an Italian national resident in Italy and an Egyptian national non resident in Italy, since both Italy and Egypt are party to the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.

The dissolution of marriage is subject to the national laws of the spouses pursuant to Art. 17 of the Preliminary Provisions to the Civil Code, as it involves a decision on a *status*.

The dissolution of a marriage between an Italian national and an Egyptian national is regulated only by Italian law since Egyptian law on divorce appears to be founded on repudiation and is thus contrary to Italian public policy.

38. *Corte di Cassazione (plenary session), 22 March 1995 No. 3321* 845

As regards an international sale of goods, the domicile of the seller is to be considered the place of performance of the obligation to pay the goods, according to Art. 59 of the 1964 Hague Convention; if said domicile is located in Italy, Italian judges are competent on a dispute concerning such payment, as per Art. 5 No. 1 of the 1968 Brussels Convention.

39. *Corte di Cassazione, 5 April 1995 No. 3974* 847

The precise and unconditional provisions of EEC Council Directive 14 February 1977 No. 77/187/CEE (concerning the rights of workers in the event of transfer of undertakings, businesses or parts of businesses as a result of legal transfers or mergers) may not apply to a dispute between an employee and an employer if the Directive was not yet implemented in Italy at the time of the resolution of the contract. Nonetheless, the State is liable for loss and damages resulting from the breach of its obligation to implement said Directive.

40. *Corte di Cassazione, 6 April 1995 No. 4033* 295

The evaluation whether a foreign arbitral award – condemning an Italian resident to fulfil an obligation in favour of a non-resident on the basis of a non-authorized contract, implying a capital export – is contrary to public policy is to be carried out pursuant to the Italian and EC legislation

in force at the time of its enforcement. The foregoing is without prejudice to the application of the principles on the enforcement of foreign judgments also to arbitral awards.

41. *Milan Court of Appeal, 11 April 1995* 299
 Pursuant to Art. 25 of the 1968 Brussels Convention, as amended by the 1982 Accession Convention, German *Mahnbescheid* and *Vollstreckungsbescheid* may be enforced in Italy.
 Art. 34 of the 1968 Brussels Convention provides that under no circumstances may the foreign judgment be reviewed as to its substance.
 In the course of the appeal against the enforcement, the party against whom enforcement is sought may invoke as grounds for the discharge of his obligation only facts subsequent to the rendering of the foreign decision.
42. *Verona Tribunal, decree 11 April 1995* 580
 Pursuant to Art. 16 of the Preliminary Provisions to the Civil Code, the incorporation of a company by foreigners as well as the participation of foreign natural or legal persons to an Italian company are subject to reciprocity.
43. *Corte di Cassazione (plenary session), 26 April 1995 No. 4625* 302
 According to Art. 17 of the 1968 Brussels Convention, an agreement on jurisdiction is valid and binding if the parties are in a continuing trading relation and it refers to a transaction subsequent to those for which they has entered into an express written agreement.
44. *Corte di Cassazione, 4 May 1995 No. 4852* 310
 The uniform provisions of the 1929 Warsaw Convention on International Carriage by Air are part of the Italian legal system since the Convention entered into force and must be applied to a contract of carriage by air if it is subject to Italian law, pursuant to Art. 25 of the Preliminary Provisions to the Civil Code.
 The recourse of the carrier who paid the damages against the other carriers jointly and severally liable towards the sender and the consignee is a subrogation that may not be exercised if the main action may not be exercised by the sender or the consignee as a result of lapse of time as per Arts 29 and 30 of the 1929 Warsaw Convention, as amended by the 1955 Hague Protocol.
45. *Corte di Cassazione, 8 May 1995 No. 5021* 313
 The legalization by the Italian consul, pursuant to Art. 17 of Law 4 January 1968 No. 15, of a power of attorney, granted abroad through a private deed authenticated by a notary in a State party to the 1961 Hague Convention, is not required. In fact the Convention has abolished the requirement of legalization for such acts.
 The utilization of a foreign notarial deed authenticating a private deed is not contrary to public policy if it produces its effects exclusively in the proceedings in which it has been invoked.
46. *Constitutional Court, 10 May 1995 No. 160* 848
 As regards the position of the parents in the proceedings for the declaration of adoptability of a minor, the issue of constitutional legitimacy of Arts. 10 to 16 of Law 4 May 1983 No. 184 with reference to Art. 24 of the Constitution is not founded.

47. *Corte di Cassazione (plenary session), 17 May 1995 No. 5391* 321
 The provisions on jurisdiction contained in the 1978 Convention amending the 1968 Brussels Convention are not applicable to the disputes pending at the time of entry into force of the Convention between Italy and the United Kingdom, i.e. 1 January 1987.
 Pursuant to Art. 4 No. 3 of the Code of Civil Procedure two proceedings are related when the issue at stake may modify the venue in accordance with Italian procedural law; this happens when proceedings have preliminary nature (*pregiudiziale*) depending from the same cause of action.
48. *Corte di Cassazione (plenary session), 17 May 1995 No. 5392* 325
 In a labour dispute, to establish the place of performance of the obligation in question, pursuant to Art. 5 No. 1 of the 1968 Brussels Convention, one should consider the main obligation characterising the contract, which is normally the obligation to carry out the work.
49. *Corte di Cassazione (plenary session), 17 May 1995 No. 5397* 513
 A preliminary ruling on jurisdiction is admissible in a dispute which the parties agreed to submit to foreign arbitration as the arbitration clause, if deemed valid and binding, renders the Italian courts incompetent pursuant to Art. II, par. 3 of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
 In case a proceeding related to a dispute submitted to foreign arbitration is pending before an Italian court, such court may not extend its jurisdiction so as to hear also said dispute as per Art. 4 No. 3 of the Code of Civil Procedure: this provision in fact may not be applied to related disputes which already have a basis for jurisdiction abroad. Moreover, Art. 819 *bis* of the Code of Civil Procedure does not apply since it entered into force after the beginning of the dispute.
50. *Corte di Cassazione, 18 May 1995 No. 5439* 330
 Pursuant to Art. 30 of the Preliminary Provisions to the Civil Code, Italian courts required to apply a foreign law may not take into account the *renvoi* to another law.
 Pursuant to Art. 17 of the Preliminary Provisions to the Civil Code, a claim for legitimation brought by the Italian father with respect to the foreign natural child is subject to both their national laws applied cumulatively.
 The party who has provided clarifications on the foreign law, upon request of the court (pursuant to the principle of co-operation of the parties and the judge), may not invoke the application of different provisions of said law in the proceedings before the Corte di Cassazione.
51. *Corte di Cassazione (plenary session), 18 May 1995 No. 5475* 515
 Pursuant to Art. 17 of the 1968 Brussels Convention the requirement of a written agreement is not satisfied in the case of a jurisdiction clause contained in the general conditions printed on the back of a bill of lading if the bill of lading does not make any express reference to such conditions.
 A bill of lading in which the signature of the sender is not to be considered without doubts as execution of the contract and, as such, of an arbitration clause, but it is only meant to transfer the right to obtain delivery of the goods is not an agreement in writing as per Art. II of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In matters of maritime carriage of goods the carrier's liability for loss or damages to the goods may be excluded pursuant to Art. 422, second paragraph of the Maritime Code, only if the carrier may demonstrate the occurrence of an event included among the «excepted perils» mentioned in said paragraph or of any other cause contemplated by Art. 4 of the 1924 Brussels Convention on Bills of Lading, as well as the causal link.

52. *Corte di Cassazione, 19 May 1995 No. 5562* 850

As per Art. 796, first paragraph of the Code of Civil Procedure, the court of appeal of the place where the register, in which a marriage is registered, is located, is competent to enforce a foreign judgment pronouncing the annulment of the marriage.

53. *Corte di Cassazione, 7 June 1995 No. 6426* 523

A final foreign arbitral award which decides only as to the *quantum debeat* may be enforced in Italy independently of the enforcement of the non-final award on the *an debeat* since the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards does not require that the foreign award be non-severable (Art. IV).

The severance between the final award on the *quantum* and the non-final award on the *an*, aimed at avoiding any control on the enforceability of latter, may prevent the enforcement of the final award only if the court, pursuant to Art. V of the 1958 New York Convention ascertains *ex officio* that the dispute was not arbitrable according to Italian law or that the award is contrary to public policy or it ascertains the existence of one of the other grounds set forth in said Art. V. The burden to prove such grounds lies upon the defendant.

54. *Corte di Cassazione (plenary session), 9 June 1995 No. 6499* 529

A jurisdiction clause in favour of English courts contained in an agreement entered into between an English company and its Italian supplier, subsequently reproduced in a different contract between the same English company and a different Italian company – the actual supplier – is not valid pursuant to Art. 17 of the 1968 Brussels Convention unless it is proved that the second Italian company has expressly approved the clause. In fact, it is necessary that a jurisdiction clause be evidenced in writing by one of the parties and that the other party received it without any resistance.

According to Art. 5 No. 1 of the 1968 Brussels Convention Italian courts are competent to hear a dispute on the damages to be paid for breach of contract or, alternatively, for the compensation to be paid for the termination of a supply agreement entered into between an English and an Italian company. The obligation in question, in fact, is the payment of the price and it must be performed at the domicile of the creditor, pursuant to Art. 57 of the 1980 Vienna Convention on the International Sale of Goods and Art. 1182 of the Civil Code. The above conclusion does not change in case the contract is characterized as a construction contract since, in case of an action for a number of obligations deriving from one contract, one must take into consideration the characteristic obligation and thus the obligation of the customer to pay the consideration for the work to be carried out by the constructor.

As per Art. 5 No. 3 of the 1968 Brussels Convention, Italian courts are competent to hear an action of unfair competition brought by an Italian

company against an English company for defamation as the economic prejudice of the victim was suffered in Italy.

55. *Corte di Cassazione, 19 June 1995 No. 6918* 539

The Austrian authority competent to apply the provisions on insurance against accidents which made payments to the survivor of a worker dead in a car accident in Italy, is entitled to subrogate in the right of such survivor in order to obtain the payment of damages and the insurance indemnity due by an Italian insurance company for civil liability, upon condition of reciprocity.

Pursuant to Art. 16 of the Preliminary Provisions to the Civil Code, there is reciprocity when the national State of the plaintiff recognizes in its legal system an equal or similar right to the right actioned in Italy, without discriminations between its nationals and Italians.

Austrian law contains provisions analogous to those of Italian law with respect to the relationships between a third party and the insurer of the liable party, third party and social security authority, social security authority and insurer of the liable party.

56. *Corte di Cassazione, 19 June 1995 No. 6925* 545

In relation to an Italian citizen, from Italy's standpoint it is irrelevant that such person has other nationalities.

Pursuant to Art. 26, first paragraph of the Preliminary Provisions to the Civil Code, in order to ascertain the formal validity of a will drawn up abroad by an Italian citizen it is necessary to establish the connecting factor more favourable in practice to its validity (in the present case, the connecting factor was the *lex loci actus*).

57. *Corte di Cassazione, 21 June 1995 No. 6973* 549

After the entry into force of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations and of Law 6 March 1978 No. 74 amending the Italian Law on Divorce, a Greek divorce judgment based on mutual consent, without any additional inquiry as to the final dissolution of the marriage, is not manifestly contrary to public policy.

The reservation deposited by Italy in accordance with Art. 19 of the Convention, to refuse to recognize a divorce or legal separation when a law other than that indicated by its rules of private international law unless the result reached is the same as that which would have been reached by applying the law indicated by those rules, refers only to spouses who are exclusively Italian nationals.

58. *Corte di Cassazione, 21 June 1995 No. 7022* 803

Law 26 March 1983 No. 84 on special drawing rights repealed the provisions of the law implementing the 1929 Warsaw Convention on air carriage and the 1955 Hague protocol which are incompatible. Such Law No. 84 applies to all pending proceedings on the carrier's liability.

Art. 3 of Law No. 84 provides for the conversion of special drawing rights into local currencies in order to determine the amount due by the liable carrier; such conversion must be carried out applying the official exchange rate set forth by the IMF «at the time of the proceedings», i.e. «at the time of the decision».

59. *Rome Juvenile Court, decree 6 July 1995* 131
- Pursuant to Art. 35, the Hague Convention of 25 October 1980 on International Abduction of Children entered into force between Italy and the other Contracting States on 1 May 1995. As neither Italy nor the United States have entered into any agreement on the retroactive applicability of the Convention, according to Art. 36, being irrelevant the declarations in favour of such retroactive applicability rendered by the respective Central Authorities, the Convention may not apply to the abduction of a child occurred in 1994.
60. *Corte di Cassazione, 15 July 1995 No. 7742* 552
- Pursuant to Art. 17 of the Preliminary Provisions to the Civil Code, the judicial declaration of paternity of a Spanish child with respect to an Italian father is subject to the national laws of the two persons in question.
- Art. 127 of the Spanish Civil Code, according to which the judge will reject a petition for a declaration of paternity unless it is based on a prima facie evidence of the factual circumstances, is analogous to the requirements provided for by Art. 274 of the Italian Civil Code.
61. *Corte di Cassazione, 21 July 1995 No. 7950* 554
- The *pubblico ministero* is entitled to bring an extraordinary appeal in cassation, pursuant to Art. 11, second paragraph of the Constitution, against a decree of a court of appeal recognizing the right of a single to apply for adoption in a case not provided for by Law 4 May 1983 No. 184.
- The fact that the Constitutional Court rendered a judgment interpreting the relevant adoption provisions in such a way as to rejecting the petition for constitutional illegitimacy does not prevent the court competent to hear the merit of the case to submit a new issue of legitimacy of the provisions already examined by the Court.
- In the light of the objective and subjective interpretation criteria set forth by the Vienna Convention on the Law of Treaty dated 23 May 1969, Art. 6 of the European Convention on Adoption, signed in Strasbourg on 24 April 1967, may not be directly applied to the adoption by a single: i.e., in cases not provided for by Art. 44 ff. of Law 4 May 1983 No. 184.
62. *Constitutional Court, 24 July 1995, No. 361* 81
- The Italian Law on Adoption, the United Nations Convention of 20 November 1989 on the Rights of the Child (Art. 21) and the European Convention of 24 April 1967 on the Adoption of Children (Art. 9) regulate adoption in the prevailing interest of the child, even with respect to the adopting party.
- In taking the decision on the fitness of the spouses for adoption, the court must also evaluate case by case illnesses of members of the family in which the child will be introduced, even though the child to be adopted has not yet been identified (as in the case of international adoptions).
- The issue of constitutional legitimacy of Art. 6 of Law 4 May 1983 No. 184 on Adoption of Minors, with respect to Arts. 31 and 32 of the Constitution, is not founded.
63. *Constitutional Court, 25 July 1995, No. 379* 84
- Pursuant to Arts. 3 and 4 of the European Convention on Judicial Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959, the requested Party may allow that the «authorities» and the interested persons

to be present at the execution of the letter rogatory, without the right of being assisted by the legal counsel.

According to Art. 24 of the Constitution, the presence of the defendant's counsel is a fundamental guaranty for the taking of evidence in the trial phase.

The issue of constitutional legitimacy of Art. 2 of Law 23 February 1961 No. 215, implementing the 1959 Convention, with respect to Art. 24, second paragraph, of the Constitution is not founded: not only may Italian courts ask the requested State, before the taking of the evidence, to admit the parties and their legal counsels, but also they may subsequently evaluate whether such taking of evidence is contrary to the fundamental principles of the Italian legal system and therefore may not be used in Italy.

64. *Milan Tribunal, 7 September 1995* 851

As provisions set forth in EC Council Directive 5 April 1993 No. 93/13/CE on unfair terms in consumer contracts are precise and unconditional and do not require an implementation by the legislative, they have direct and immediate effects not only as regards the relationship between citizens and the State, but also among individuals; therefore, it applies to an insurance contract against theft entered into between private persons after 31 December 1994.

65. *Corte di Cassazione, 12 September 1995 No. 9638* 568

Pursuant to Art. 25 of the Preliminary Provisions to the Civil Code, in case the contracting parties have different nationalities, the applicable law is the law of the country where the contract was concluded; a maritime labour contract concerning Italian nationals on board a foreign vessel is concluded in Italy if the activity of the ship's agent and of the Italian authority controlling the conditions of the enlistment determined the issuance of the permit to hire the sailor.

The application of the law of the flag, pursuant to Art. 9 of the Maritime Code (Liberian law), to a maritime labour contract relating to Italian nationals, providing also for temporary work, is contrary to the principle of Italian law according to which these contracts are deemed to be concluded for an indefinite period of time.

In case neither the issue of the exhibition of foreign law nor the inactivity of the court competent to hear the merits of the case have been raised before the Corte di Cassazione, Italian law applies.

Judgment No. 96 of 1987 of the Constitutional Court introduced in our legal system the public policy principle, which may not be derogated by laws or acts of a foreign State, according to which the shipowner, in order to invoke a justified ground for dismissing the worker, must prove that he did not utilize the worker thereafter.

Pursuant to Art. 31 of the Preliminary Provisions to the Civil Code, in case the forms of publicity with respect to deeds of transfer of right on goods, governed by a foreign law in accordance to Art. 26, second paragraph, of said Provisions, have different effects from those provided for by Italian law, Italian law applies. In case management is transferred to a different party, who subsequently terminates the relationship, without compliance with formalities having analogous effect to those set forth in Arts. 265-272 of the Italian Maritime Code with respect to the publicity of shipowners' activity, said provisions apply as they are mandatory, as well as Art. 2112 of the Italian Civil Code which they supplement.

In the Italian legal system there is no public policy principle whereby Italian sailors on board foreign vessels are subject to minimum social security contributions set forth in the national collective agreements, provided that the parameters of Art. 36 of the Constitution are respected.

66. *Corte di Cassazione (plenary session), 20 October 1995 No. 10932* 807
- The restrictive theory of foreign immunity as developed in international practice is aimed at restricting the scope of such immunity having regard to the nature of the labour relationship between the foreign State and nationals of the host State; this can not be considered yet as international customary law.
- Italian courts are competent in an action brought by the Italian employee against a foreign State in order to obtain payment of an additional compensation to which he claims to be entitled by virtue of his office, possibly also on the basis of a collective labour agreement, since the dispute concerns only pecuniary aspects of the labour contract.
67. *Constitutional Court, order 26 October 1995 No. 469* 588
- The issues of constitutional legitimacy of Arts. 7 and 7 *bis* of Decree 30 December 1989 No. 416, ratified with amendments by Law 28 February 1990 No. 39 are manifestly inadmissible.
68. *Corte di Cassazione, 2 November 1995 No. 11392* 810
- Pursuant to Art. 25 of the Preliminary Provisions to the Civil Code, a sub-publishing agreement entered into between an English and an Italian company is governed by English law if it has been so agreed upon by the parties.
- In a dispute concerning the application of English law, recourse may be made to an *affidavit* providing information thereon, but only the judge is competent to apply the relevant rules in the case at stake.
- In English law the «parole evidence rule» (corresponding to «in claris non fit interpretatio») prevents the judge from utilizing additional interpretation criteria when he deems that the intention of the parties clearly and univocally results from the words of the contract.
- A petition to the Corte di Cassazione based on the alleged breach of law concerning the application of English law is not admissible if the party does not provide specific indications as to such law.
69. *Corte di Cassazione (plenary session), 25 November 1995 No. 12209* 816
- Art. 5 No. 1 of the 1968 Brussels Convention establishing jurisdiction in contractual matters is an exception provision and as such may not be applied by analogy to an action for the ascertainment of the non-existence of an obligation.
- As per Art. 6 No. 1 of the Brussels Convention, in case of an action brought against a number of defendants, Italian courts are not competent if none of said defendants is domiciled in Italy.
70. *Verbania Criminal Pretore, 14 December 1995* 335
- The crime of attempted illegal export of cultural goods, protected by Law 1 June 1939 No 1089, is committed in case of lack of export licence irrespective of the fact that the relevant goods have been notified pursuant to Art. 3 and following of said Law. Such notification is aimed not only at excluding exportability of the goods, but also at creating additional limitations to the right of their disposal within the Italian territory.

The establishment of the objective element of the crime does not exclude the need to provide evidence as to the subjective element, i.e. the will to illegally export documents of cultural interest and the wilful knowledge of their importance for the national archives.

Pursuant to Art. 47, second paragraph, of the Criminal Code, the lack of appreciation of the value for the archives of goods purchased at an auction and of the effects of their export constitutes a case of material mistake which excludes commission of a crime.

71. *Corte di Cassazione, 15 December 1995 No. 12835* 819

The decision of the court of appeal suspending the proceedings for the enforcement of a foreign judgement - according to Art. 38 of the 1968 Brussels Convention - may not be appealed but only revoked by the same court, even if it was rendered with the judgment on the appeal lodged against the decision authorizing the enforcement.

72. *Corte di Cassazione, 20 December 1995 No. 12978* 820

The burden of proving the diversity of foreign law with respect to Italian law lies upon the party who invokes it since Italian courts are not supposed to know foreign laws and such foreign laws are comparable to facts of the case.

The existence of reciprocity as per Art. 16 of the Preliminary Provisions to the Civil Code is a condition of the right invoked by the foreigner and must be proved by the same in case it is challenged. A review before the *Corte di Cassazione* is not admissible.

The proof of reciprocity may be given with any adequate means, including an official statement rendered by the authorities of the foreign State; it is not necessary to file the text of the foreign law.

73. *Corte di Cassazione, 20 December 1995 No. 13018* 825

With respect to an international carriage by sea, the insertion of the so-called *Paramount clause* in a charter-party implies the reception of the 1924 Brussels Convention on charter-parties - as far as it is applicable - between the original parties to the contract.

74. *Florence Tribunal, decree 29 January 1996* 339

Since Art. 17 of the Regulation implementing the Law on Nationality (Presidential Decree 12 October 1993 No. 572) simply provides that the interested party may request the Minister of Interior to certify his statelessness. The foregoing is without prejudice to the possibility to bring an action before the courts in order to ascertain such statelessness.

A person that, as a result of the dissolution of the Soviet Union, may no longer be considered a Soviet citizen nor is he Russian or Italian citizen, is to be declared stateless.

75. *Corte di Cassazione, 2 March 1996 No. 1649* 831

As per Art. 796, first paragraph, of the Code of Civil Procedure, the court of appeal of the place in which the foreign judgment must be enforced is competent to enforce it; the party requesting the enforcement may choose to bring the action in the court of appeal in whose district the goods subject to the enforcement proceedings are located, even though the debtor's seat is located elsewhere.

The contractual reference to an arbitration clause contained in a

model-contract is a method of determination per relationem of the competent jurisdiction and complies with the validity requirements set forth by Art. II of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

76. *Corte di Cassazione, 8 March 1996 No. 1842* 835
 The issue on the application of Art. 54 of the uniform rules and practices of the International Chamber of Commerce (concerning the transfer of documentary credit and the indication of the first beneficiary) is not subject to the control of the Corte di Cassazione since these are not normative rules, but clauses which integrate the will of the contracting parties.
77. *Milan Court of Appeal, 5 March 1996* 343
 Articles 1 and 2 of the Uniform Law on the Bill of Exchange (Royal Decree 14 December 1933 No. 1669), providing the validity requirements, refer also to bills of exchange drafted abroad as they are mandatory provisions.
 As the acceptance of a bill is subject to Art. 25, second paragraph, of the Preliminary Provisions to the Civil Code, Italian law applies to a bill of exchange endorsed in Italy.
78. *Parma Tribunal, order 30 April 1996* 347
 Under Articles 796, 797 and 798 of the Code of Civil Procedure, still in force, a provisional measure prior to the request for the enforcement of a foreign judgment must be sought, pursuant to Art. 669-ter of the same Code, before the Court of Appeal as this is the court competent to hear the merits of the case.
79. *Milan Tribunal, order 7 May 1996* 837
 The provisions of the reform of the Italian system of private international law contained in Law 31 May 1995 No. 218, and in particular Art. 14 on the ascertainment of foreign law by the Italian court, apply only to proceedings initiated after the entry into force of said Law, as per Art. 72.
 In a proceeding initiated prior to the entry into force of Law No. 218 of 1995, foreign laws are to be considered outside the scope of the official knowledge of Italian judges; therefore, the party invoking the application of foreign law has the burden of proving it. Otherwise, Italian law applies.
 In order to verify whether a joint-venture contract causes the establishment of a legal entity, Italian law applies if the interested party has not proved the relevant validity requirements set forth by the law of the place of putative incorporation (i.e., Russia).
80. *Constitutional Court, 27 June 1996 No. 223* 795
 The absolute protection granted by the Constitution to human life – the first of the fundamental rights recognized by Art. 2, which results in the interdiction of death penalty according to Art. 27, paragraph 4 – limits the powers of all public authorities, in particular in matters of international co-operation aimed at judicial assistance. Therefore, Art. 27, paragraph 4, in the light of Art. 2 of the Constitution, sets forth the principle for evaluating the constitutional legitimacy of the general provision on extradition (Art. 698, second paragraph, Code of Criminal Procedure) and of the laws implementing international treaties on extradition and judicial assistance.

As in the Italian legal system the interdiction of death penalty is established by the Constitution, the wording «sufficient assurances» or «guarantees» (provided for by Art. 698, second paragraph, of the Code of Criminal Procedure, in order to grant extradition for crimes punished with death sentence under the foreign law, as well as by Art. IX of the Treaty of Extradition between Italy and the United States signed in Rome, 13 October 1983) is not congruent with the Constitution: the prohibition set forth in Art. 27, paragraph 4, of the Constitution, considering the underlying values, requires an absolute guarantee.

Art. 698, second paragraph of the Code of Criminal Procedure, and Law 26 May 1984 No. 225, implementing the Treaty of Extradition between Italy and the United States, with regard to Art. IX of the Treaty, are contrary to the Constitution.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 23, 25, 27.

Brussels Convention of 1968: 4, 7, 8, 9, 10, 24.

Community law: 1, 17, 19.

Community proceedings: 20.

Competition: 15.

Contracts: 3.

External Relations: 16, 25.

Freedom of movement of capitals: 19.

Freedom of movement of goods: 2, 18.

Freedom of movement of persons: 14, 16.

Liability of member States: 22, 27.

Non-contractual liability of the Community: 6.

Preliminary ruling on interpretation: 5, 11, 12.

Prohibition of discrimination: 21.

Right of residence and establishment: 13, 26.

Treaties and general international rules: 16.

1. *Court of Justice, 10 November 1993, case C-60/92* 156

A national court, when considering an application for the preliminary examination of witnesses in the course of a civil proceeding, is not required under Community law to apply the principle that an undertaking is not obliged to answer certain questions if the answer thereto constitutes an admission that the competition rules have been infringed.

2. *Court of Justice, 28 March 1995, case C-324/93* 898
- Art. 30 of the EC Treaty applies to a national practice prohibiting importation of narcotic drugs covered by the 1961 Single Convention on Narcotic Drugs and marketable under that Convention.
- Art. 30 of the EC Treaty is to be interpreted as requiring a Member State to ensure that this provision is fully effective by disapplying a national practice contrary to it unless that practice is necessary in order for the Member State concerned to comply with obligations towards non-member States laid down in an agreement concluded prior to entry into force of the Treaty or to accession by that Member State.
3. *Court of Justice, 6 April 1995, case C-299/93* 158
- The Court's jurisdiction to know a case concerning a contract between the Community and an individual is to be determined only on the basis of Art. 181 of the EC Treaty or of Art. 153 of the Euratom Treaty, and of the terms of the arbitration clause in the contract, irrespective of national provisions which would exclude such jurisdiction.
- Even though the Commission can be assimilated to an Italian public body for the purposes of non-application of Italian Law No. 392 of 27 July 1978 on Tenancies of Residential Property to a rental agreement with an employee, such agreement is subject to these provisions when it does not meet the requirements set forth by Italian case law which would lead to the application of the Italian Civil Code.
- Art. 43 of Italian Law on Tenancies of Residential Property - requiring that no action for the determination or adjustment of the rent may be brought if it has not been preceded by the application for conciliation mentioned in Art. 44 - applies also to an agreement subject to the jurisdiction of the Court of justice.
4. *Court of Justice, 6 April 1995, case C-439/93* 147
- The expression «dispute arising out of the operation of a branch, agency or other establishment» in Art. 5(5) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the 1978 Accession Convention, does not presuppose that the undertakings in question entered into by the branch in the name of its parent body are to be performed in the Contracting State in which the branch is established.
5. *Court of Justice, order 7 April 1995, case C-167/94* 150
- A national court may not refer to the Court a question on Art. B of the Treaty on European Union in application of Art. 177 of the EC Treaty. For the Court of Justice to give an interpretation on Community law it is necessary for the national court to define the factual and legislative context of the questions it is asking or at the least to explain the factual premises on which those questions are based and to give the explanation of the reasons for the requested interpretation.
6. *Court of First Instance, 6 July 1995, case T-527/93* 365
- In the context of a legislative measure, characterized by the exercise of a wide discretion essential for the implementation of the common agricultural policy, the Community does not incur in liability pursuant to Art. 215 of the EC Treaty unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers.

In concluding fishing agreements with non-member States the Community cannot ask for a zone in dispute to be excluded without taking a position on matters forming part of the internal affairs of non-members States.

The right to claim protection of legitimate expectations extends to any individual who is in a situation from which it is clear that, in giving him specific assurances, the Community administration caused him to entertain justified hopes.

The Community incurs in liability only if it can be proved that the infringement of the institutions caused damage to the individual.

7. *Court of Justice, 13 July 1995, case C-341/93* 153
- Art. 6(3) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 and the 1982 Accession Conventions, applies only to claims by defendants which seek the pronouncement of a separate judgment or decree. It does not apply to the situation where a defendant raises, as a pure defence, a claim which he allegedly has against the plaintiff. The defences which may be raised and the conditions under which they may be raised are governed by national law.
8. *Court of Justice, 13 July 1995, case C-474/93* 375
- The *decreto ingiuntivo* within the meaning of Book IV of the Italian Code of Civil Procedure (Articles 633-656), together with the application instituting the proceedings, must be regarded as the «document which instituted proceedings or ... an equivalent document» within the meaning of Art. 27(2) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention.
9. *Court of Justice, 11 August 1995, case C-432/93* 380
- Art. 37(2) and the first paragraph of Art. 38 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the 1978 Accession Convention are to be interpreted as meaning that a decision by which a court of a Contracting State, seized of an appeal against authorization to enforce an enforceable judgment of a court in another Contracting State, refuses a stay or lifts a stay previously ordered cannot be contested by an appeal in cassation or similar form of appeal limited to the examination of points of law only. Moreover, the court seized of such an appeal on a point of law under Art. 37(2) of the Convention does not have jurisdiction to impose or reimpose such a stay.
10. *Court of Justice, 19 September 1995, case C-364/93* 589
- The term «place where the harmful event occurred» in Art. 5(3) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as not referring to the place where the victim claims to have suffered financial loss consequential upon initial damage arising and suffered by him in another Contracting State.
11. *Court of Justice, 19 October 1995, case C-111/94* 593
- The Court of Justice has no jurisdiction to give preliminary rulings under Art. 177 of the EC Treaty if the case pending before the national court is not intended to lead to a decision of a judicial nature.

12. *Court of Justice, 9 November 1995, case C-465/93* 595

Article 189 of the Treaty is to be interpreted as not precluding national courts from granting interim relief to settle or regulate the disputed legal positions or relationships with reference to a national administrative measure based on a Community regulation which is the subject of a reference for a preliminary ruling on its validity.

Such interim relief can be ordered by the national court only if: *a*) that court entertains serious doubts as to the validity of the Community act and, if the validity of the contested act is not already in issue before the Court of Justice, itself refers the question to the Court of Justice; *b*) there is urgency, in that the interim relief is necessary to avoid serious and irreparable damage being caused to the party seeking the relief; *c*) the court takes due account of the Community interest; and in its assessment of all those conditions, it respects any decisions of the Court of Justice or the Court of First instance ruling on the lawfulness of the regulation or on an application for interim measures seeking similar interim relief at community level.

13. *Court of Justice, 9 November 1995, case C-475/93* 634

Articles 48(2) and 51 of the EC Treaty must be interpreted as meaning that they do not preclude the replacement by EC Council Regulation No. 1408 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by EC Council Regulation No. 2001 of 2 June 1983, pursuant to Art. 6 thereof, of a convention binding two Member States exclusively where, prior to the entry into force of regulation No. 1408/71, an insured person completed insurance periods in only one of the signatory States, even where the application of the bilateral social security convention would have placed that insured person in a more favourable position.

14. *Court of Justice, 30 November 1995, case C-175/94* 603

Art. 9(1) of the Council Directive No. 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 must be interpreted as meaning that, save in cases of urgency, it prohibits the administrative authority from taking a decision ordering expulsion before a competent authority has given its opinion.

Art. 9(1) of Directive No. 64/221 does not preclude the competent authority referred to in that provision from being appointed by the same administrative authority that takes the decision ordering expulsion, provided that the competent authority can perform its duties in absolute independence and is not subject to any control by the authority empowered to take the measures provided for in the directive. It is for the national court to determine in each case whether those requirements have been met.

15. *Court of Justice, 12 December 1995, joint cases C-319/93, C-40/94, C-224/94* .. 609

The inapplicability of Art. 85 of the EC Treaty to agreements, decisions and practices of farmers, farmers' associations or associations of such associations is exclusively subject to the conditions laid down in the second sentence of Art. 2(1) of Regulation No. 26. If an agreement or

decision falls within the scope of art. 85(1) of the Treaty and the criteria for exemption referred to in the second sentence of art. 2(1) of Regulation No 26 are not fulfilled and it does not qualify for exemption pursuant to Art. 85(3), it is automatically void and such nullity has retroactive effect.

A national court before which a party pleads the nullity of a clause in the statutes of an agricultural co-operative on the ground that it infringes Art. 85(1) of the EC Treaty, and before which the co-operative seeks to rely on art. 2(1) of Regulation No. 26, may continue the proceedings and adjudicate on the dispute if it is clear that the criteria for the application of art. 85(1) are not fulfilled, or may declare the clause void under Art. 85(2) if it is certain that that provision does not fulfil the conditions for application of the exception laid down in art. 2(1) of Regulation No. 26 and does not qualify for exemption under Art. 85(3). Where there is any doubt, the national court may, if it is appropriate and consistent with the national rules of procedure, obtain additional information from the Commission or allow parties to seek a decision from the Commission.

16. *Court of Justice, 12 December 1995, case C-469/93* 637

The General Agreement on Tariffs and Trade does not contain provisions of such a nature as to confer rights on individuals which they could rely on before national courts in order to challenge the application of conflicting national provisions. The fourth ACP-EEC Convention may contain such provisions.

17. *Court of Justice, 14 December 1995, case C-312/93* 626

Community law precludes application of a domestic procedural rule whose effect, in procedural circumstances such as those in question in the main proceedings, is to prevent the national court, seized of a matter falling within its jurisdiction, from considering of its own motion whether a measure of domestic law is compatible with a provision of Community law when the latter provision has not been invoked by the litigant within a certain period.

18. *Court of Justice, order 14 December 1995, case C-387/93* 616

Art. 37 of the EC Treaty has no relevance with regard to national legislation such as that in force in Italy, which reserves the retail sale of manufactured tobacco products to distributors authorized by the State, provided that the State does not intervene in the procurement choices of retailers.

National legislation such as that in force in Italy, which reserves the retail sale of manufactured tobacco products, irrespective of their origin, to authorized distributors but does not thereby bar access to the national market for products from other Member States or does not impede such access for domestic products within the distribution network, does not fall within the scope of Art. 30 of the Treaty.

Articles 5, 90 and 86 of the Treaty do not preclude national legislation, such as that in force in Italy, from reserving the retail sale of manufactured tobacco products to distributors who have been authorized by the State.

Art. 30 of the Treaty does not preclude national legislation, such as that in force in Italy, from penalizing as a smuggling offence the unlawful possession by a consumer of manufactured tobacco products from other

Member States on which excise duty in accord with Community law has not been paid, where the retail sale of those products is, like the retail sale of identical domestic products, reserved to distributors authorized by the State.

19. *Court of Justice, 14 December 1995, joint cases C-163/94, C-165/94, C-250/94* 642
 Articles 73b(1), in conjunction with Art. 73c and 73d(1)(b) of the EC Treaty may be relied on before national courts and may render inapplicable national rules inconsistent therewith.
20. *Court of Justice, order 14 December 1995, case C-173/95-P* 900
 An appeal against a decision of the Court of First Instance must contain the indication of the grounds on which the appeal is based as well as the arguments of law relied on.
21. *Court of Justice, 1 February 1996, case C-177/94* 630
 Art. 6 of the EC Treaty in conjunction with Articles 52 and 59 thereof, laying down the principle of non-discrimination on the grounds of nationality, must be interpreted as not precluding a Member State's legislation from requiring a victim of a criminal offence who wishes to bring a suit as a civil party in criminal proceedings to grant his representative a special power of attorney, even when the law of the Member State of which the victim is a national does not lay down such a formality.
22. *Court of Justice, 5 March 1996, joined cases C-46/93 and C-48/93* 853

The principle that Member States are obliged to make good damage caused to individuals by breaches of Community law attributable to the State is applicable where a breach of Community law by a Member State is attributable to the national legislature acting in a field in which it has a wide discretion to make legislative choices.

Individuals suffering loss or injury thereby are entitled to reparation where the rule of Community law breached is intended to confer rights upon them, the breach is sufficiently serious and there is a direct casual link between the breach and the damage sustained by the individual. Subject to that reservation, the State must make good the consequences of the loss or damage caused by the breach of Community law attributable to it, in accordance with its national law on liability. However, the conditions laid down by the applicable national laws must not be less favourable than those relating to similar domestic claims or framed in such a way as in practice to make it impossible or excessively difficult to obtain reparation.

The national court cannot, under the national legislation which it applies, make reparation for loss or damage conditional upon a requirement of fault, whether intentional or negligent, in the part of the State organ responsible for the breach which goes beyond the requirement that there be a sufficiently serious breach of Community law.

Reparation by Member States of loss or damage which they have caused to individuals as a result of breaches of Community law must be commensurate with the loss or damage sustained. In the absence of relevant Community provisions, it is for the domestic legal system of each Member State to set the criteria for determining the extent or reparation. However, those criteria must not be less favourable than those applying to similar claims or actions based on domestic law and must not be such as in practice

to make it impossible or excessively difficult to obtain reparation. National legislation which generally limits the damage for which reparation may be granted to damage done to certain, specifically protected individual interests not including loss or profit by individuals is not compatible with Community law. Moreover, it must be possible to award specific damages, such as the exemplary damages provided for by the English law, pursuant to similar claims or actions founded on domestic law.

The obligation of Member States to make good loss or damage caused to individuals by breaches of Community law attributable to the State cannot be limited to damage sustained after the delivery of a judgment of the Court finding the infringement in question

23. *Court of Justice, 7 March 1996, case C-192/94* 870

In the absence of measures implementing Council Directive No. 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit within the prescribed period, a consumer may not, even in view of Art. 129 a of the EC Treaty, base an action on the directive itself against a lender who is a private person, on account of inadequacies in the supply of goods or provision of services by the supplier or provider with whom the lender concluded an exclusive agreement with regard to the grant of credit and assert that right before a national court.

24. *Court of Justice, 14 March 1996, case C-275/94* 874

Art. 47(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention, is to be interpreted as meaning that, where the domestic procedural rules so permit, proof of service of the judgment may be produced after the application has been made, in particular during the course of appeal proceedings subsequently brought by the party against whom enforcement is sought, provided that that party is given a reasonable period of time in which to satisfy the judgment voluntarily and that the party seeking enforcement bears all costs unnecessarily incurred.

25. *Court of Justice, 19 March 1996, case C-25/94* 878

An action for annulment, provided for in Art. 173 of the EC Treaty, must be available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects.

In relation to agreements falling partly within the competence of the Community and partly within that of its Member States, it is essential to ensure close co-operation between the Member States and the Community institutions both during the stipulation and the fulfilment of the Agreement, therefore adopting all necessary measures.

26. *Court of First Instance, 21 March 1996, case T-230/94* 885

Pursuant to the Declaration on the definition of the term «Nationals» given by the United Kingdom upon signing the 1972 Accession Treaty, as amended by the 1981 British Nationality Act, a «British Overseas Citizen» cannot be considered as a British national for the purpose of application of EC law.

27. *Court of Justice, 26 March 1996, case C-392/93* 892

Community law does not require a Member State which, in transposing Directive No. 90/531 into national law, has itself determined which services of a contracting entity are to be excluded from its scope in implementation of Art. 8, to compensate that entity for any loss suffered by it as a result of the error committed by the State.

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Grafiche Fiorini - Verona, Via Altichiero, 11



Rivista associata all'Unione della Stampa Periodica Italiana

Proprietà letteraria - Stampato in Italia - Printed in Italy
