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CASES IN ITALIAN COURTS

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1. *Corte di Cassazione (plenary session), 19 December 1994 No. 10910* 414
 The reference to the general conditions of delivery and payment printed on the bottom of the order prepared by the Dutch seller for the Italian buyer does not satisfy the requirements set forth by Art. 17 of the 1968 Brussels Convention. In fact, it does not permit to infer the existence of a valid agreement on jurisdiction.
 Italian courts are competent to hear a case on the non correct performance of a sale contract regarding a set of machinery to be placed by the Dutch seller in the premises of the Italian buyer as the place of performance of the obligation in question – as per Art. 5 No. 1 of the Brussels Convention – is not the place of delivery of the machinery to the buyer, but the place where they are set to operate (i.e. the premises of the buyer).
2. *Corte di Cassazione (plenary session), 4 January 1995 No. 90* 984
 Pursuant to Art. 17 of the 1968 Brussels Convention, a jurisdiction agreement in favour of a Contracting State does not require the express approval set forth in Art. 1341 of the Civil Code.
3. *Corte di Cassazione, 19 May 1995 No. 5563* 176
 Pursuant to Art. 32 of Law 4 May 1983 No. 184, the juvenile court is competent to decide on the enforcement of foreign adoption measures also with respect to the status and the quality of the adopting parties as per Art. 31 thereof.
4. *Corte di Cassazione (plenary session), 22 May 1995 No. 5601* 984
 Art. 680, fourth paragraph, of the Code of Civil Procedure, does not apply by analogy to foreign arbitration; accordingly, a provisional measure relating to a dispute deferred to foreign arbitrators is ineffective if the proceedings on the merits of the case have not been initiated within fifteen days of the commencement of the seizure proceedings.
5. *Corte di Cassazione (plenary session), 1 June 1995 No. 6136* 418
 In a dispute regarding a labour contract between a US citizen and a legal entity established pursuant to US law and recognised in Italy by virtue of Art. 2, second paragraph of the Italian-American Treaty on Friendship, Trade and Navigation of 2 February 1948, it is possible to derogate to the jurisdiction of Italian courts with a written agreement under Art. 2 of the Code of Civil Procedure provided that such agreement concerns individual interests and merely private obligations of the labour contract.
 The specific signature of a jurisdiction agreement contained in a labour contract is not necessary pursuant to Art. 1341 of the Civil Code when its form is governed by American law, in accordance with Art. 26 of the Preliminary Provisions to the Civil Code; moreover, the contract in question is not an adhesion contract.
 Limits set forth by public policy, as per Art. 31 of the Preliminary Provisions to the Civil Code, may not have an impact on the determination of the competent jurisdiction, which precedes both the determination of the venue – that in labour matters may not be derogated – and of the applicable law.
6. *Alessandria Tribunal, decree 19 August 1995* 685
 Pursuant to Art. 25, first paragraph, of Law 31 May 1995 No. 218, Italian courts may not register the part of a shareholders' meeting resolution providing for the transformation of an Italian company into a type of company not contemplated by the Italian legal system (i.e. a *société anonyme* under Swiss law).

7. *Corte di Cassazione, 20 September 1995 No. 9980* 985
 The supply of the duly authenticated original award or a duly certified copy thereof, as per Art. IV of the 1958 New York Convention on the Enforcement of Foreign Arbitral Awards, is a procedural requirement (*presupposto processuale*) and not a condition of the action; therefore, the fact that an Italian judgment ascertained that such document had not been supplied does not preclude a subsequent petition for the recognition of the same award.
8. *Corte di Cassazione (plenary session), 3 October 1995 No. 10388* 987
 The procedure set forth in the Code of Civil Procedure applies to the recognition in Italy of a German judgment declaring the bankruptcy of an Italian company in Germany since there is no specific international convention on this matter.
9. *Corte di Cassazione (plenary session), 20 October 1995 No. 10935* 988
 Without prejudice to the non-applicability of the 1968 Brussels Convention to proceedings in matters of legal separation and divorce, the fact that a divorce proceedings is pending before English courts does not exclude the jurisdiction of Italian courts with respect to the proceedings for the legal separation between the same spouses.
10. *Corte di Cassazione, 24 November 1995 No. 12166* 427
 Neither Arts. 826 and 828 of the Civil Code on property of which the State may not dispose of, nor Art. 23 of Law 1 June 1939 No. 1089 on the impossibility to sell State cultural property may be interpreted extensively in order to obtain the restitution of artistic objects illicitly stolen from a foreign State and sold in Italy.
 Arts. 1147, third paragraph, and 1153 of the Civil Code on the protection of the *bona fide* purchaser *a non domino*, apply to a purchase in Italy of movables (even though of illegal origin) completed prior to the entry into force of the 1970 Paris Convention on the means of prohibiting and preventing the illicit transfer of ownership of cultural property.
11. *Turin Court of Appeal, decree 1 December 1995* 685
 Pursuant to Art. 25, first paragraph, of Law 31 May 1995 No. 218, Italian courts may not register the part of a shareholders' meeting resolution providing for the transformation of an Italian company into a type of company not contemplated by the Italian legal system (i.e. a *société anonyme* under Swiss law).
12. *Corte di Cassazione, 12 December 1995 No. 12738* 177
 Pursuant to Art. 18 of Royal Decree 21 June 1942 No. 929 and Art. 6 of the Paris Convention of 20 March 1883 for the protection of industrial property, a mark utilised as a symbol of an international organisation may not become object of an exclusive right by a company.
13. *Constitutional Court, 18 December 1995 No. 509* 397
 The issue of constitutional legitimacy of Art. 9, second paragraph, of EC Council Regulation 14 June 1971 No. 1408, concerning the application of social security régimes to employed and self-employed persons and their family members migrating within the Community, is not admissible as it has been raised before the Constitutional Court directly rather than through the law implementing the EC treaty.
 The issue of constitutional legitimacy of Art. 1 of Law 18 February 1983 No. 47, in so far as it does not provide that the social security contributions paid

for the period of work of an Italian worker only in another EC country be computed for the purposes of permitting his voluntary contributions, is not founded with respect to Arts. 1, 3, 4 and 38, second paragraph, of the Constitution.

14. *Constitutional Court, order 29 December 1995 No. 536* 464

The Constitutional Court is not a "national jurisdiction" as per Art. 177 of the EC Treaty and therefore may not ask a preliminary ruling on interpretation to the EC Court of Justice; only the national court which submitted the issue on constitutional legitimacy to the Constitutional Court may ask such preliminary ruling.

15. *Constitutional Court, 9 January 1996 No. 3* 990

The issue of constitutional legitimacy - with reference to Arts. 3, 9 and 41 of the Constitution - of Arts. 14 and 15 of Royal Decree 29 June 1939 No. 1127 in matters of patents is not founded in so far as such articles do not provide that, once the prohibition to patent certain drugs in Italy has been declared contrary to the Constitution, drugs patented abroad during the applicability of the previous provisions - and for which the one-year term set forth by the 1883 Paris Convention as amended by the 1967 Stockholm Convention has expired - may not be patented in Italy.

16. *Council of State (4th Session), 9 January 1996 No. 36* 466

The provisions on embargo against the Federal Republic of Yugoslavia - EC Regulation 26 April 1993 No. 990 and Decree-Law 15 May 1993 No. 144, as amended by Law 16 July 1993 No. 230 - provide that the characterisation of the unlawful acts which constitute a breach of the embargo is to be made only pursuant to the EC rules, whereas the determination of the sanctions applicable thereto falls substantially within the scope of the domestic rules; such domestic rules, however, must respect the limits set forth by EC law.

EC rules on embargo, which prohibit not only direct transfers from member States to former Yugoslavia, but also indirect transfers through the intermediation of third parties from non-EC States, and domestic rules provide the confiscation of the mean of transportation breaching the embargo. Such provision apply only in case the carrier has personally committed the unlawful act, either directly or as an accomplice of the importer.

17. *Corte di Cassazione (plenary session), 12 January 1996 No. 173* 115

Italian courts are not competent to hear an action for the enforcement of a money-judgment concerning a labour contract with a foreign public body if the enforcement is to be carried out on goods intended for use by the foreign State in its sovereign functions or in the sphere of public law. In fact, Art. IX of the London Convention of 19 June 1951 is not applicable as jurisdiction to adjudicate is different from jurisdiction to enforce. Therefore, the issue must be decided on the basis of customary law.

18. *Corte di Cassazione (plenary session), 12 January 1996 No. 174* 121

Italian courts are competent to hear an action for the termination of a labour contract between the US Navy and an employee: pursuant to Art. IX of the London Convention of 19 June 1951, labour terms and conditions of employees hired by the military and civil offices of NATO for the local needs are governed by the laws of the host State both with regard to the substantive regulation of the labour contract and the procedural protection of the employee, in particular for his forced re-employment.

19. *Corte di Cassazione (plenary session), 15 January 1996 No. 264* 127
- Pursuant to Arts. 17 of the Preliminary Provisions to the Civil Code and 25 of Law 31 May 1995 No. 218, the capacity to act in court of the representative of a foreign State is subject to the law of that State.
- The power of attorney is governed by Italian law according to both Art. 27 of the Preliminary Provisions to the Civil Code and Art. 12 of Law 31 May 1995 No. 218. Such power of attorney may be granted also with a deed drawn up abroad in accordance with the *lex loci*, provided that such deed is equivalent, as to its form and as to its validity, to an Italian one.
- A power of attorney issued with a private deed non-authenticated is not valid in Italy; the subsequent legalisation is not a remedy. Therefore, even such legalisation is not relevant nor valid as it relates to an invalid deed.
- A private deed lacking authentication and legalisation may not be effective even to the limited purpose of granting the lawyer the power of appointing other attorneys to sign the petition before the Corte di Cassazione. In fact, even though such deed would be valid pursuant to the foreign law - to be determined in accordance with Art. 26 of the Preliminary Provisions to the Civil Code - it would be contrary to public policy as per Arts. 31 of the Preliminary Provisions to the Civil Code and 16 of Law 31 May 1995 No. 218 (art. 1392 of the Civil Code).
- An action for a declaratory judgment may not be brought for lack of interest, pursuant to Art. 100 of the Code of Civil Procedure, if the breach of right is merely potential as it is in the present case, a future judgment by a non-determined foreign court imposing a performance not yet specified.
20. *Trani Tribunal, order 22 January 1996* 178
- The capacity to be a party in proceedings is a civil right granted by Art. 16 of the Preliminary Provisions to the Civil Code to foreign legal entities subject to reciprocity. Therefore, a natural person bringing an action in Italy on behalf of a company incorporated abroad is not required to prove his capacity for this purpose; the burden of such proof lies upon the other party.
21. *Constitutional Court, 29 January 1996 No. 15* 180
- Art. 122, first paragraph, of the Code of Civil Procedure, does not prevent the protection in court of the linguistic identity of a person belonging to the Slovenian minority; on the contrary, it contains a provision to be read together with the relevant provision on the protection of such minority (Arts. 6 of the Constitution, 3 of the Regional Statute of Friuli-Venezia Giulia, 8 of the Osimo Treaty of 10 November 1975). Therefore, it is not a provision contrary to the Constitution to be declared illegitimate.
22. *Corte di Cassazione (plenary session), 3 February 1996 No. 919* 137
- Italian Courts are competent to hear an action concerning the payment of the fees to an Italian architect with respect to the restructuring of a building to be used as embassy. In fact the rule of international customary law - implemented in Italy through Art. 10 of the Constitution - refers only to relationships which are entirely outside the Italian legal system as they are carried out by a State acting *jure imperii*.
23. *Turin Pretore, decree 12 February 1996* 747
- A petition pursuant to Art. 633 of the Code of Civil Procedure which is to be served, together with the summary injunction (*decreto ingiuntivo*), to a foreign debtor residing in another EC Member State, is admissible.

24. *Ravenna Tribunal, order 20 February 1996* 687
 Since a credit arising out of a breach of a sale is not a "maritime credit" pursuant to the 1952 Brussels Convention on the Unification of Certain Rules on Seizure of Ships, a ship flying the flag of a foreign State, although it is a party to the Convention, may not be subject to seizure in order to protect such a credit.
 The State of Bahamas must be considered a Contracting Party to the 1952 Brussels Convention on the Unification of Certain Rules on Seizure of Ships since the petitioner has not fulfilled the burden of proving that Bahamas denounced the Convention after independence from the United Kingdom.
 Italian Courts are not competent to hear a case submitted to foreign arbitrators, not even for the purpose of issuing provisional measures.
25. *Potenza Tribunal, 28 February 1996* 189
 Italian courts are competent to declare divorce upon the joint petition of the Italian spouses, pursuant to Law 6 March 1987 No. 74, also on the basis of a foreign divorce judgment which was not enforced by the court of appeal.
26. *Parma Pretore, 28 February 1996* 188
 In case of a labour accident occurred to an Italian worker in Ethiopia (such accident consisting in a seizure by guerrillas), the employer is liable pursuant to Art. 2087 of the Civil Code as this provision applies also when the work is to be performed abroad.
27. *Corte di Cassazione, 7 March 1996 No. 1805* 192
 Pursuant to Art. 18 No. 4 of Royal Decree 21 June 1942 No. 929, with respect to Art. 6 *ter* No. 1 *litt. a* of the Paris Convention of 20 March 1883 for the protection of industrial property, flags of Contracting Parties to the Convention may not be utilised as exclusive marks, regardless of the appropriateness of such use.
28. *Corte di Cassazione, 11 March 1996 No. 1992* 193
 The Minister of interiors, as intermediary institution according to the 1956 New York Convention on the Recovery of Maintenance Abroad, when it seeks the enforcement of foreign maintenance judgments in favour of minors is acting in its own capacity and therefore is independent from the issuance of a power of attorney by the creditor. Such capacity to sue is only conditioned upon the request of the transmitting agency.
29. *Corte di Cassazione, 20 March 1996 No. 2369* 437
 An EC directive whose term for the implementation has expired, even if it has not been implemented, is one of the sources of domestic law and it may not be neglected in the determination of the general principles of the subject matter.
 The equitable decision of the *conciliatore* must take into account the principles of consumer protection contained in Directive No. 577/85/CEE on doorstep selling even prior to the entry into force of Presidential Decree 15 September 1992 No. 50, implementing such Directive.
30. *Lombardy Regional Administrative Tribunal, 22 March 1996 No. 346* 752
 The refusal to grant Italian nationality by naturalisation, due to lack of means of maintenance by the petitioner, is illegitimate in case the petitioner is a housewife and the income is provided by her husband and her daughters.
31. *Corte di Cassazione, 27 March 1996 No. 2756* 469
 The Libyan provisions freely permitting the conclusion of term contracts

may not apply to an employment contract between Italian citizens to be performed in Libya, as they are contrary to public policy as per Art. 31 of the Preliminary Provisions to the Civil Code: in fact, the Italian employee would be granted a treatment less favourable than the one provided for by Italian law.

In a choice-of-law clause, as per Art. 25, first paragraph, of the Preliminary Provisions to the Civil Code, the ascertainment of the will of the parties is a factual issue falling within the competence of the judge competent on the merit and may not be submitted to the Corte di Cassazione.

32. *Corte di Cassazione, 29 March 1996 No. 2897* 141
 According to the principle of territoriality, social security is governed by the law of the State in which such relationship is located and the labour contract was performed.
 Following the decision No. 369 of 1985 of the Constitutional Court and Law 3 October 1987 No. 398, an Italian worker employed by an Italian company in a foreign State, with which no international convention is in force, is entitled to social security payments in accordance with Italian law.
 By virtue of the decision No. 369 of 1985 of the Constitutional Court, the worker who carried out its activity in Libya before the entry into force of Law 3 October 1987 No. 398 is subject to the mandatory social security provisions of Italian law.
33. *Alba Tribunal, order 14 May 1996* 753
 Pursuant to Art. 10 of Law 31 May 1995 No. 218, Italian courts are competent to decide on the granting a measure *ante causam* as per Art. 669-bis et seq. of the Code of Civil Procedure, if they are competent to hear the merits of the case relating thereto.
34. *Livorno Tribunal, 20 May 1996* 933
 International trade usages mentioned in Art. 17 of the 1968 Brussels Convention are not the usages referred to in Art. 8 of the Preliminary Provisions to the Civil Code; international trade usages are based on commercial practice and do not require the *opinio iuris*.
 According to international trade usages, a jurisdiction agreement contained in a bill of lading signed only by the carrier is valid.
35. *Milan Court of Appeal, 24 May 1996* 443
 A party having voluntarily joined foreign proceedings may not claim, for the purposes of Art. 797 No. 2 of the Code of Civil Procedure, that it has not been served the document instituting the proceedings. The same party remains a party even if it quits the proceedings, also with respect to counterclaims pending against it.
 Pursuant to Art. 797 No. 3 of the Code of Civil Procedure, a judgment based on admissions, as per Arts. 127 and 128 R.P.C. of Iowa, may acquire *res iudicata* effect as such term is defined in Italian law.
 The request for admissions set forth in Art. 127 R.P.C. of Iowa permit to the party to which such requests are addressed to defend adequately in order to impede that a certain circumstance be deemed to have been admitted: therefore, such request is not in contrast with the fundamental principle of due process. The principle of the free evaluation of evidence has not fundamental nature.
36. *Milan Tribunal, 29 May 1996* 455
 Pursuant to Art. 5 No. 1 of the 1988 Lugano Convention, in contractual

matters the court of the place in which the obligation in question has been or must be performed is competent.

In a dispute between Italian citizens and a company having its seat in Switzerland, Italian courts are not competent if the payment of the fees of the former must be made at the domicile of the latter, as per Art. 1182, last paragraph, of the Civil Code. The fact that the first payment has occurred care of an Italian bank is not relevant.

37. *Rome Juvenile Court, decree 12 June 1996* 689
 Pursuant to the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children signed in Luxembourg on 20 May 1980, a measure of a Belgian court on the placement of a child may be enforced in Italy provided that the child has also the Belgian nationality (Art. 10, litt. c), that the effects of the decision are compatible with the fundamental principles of the law relating to the family in the State addressed (10 a) and that refusal of recognition is not in accordance with the welfare of the child (10 d).
38. *Corte di Cassazione, 17 June 1996 No. 5567* 458
 The decision in chambers, whereby the Court of Appeal decides on the appeal against the decree of the Juvenile Court on the ascertainment of the requirements for international adoption pursuant to Art. 30 of Law 4 May 1983 No. 184, may not be challenged before the Corte di Cassazione as per Art. 11 of the Constitution.
 Appeal before the Corte di Cassazione against the decree of the Court of Appeal establishing the fitness of spouses for adoption at the request of the attorney general is not admissible.
39. *Corte di Cassazione (plenary session), 18 June 1996 No. 5571* 691
 The foreign defendant may submit a petition for a preliminary ruling on jurisdiction even if it has not appeared in the litigation on the merits.
 Pursuant to Art. 72 of Law 31 May 1995 No. 218, the provisions of said law do not apply to proceedings initiated prior to its entry into force.
 Art. 4 No. 4 of the Code of Civil Procedure applies when the legal system of the foreign State of the defendant provides that he may bring an action in that State against an Italian national.
 Italian courts are competent to hear an action for the judicial separation brought by the Italian spouse against a US national resident in New York for more than two years.
40. *Corte di Cassazione, 21 June 1996 No. 5768* 471
 The delivery by an air carrier of goods in a quantity lower than the one expected by the receiver is a case of delivery not in accordance with the document of transportation as per Art. 26 of the 1929 Warsaw Convention on international air transport; therefore, the receiver must submit a claim in writing within the mandatory term fourteen days from the date of delivery.
41. *Corte di Cassazione, 8 July 1996 No. 6196* 473
 Since Denmark is party to the 1965 Hague Convention on service abroad, service of a judicial act to a person resident in Denmark may not be carried out pursuant to Art. 142, first paragraph, of the Code of Civil Procedure, posting the act on the board of the competent court; such formal service is required only when it is not possible to serve the act in one of the manners contemplated by

- international conventions or by Arts. 30 and 75 of Presidential Decree 5 January 1967 No. 200.
42. *Milan Court of Appeal, 9 July 1996* 460
- Art. 27 No. 2 of the 1968 Brussels Convention excludes the recognition of a foreign decision if the document which instituted the proceedings was not duly served in sufficient time to enable the defendant to arrange for his defence.
- A German default judgment relating to proceedings in which an Italian company had a mandatory time-limit of four weeks to appear must be enforced in Italy.
43. *Corte di Cassazione, 10 July 1996 No. 6297* 146
- The decision of the Constitutional Court of 9 February 1983 No. 30, which declared the constitutional illegitimacy of Art. 1, first paragraph No. 1 of Law 13 June 1912 No. 555 on Nationality, in so far as it did not grant Italian nationality to the child of an Italian mother, added a new criterion for the acquisition of Italian nationality *iure sanguinis*.
- Birth is a requirement for the acquisition of Italian nationality provided that the mother or father are Italian nationals.
- The children of an Italian mother must be considered Italian nationals even if they were born before 1 January 1948, date of entry into force of the Italian Constitution.
44. *Constitutional Court, order 12 July 1996 No. 246* 475
- The issue of constitutional legitimacy of Art. 5, paragraph 3 and 6, of Law 30 July 1990 No. 217 (State support for legal expenses for needy people) with reference to Arts. 10 and 24 of the Constitution - in relation with Art. 49 of the 1971 Rome Convention between Italy and Morocco on judicial assistance - is manifestly unfounded as there is no inequality of treatment between Italian nationals and foreigners as regards defence in courts.
45. *Rome Juvenile Court, decree 18 July 1996* 697
- Pursuant to the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children signed in Luxembourg on 20 May 1980, a British decision assigning an Italian-British child to his mother may not be enforced in Italy if the conditions concerning the representative power of the Central Authority to act on behalf of the petitioner (Art. 13 litt. *a*) and the authentication of documents (Art. 13 litt. *b*) are not fulfilled and the decision is contrary to an Italian decision assigning the child to his father.
46. *Constitutional Court, 24 July 1996 No. 303* 404
- Art. 6, second paragraph of Law 4 May 1983 No. 184 concerning foster placement and adoption of minors, provides – both for the adoption established by Italian courts and for the adoption of foreign minors on the basis of a foreign decision – that there may be a difference of no more than forty years between the spouses and the child.
- Art. 6, second paragraph of Law 4 May 1983 No. 184 is unconstitutional with reference to Arts. 2 and 31 of the Constitution in so far as it does not empower the court to grant the adoption, taking into account exclusively the interest of the child, when the age of one of the spouses exceeds of more than forty years the age of the minor (but the difference is kept within the ordinary range), in a case in which the minor would otherwise receive a serious and irreparable prejudice.

47. *Rome Juvenile Court, decree 26 September 1996* 699

Pursuant to Arts. 7 and 11 of the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children signed in Luxembourg on 20 May 1980, decisions regarding the assignment and the right of access to child rendered in a Contracting State are recognised and enforced in every other Contracting State.

Certain British decisions assigning a child resident abroad with his foreign mother jointly to the mother and the foreign father resident in Italy and regulating the right to access may be recognised in Italy (except for the financial arrangements).

48. *Corte di Cassazione (plenary session), 1 October 1996 No. 8590* 936

An action for the enforcement of a foreign maintenance judgment - pursuant to the 1958 Hague Convention on the Recognition and Enforcement of Maintenance Decisions, excluding the relitigation of the merits - is autonomous and aims at producing procedural effects; therefore, it is not subject to a statute of limitations.

Pursuant to Art. 5 of the 1958 Hague Convention, the review of the foreign judgment by the court competent for its enforcement must be limited to the control of the formal conditions set forth by Art. 2 and the documents listed in Art. 4, as well as the issues possibly resulting from changes to the foreign judgment as per Art. 8, such as the decision which the foreign judge may have rendered with respect to the application of the statute of limitations of the creditor's law to the right to maintenance.

Even applying the new rules of Italian private international law, one could not envisage an issue with respect to the statute of limitations of the action for the enforcement of a foreign judgment - except for the control of the limitations of the rights ascertained by the foreign court - since Art. 73 of Law No. 218 repealed Arts. 796-805 of the Code of Civil Procedure and the new rule set forth by Art. 64 does not provide for an enforcement action. Accordingly, foreign judgments are now recognised automatically in Italy provided that the conditions set forth by the law, which are partly analogous to those of the 1958 Hague Convention, are fulfilled.

49. *Constitutional Court, 8 October 1996 No. 336* 409

In order to evaluate whether Arts. 723, first paragraph, and 725, second paragraph, of the Code of Criminal Procedure concerning Letters of request of foreign courts, conform to Law 16 February 1987 No. 81, one should only take into consideration the principles of said Law on the relationship with foreign courts; in particular, Art. 2, first paragraph, first part, which provides that the Code of Criminal Procedure must conform to the international conventions on human rights and criminal proceedings ratified by Italy.

International law, and in particular the European Convention on Judicial Assistance signed in Strasbourg on 20 April 1959, is not breached as a result of the fact that the inquires requested by the foreign court are performed, according to Art. 723, first paragraph, by a judge rather than by a prosecutor; in fact, such Convention does not bind the Contracting States to determine a specific authority to carry out the Letter of request.

The issue of constitutional legitimacy of Arts. 723, first paragraph, and 725, second paragraph, of the Code of Criminal Procedure, with reference to Arts. 3, 24 and 76 of the Constitution is not founded.

50. *Milan Court of Appeal, 8 October 1996* 942

A Swiss decision declaring the adoption of an Italian child by the second husband of his mother - upon a petition submitted by the child after he has become of age - is enforceable pursuant to Arts. 796 and 797 of the Code of Civil Procedure.

51. *Bolzano Pretore, order 15 October 1996* 701

The principle of supremacy of EC Law requires both the Courts and administrative bodies not to apply domestic laws, even of constitutional level, contrary to EC rules directly applicable as these are interpreted by the Court of Justice.

The Constitutional Court has reserved its right to verify the compatibility of EC rules with the fundamental principles of the Italian legal system - including the protection of recognised linguistic minorities as per Art. 6 - by means of the control of the constitutionality of the law implementing the EC Treaty. However, until a decision establishing the unconstitutionality of EC rules, both the Courts and the administration are bound to apply them.

The non-recognition to EC nationals of the right to choose the procedural language before the courts of the Province of Bolzano - granted to Italian nationals resident in Alto Adige pursuant to Art. 3, third paragraph, of Presidential Decree 15 July 1988 No. 574 - is contrary to the fundamental principle of freedom of movement of persons and in particular with the freedom to provide services, which is based on the general principle of non-discrimination set forth by Art. 6 of the EC Treaty.

It is not necessary to request the Court of Justice to render a decision on the issue of the applicability also to EC nationals of the right to choose the procedural language as such issue may be resolved on the basis of the current state of EC law pursuant to the *acte clair* doctrine. Therefore, as the Italian provision is contrary to Art. 59 of the EC Treaty, representing an obstacle to the freedom to provide services, the EC rules are to be applied.

The different regulations applying to Italian nationals resident outside Alto Adige - who may not choose the procedural language - and EC nationals - who enjoy of this right on the basis of EC law - is a so-called reverse discrimination which may be justified with the need to favour only those EC nationals that actually exercise the right of free movement.

52. *Corte di Cassazione, 21 October 1996 No. 9153* 713

The registration of a mortgage is not a secondary effect of a foreign judgment; therefore, the enforcement of a foreign decision by an Italian court, pursuant to Art. 796 et seq. of the Code of Civil Procedure, permits the registration of a mortgage on the assets of the judgment-debtor.

The fact that at the time of conclusion of the Convention between Italy and the United Kingdom of 7 February 1964 on the Recognition and the Enforcement of Judgments in Civil and Commercial Matters and of the Protocol amending it of 14 July 1970, the international relations of Saint Vincent and Grenadines were carried out by the British Government does not imply automatically the extension of the Convention to a territory not included among those to which the Convention originally applied.

Following the constitution of Saint Vincent as a State associated with the United Kingdom on 27 October 1969, or its independence (1979), as a successor State it could have extended the application of the 1964 Convention to its territory only pursuant to the procedure set forth by Art. X, which requires

the notification of extension to the Italian Government after an exchange of notes. However, such extension did not occur.

Pursuant to Art. 796 No. 6 of the Code of Civil Procedure, a foreign judgment may be enforced in Italy, provided that, *inter alia*, before Italian courts is not pending a proceedings between the same parties for the same cause of action initiated before the judgement has become final and conclusive (*res judicata*); for this purpose the relevant time is the time of service of the document instituting the proceedings in Italy. Any further inquiry on the content and the formal requirements of the document instituting the proceedings is not admissible. However, in case the Italian proceedings on the merits ends up with a declaration that it has been invalidly established, then the party prevailing in the foreign judgment may submit again its request for the enforcement.

53. *Constitutional Court, 22 October 1996 No. 358* 681

The situations contemplated by Art. 669-*sexies* of the Code of Civil Procedure, relating to the provisional measures issued *ex parte*, and by Art. 669-*octies* of the same Code, relating to the beginning of the litigation on the merits after the termination of the summary phase of the contentious proceedings, are not homogeneous.

The issue of constitutional legitimacy of Art. 669-*octies*, first paragraph of the Code of Civil Procedure - in so far as it does not provide that, if the act instituting proceedings is to be served abroad, the term for the beginning of the proceedings may be trebled by the court issuing the order - with reference to Arts. 3 and 24 of the Constitution is unfounded.

54. *Corte di Cassazione (plenary session), 4 November 1996 No. 9533* 722

As per Art. 5 No. 3 of the 1968 Brussels Convention, Italian courts are not competent when the victim suffered in Italy only a financial loss consequential upon initial damage arising and suffered by him in another Contracting State (i.e., the tortious behaviour of officers of an English bank with respect to an Italian national domiciled in Italy).

55. *Corte di Cassazione, 4 November 1996 No. 9576* 944

It is not necessary that the parents have a precise will to abandon their child in order to have the status of abandonment justifying the declaration of the adoptability of the child; it is sufficient that the parents have a behaviour contrary to the right-duty set forth in Art. 147 of the Civil Code and in Art. 30 of the Constitution.

Art. 37 of Law 4 May 1983 No. 184 on Adoption provides that such law applies to foreign abandoned children in Italy; therefore, Italian courts are competent regardless of the jurisdiction criteria set forth in Art. 4 of the Code of Civil Procedure and Italian law applies, irrespective of conflict of laws rules.

In case the juvenile court begins a proceedings aimed at declaring of adoptability of a foreign child as a result of his abandonment, the fact that the foreign State's authorities request his repatriation does not preclude Italian jurisdiction nor the application of Italian law, given the close connections between jurisdiction and applicable law in these matters.

56. *Corte di Cassazione (plenary session), 6 November 1996 No. 9655* 948

Pursuant to Art. 72 of Law 31 May 1995 No. 218, the new rules do not apply to an action for legal separation initiated prior to their entry into force.

Proceedings for legal separation between Italian spouses may not be subtracted from Italian jurisdiction; residence or domicile abroad of one of

the spouses or petitions relating to the assignment of children, who also have a foreign nationality, are not relevant.

The fact that a divorce action is pending before a foreign court does not exclude Italian jurisdiction in an action for legal separation between the same spouses.

57. *Venice Tribunal, 14 November 1996* 158

Art. 72, second paragraph of Law 31 May 1995 No. 218, provides that pending actions are decided by Italian courts provided that the facts and rules establishing jurisdiction supervene during the course of the proceedings.

Art. 32 of Law 31 May 1995 No. 218 includes, among the connecting factors to establish jurisdiction in matters of legal separation, also the Italian nationality of one of the spouses and the celebration of the marriage in Italy.

Italian courts are competent to hear an action of legal separation between an Italian national and a foreigner resident abroad, even if it has been brought prior to 1 September 1995.

Notwithstanding the reserve in favour of international conventions set forth by Art. 2 of Law 31 May 1995 No. 218, the convention between Italy and France dated 3 June 1930 on the enforcement of foreign judgments does not apply to establish Italian jurisdiction.

As per both Arts. 18 and 19 of the Preliminary Provisions to the Civil Code and Arts 29, 30 and 31 of Law 31 May 1995 No. 218, marriage and legal separation between an Italian national, who has also acquired French nationality, and a French national are governed by the common national law, i.e. French law: in particular Art. 296 and following of the Civil Code regarding legal separation.

The counterclaim for divorce brought pursuant to Art. 297 of the French Civil Code must be rejected as it would be contrary to Italian public policy as per Art. 16 of Law 31 May 1995 No. 218.

The separation proceedings pending in Italy may not be suspended as a result of the fact that divorce proceedings are pending in France (Art. 7, paragraphs 1 and 3, of Law 31 May 1995 No. 218).

58. *Corte di Cassazione, 18 November 1996 No. 10086* 164

By virtue of the judgment of the Constitutional Court dated 16 April 1975 No. 87 - declaring the constitutional illegitimacy of Art. 10, third paragraph, of Law 13 June 1912 No. 555 on Nationality in so far as it provided the automatic loss of Italian nationality for the woman marrying a foreigner - all Italian nationals who had suffered this prejudice are deemed to be Italian without interruption.

Art. 219, first paragraph, of law 19 May 1975 No. 151, providing that women former Italian nationals may declare before the civil register their will to re-acquire their original status, regulates exclusively the conditions to exercise again the rights pertaining to nationals.

The judgment of the Constitutional Court dated 16 April 1975 No. 87 applies also to marriages celebrated before 1 January 1948, date of entry into force of the Italian Constitution.

By virtue of judgments of the Constitutional Court No. 87 of 1975 and No. 30 of 1993, the son of an Italian mother, who married a foreigner acquiring his nationality before 1 January 1948, is an Italian national.

59. *Corte di Cassazione, 21 November 1996 No. 10275* 952

The evaluation of the sufficiency of the term to arrange for one's defence, as per Art. 7 No. 3 of the Italian-Austrian Convention of 16 November 1971 on Recognition and Enforcement of Judgments, is to be made independently from the provisions of the two Contracting States.

Art. 9 of the 1971 Convention does not provide for the mandatory translation of the injunction served upon the debtor.

60. *Corte di Cassazione (plenary session), 27 November 1996 No. 10524* 726

As per Art. 5 No. 3 of the 1968 Brussels Convention, Italian courts are not competent in an action for damages brought by an Italian shareholder claiming to have suffered damage in Italy as a result of the loss of value of its shares of a Dutch company in connection with the sale of shares concluded in Switzerland. In fact, the tortious behaviour giving rise to the liability occurred in Switzerland, whereas in Italy only occurred a financial loss.

61. *Corte di Cassazione (plenary session), 29 November 1996 No. 10676* 729

As per Art. 5 No. 3 of the 1968 Brussels Convention, Italian courts are not competent when the victim suffered in Italy only a financial loss consequential upon initial damage arising and suffered by him in another Contracting State (i.e., a series of tortious behaviour finalized to acquire the control of a foreign company).

The connecting factor set forth in Art. 5 No. 4 of the 1968 Brussels Convention may not be invoked in case the criminal proceedings have not actually been initiated and are only hypothetical.

62. *Corte di Cassazione, 2 December 1996 No. 10728* 954

The judge competent for the enforcement of a foreign decision may not control the conformity to Italian procedural provisions of the foreign rules relating to the acquisition of *res judicata* effect.

Pursuant to Art. 4 of the Italian-Swiss Convention of 3 January 1933 on recognition and enforcement of judgments, which prevails over Art. 798 of the Code of Civil Procedure, relitigation of the merits is excluded.

63. *Corte di Cassazione (plenary session), 9 December 1996 No. 10954* 958

Art. 3 of Law 31 May 1995 No. 218 provides that disputes not included in the field of application of the 1968 Brussels Convention are subject to Italian jurisdiction also on the basis of the connecting factors set forth for venue, including the residence of the plaintiff as per Art. 18 of the Code of Civil Procedure, provided that the defendant is neither resident nor domiciled in Italy.

Art. 4 of Law No. 218/95 provides that, in case there is no jurisdiction pursuant to Art. 3, Italian courts may nevertheless be competent if the parties have agreed to submit to them or if the defendant does not raise such lack of jurisdiction during the proceedings.

Italian courts are competent to hear an action brought by two companies having their seat in Italy against a company having its seat in the United States which does not object to Italian jurisdiction.

Counterclaims brought by a US company against Italian companies are subject to Italian jurisdiction.

64. *Genoa Tribunal, order 21 December 1996* 172

As per Art. 16 of the Preliminary Provisions to the Civil Code, reciprocity requires that the foreign State recognises in its legal system the same or a similar right to the right which the foreigner wishes to exercise in Italy. Moreover, it requires that such State does not discriminate an Italian national in such a way as to prevent him from enjoying the same right.

The purchase of an immovable in Italy by a Swiss company performed in 1971 is null and void since Swiss law at the time (federal decrees 23 March 1961 and 24 June 1970) prohibited to foreigner and foreign companies the purchase

- of residential immovables unless there was a legitimate interest which in the case at stake was not present.
65. *Rome Juvenile Court, decree 23 December 1996* 735
- Pursuant to the Hague Convention of 25 October 1980 on International Abduction of Children, minors illegally abducted by the Italian mother from the United States, where they were living with their father, a US national, must immediately return to the United States if they have been living in Italy for less than one year (Art. 12, paragraph 1) and they do not consider prejudicial their return to the United States (Art. 13).
66. *Corte di Cassazione (plenary session), order 15 January 1997 No. 20* 961
- If all the conditions are fulfilled, the Corte di Cassazione must request the EC Court of Justice a preliminary ruling of interpretation on the new wording of Art. 17 of the 1968 Brussels Convention, as amended by the 1978 Luxembourg Convention, in so far as it refers to the conclusion of a jurisdiction agreement “in international trade or commerce, in a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware”.
- In particular, if a jurisdiction agreement contained in a bill of lading has been agreed upon in writing or evidenced in writing, it is doubtful whether the reference in Art. 17 of the 1968 Brussels Convention to “usages” requires that the effective will of the parties be ascertained or it is sufficient that the parties be aware of the jurisdiction agreement in all relationships similar to the one in question or that they were not aware of it because of their non-excusable negligence.
67. *Venice Tribunal, 25 March 1997* 737
- The decisions of the Constitutional Court produce effects with respect to all the legal relationships to which the provisions declared illegitimate apply, irrespective of the fact that they precede or follow the date of publication of the decision in question.
- By virtue of the decisions of the Constitutional Court of 16 April 1975 No. 87 and 9 February 1983 No. 30, the children of an Italian mother married with a Swiss national born in 1960 and 1967 are Italian nationals *iure sanguinis*.
68. *Milan Court of Appeal, 28 March 1997* 740
- International conventions of uniform law do not apply in case the matter did not come into contact with different legal systems. The subjective characterization of the contract as an international carriage is not sufficient for this purpose.
- The Geneva Convention of 19 May 1956 on International Carriage by Road (CMR) does not apply to a carriage concerning goods shipped from Italy towards other Contracting States and stolen before they crossed the Italian border.
69. *Bari Pretore, 8 Aprile 1997* 967
- Italian courts are competent to hear an action on an employment contract between the Centre International de Hautes Etudes Agronomiques Méditerranéennes and an employee thereof exercising auxiliary functions, on the basis of the reservation made by Italy to the 1962 Agreement instituting such Centre.
- The effects of the conclusion of an employment contract for a limited time period, even if it conflicts with Law 18 April 1962 No. 230, is not contrary to public policy.

70. *Treviso Tribunal, decree 15 April 1997* 744

In case the foreign competent authority, required to grant the green light to marry pursuant to Art. 116 of the Civil Code, does not answer for months this lack of response is to be considered a non-motivated refusal contrary to Italian public policy.

The Registrar may be authorised to publish the marriage of a Serbian national provided that there are no other legal impediments.

71. *Corte di Cassazione, 21 April 1997 No. 3411* 971

Art. 72 of Law 31 May 1995 No. 218 provides that said Law applies only to proceedings commenced after its entry into force.

Since Art. 2 of the Code of Civil Procedure precludes the parties from agreeing on the competence of foreign courts in matters of rights in property arising out of a matrimonial relationship, a Swiss divorce judgment relating to such matters may not be enforced in Italy - pursuant to Arts. 1 and 2 of the Italian-Swiss Convention of 3 January 1933 on recognition and enforcement of judgments - if the competence of the Swiss judge was based on the acceptance of jurisdiction.

72. *Milan Juvenile Court, decree 6 May 1997* 745

Pursuant to Art. 3 of the Hague Convention of 25 October 1980 on International Abduction of Children, the transfer of children to Canada by their mother in breach of the custody rights - assigning the children jointly to both parents according to Arts. 143, 147 and 316 of the Civil Code - is illegal.

73. *Venice Court of Appeal, 13 June 1997* 975

Pursuant to Arts. 37 and 72, paragraph 2, of Law 31 May 1995 No. 218, Italian courts are competent in a matter of legal separation between an Italian national and a French national pending at the time of the entry into force of said Law; the jurisdiction criteria of the Italian-French Convention of 3 June 1930 on recognition and enforcement of judgments are not relevant.

Both Art. 7, first paragraph, of Law 31 May 1995 No. 218 and Art. 19 of the 1930 Italian-French Convention require, for the purpose of declaring *lis alibi pendens*, a specific request of the party; the judge may not suspend the proceedings *ex officio*.

A French divorce proceedings is not preliminary to a legal separation proceedings pending in Italy.

74. *Milan Court of Appeal, 18 July 1997* 980

In order to determine, pursuant to Art. 5 No. 1 of the 1968 Brussels Convention, the competent court in a dispute relating to a sale of goods between a company with registered seat in Italy and a company with registered seat in Germany, first of all it is necessary to apply the 1980 Rome Convention on the Law Applicable to Contractual Obligations.

Italian courts are competent if the seller, providing the characteristic performance as per Art. 4, paragraph 2, of the 1980 Rome Convention, has its seat in Italy since the place of performance of the obligation in question is to be determined according to Italian law (Art. 10 of the Rome Convention).

Pursuant to Arts. 4, second paragraph, and 10 of the 1980 Rome Convention, regulating the contract and the scope of the applicable law, Italian law applies to a contract entered into between an Italian seller and a German purchaser.

EUROPEAN COMMUNITIES CASES

- Acts of Community institutions:* 12, 20.
Brussels Convention of 1968: 14, 18, 23, 25, 26.
Common commercial policy: 19.
Community law: 1, 4, 6, 12, 13.
Development cooperation: 16.
European Economic Area: 20.
External relations: 2, 10.
Freedom of movement of persons: 7, 8, 9, 24.
Freedom to provide services: 5, 17.
Liability of member States: 4, 13.
Preliminary ruling on interpretation: 15, 22, 28.
Prohibition of discrimination: 1, 3, 11, 21, 27.
Right of residence and establishment: 5.
Treaties and general international rules: 2, 16, 19, 20.

1. *Court of Justice, 7 March 1996, case C-334/94* 195

By retaining in force laws, regulations and administrative provisions restricting the right to register a vessel in the national register and to fly the national flag to vessels more than half the shares in which are owned by natural persons of French nationality, legal persons having a seat in France, legal persons a certain proportion of whose directors, administrators or managers must be French nationals or, in the case of a private limited company, limited partnership, or general commercial or non-commercial partnership, more than half of whose capital must be held by French citizens or all of whose capital must be held by French persons who fulfil certain conditions, the French Republic has failed to fulfil its obligations under Articles 6, 48, 52, 58 and 221 of the EC Treaty, Article 7 of Regulation (EEC) No. 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State and Article 7 of Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity.

National provisions contrary to EC law may be modified only by national provisions of the same legislative value; mere administrative practices do not suffice for this purpose.

2. *Court of Justice, 28 March 1996, opinion 2/94* 201

The request for an opinion to the Court of Justice concerning the competence of the Community to conclude an international agreement is admissible if the purpose of the envisaged agreement is known before negotiations are commenced, notwithstanding that negotiations have not been

commenced and that the precise terms of the agreement have not been determined.

The Community has no competence to accede to the 1950 European Convention on Human Rights because such accession would entail a substantial change in the present Community system for the protection of human rights and would therefore entail a modification of constitutional significance going beyond the scope of Article 235.

3. *Court of Justice, 30 April 1996, case C-214/94* 206

The prohibition of discrimination based on nationality, laid down in Article 48(2) of the EC Treaty and Article 7 (1) and (4) of Council Regulation (EEC) No. 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, applies to a national of a Member State who is permanently resident in a non-member country and whose contract of employment was entered into and is permanently performed there, as regards all aspects of the employment relationship which are governed by the legislation of the employing Member State.

4. *Court of Justice, 23 May 1996, case C-5/94* 506

A Member State has an obligation to make reparation for the damage caused to an individual by a refusal to issue an export licence in breach of Article 34 of the Treaty where the rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach and the damage sustained by the individuals. Subject to that reservation, the State must make good the consequences of the loss or damage caused by a breach of Community law attributable to it, in accordance with its domestic law on liability. However, the conditions laid down by the applicable domestic 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.

5. *Court of Justice, 6 June 1996, case C-101/94* 477

By restricting the activity of dealing in transferable securities (apart from by banks) to companies or firms whose registered office is in Italy, the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the EC Treaty.

6. *Court of Justice, 13 June 1996, case C-144/95* 209

The Court has no jurisdiction to determine whether procedural rules applicable to offences under national legislation which falls outside the scope of Community law may be in breach of the principles concerning observance of the rights of defence and of adversarial nature of proceedings.

7. *Court of Justice, 2 July 1996, case C-473/93* 511

By not restricting the requirement of Luxembourg nationality to access to civil servants' and public employees' posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities in the public sectors of research, education, health, inland transport, posts and telecommunications, and in the water, gas and electricity distributions services, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 1 of Regulation

- (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.
8. *Court of Justice, 2 July 1996, case C-173/94* 511
 By not restricting the requirement of Belgian nationality to posts which, in the public legal entities responsible for the distribution of water, gas and electricity, involve direct and indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities, the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 1 of Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.
9. *Court of Justice, 2 July 1996, case C-290/94* 511
 By not restricting the requirement of Greek nationality to access to posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities in the public sectors of water, gas and electricity distribution, the operational public health services, in the sectors of public education, transport by sea and air, railways, city and inter-city public transport, research for civil purposes, posts and telecommunications and radio and television broadcasting, and in the Athens Opera and in the municipal and local orchestras, the Hellenic Republic has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 1 of Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.
10. *Court of Justice, 30 July 1996, case C-84/95* 211
 Article 8 of Council Regulation (EEC) No. 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) applies to an aircraft which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro), even though the owner has leased it for four years to another undertaking, neither based in nor operating from that republic and in which no person or undertaking based in or operating from that republic has a majority or controlling interest.
11. *Court of Justice, 26 September 1996, case C-43/95* 481
 The first paragraph of Article 6 of the EC Treaty precludes a Member State from requiring a legal person established in another Member State which has brought, before one of its courts, an action against one of its nationals or a company established in the Member State in question to lodge security for the costs of the proceedings, where no such requirement can be imposed on legal persons from that State, in a situation in which the action is connected with the exercise of fundamental freedoms guaranteed by Community law.
12. *Court of Justice, 26 September 1996, case C-168/95* 1011
 In the absence of full transposition by a Member State within the time allowed of Directive 76/464, and therefore of Article 3 thereof, and of Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges, a public authority of that State may not rely on that Article 3 against an individual.
 There is no method of procedure in Community law allowing the national court to eliminate national provisions contrary to a provision of a directive which

has not been transposed where that provision may not be relied upon before the national court.

13. *Court of Justice, 8 October 1996, joined cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94* 485

Failure to take any measure to transpose a directive in order to achieve the result it prescribes within the period laid down for that purpose constitutes per se a serious breach of Community law and consequently gives rise to a right of reparation for individuals suffering injury if the result prescribed by the directive entails the grant to individuals of rights whose content is identifiable and a causal link exists between the breach of the State's obligation and the loss and damage suffered.

The result prescribed by Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours entails the grant to package travellers of rights guaranteeing a refund of money paid over and their repatriation in the event of the organizer's insolvency; the content of those rights is sufficiently identifiable.

In order to comply with Article 9 of Directive 90/314, the Member State should have adopted, within the period prescribed, all the measures necessary to ensure that, as from 1 January 1993, individuals would have effective protection against the risk of the insolvency of the organizer and/or retailer party to the contract.

If a Member State allows the package travel organizer and/or retailer party to a contract to require payment of a deposit of up to 10% towards the travel price, with a maximum of DM 500, the protective purpose pursued by Article 7 of Directive 90/314 is not satisfied unless a refund of that deposit is also guaranteed in the event of the insolvency of the package travel organizer and/or retailer party to the contract.

Article 7 of Directive 90/314 is to be interpreted as meaning that the "security" of which organizers must offer sufficient evidence is lacking even if, on payment of the travel price, travellers are in possession of documents of value and that the Federal Republic of Germany could not have omitted altogether to transpose Directive 90/314 on the basis of the Bundesgerichtshof's "advance payment" judgment of 12 March 1987.

Directive 90/314 does not require Member States to adopt specific measures in relation to Article 7 in order to protect package travellers against their own negligence.

14. *Court of Justice 10 October 1996, case C-78/95* 497

Article 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, applies to judgments given against a defendant who was not duly served with, or notified of, the document instituting proceedings in sufficient time and who was not validly represented during those proceedings, albeit the judgments given were not given in default of appearance because someone purporting to represent the defendant appeared before the court first seised.

15. *Court of Justice, 26 November 1996, case C-68/95* 1015

The Treaty makes no provision for a reference for a preliminary ruling by which a national court asks the Court of Justice to rule that an institution has failed to act. Consequently, national courts have no jurisdiction to order interim measures pending action on the part of the institution. Judicial review of alleged failure to act can be exercised only by the Community judicature.

16. *Court of Justice, 3 December 1996, case C-268/94* 755
 A cooperation agreement with a developing country, providing that respect of human rights and democratic principles constitutes an essential element of the agreement, is validly based on Article 130 U No. 2 of the EC Treaty.
 The fact that a development cooperation agreement contains clauses concerning various specific matters cannot alter the characterization of the agreement, which must be determined having regard to its essential object and not in terms of individual clauses, provided that those clauses do not impose such extensive obligations concerning the specific matters referred to that those obligations in fact constitute objectives distinct from those of cooperation development.
17. *Court of Justice, 12 December 1996, case C-3/95* 992
 Article 59 of the EC Treaty does not preclude a national rule which prohibits an undertaking established in another Member State from securing judicial recovery of debts owed to others on the ground that the exercise of that activity in a professional capacity is reserved to the legal profession.
18. *Court of Justice, 9 January 1997, case C-383/95* 501
 Article 5 (1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1989 Accession Convention must be interpreted as meaning that where, in the performance of a contract of employment, an employee carries out his work in several Contracting States, the place where he habitually carries out his work, within the meaning of that provision, is the place where he has established the effective centre of his working activities. When identifying that place, it is necessary to take into account the fact that the employee spends most of his working time in one of the Contracting States in which he has an office where he organizes his activities for his employer and to which he returns after each business trip abroad.
19. *Court of Justice, 14 January 1997, case C-124/95* 766
 The common commercial policy provided for in Article 113 of the EEC Treaty, as implemented by Council Regulation (EEC) No. 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro and by Council Regulation (EEC) No. 2603/69 of 20 December 1969 establishing common rules for exports, precludes Member State A from adopting, for the purpose of ensuring effective application of United Nations Security Council Resolution 757 (1992) measures prohibiting Serbian or Montenegrin funds located in its territory from being released in order to pay for goods exported by a national of Member State B from that latter State to Serbia or Montenegro on the ground that Member State A allows payment for such exports to be made only if the exports take place from its own territory and they have been authorized by its own competent authorities pursuant to Regulation No. 1432/92, when the goods in question have been classified by the United Nations Sanctions Committee as products intended for strictly medical purposes and the competent authorities of Member State B have issued export authorizations for them in accordance with Regulation No. 1432/92.
 National measures which prove to be contrary to the common commercial policy provided for in Article 113 of the Treaty and to the Community regulations implementing that policy are justified under Article 234 of the EEC Treaty only if they are necessary to ensure that the Member State

concerned performs its obligations towards non-member countries under an agreement concluded prior to entry into force of the Treaty or prior to accession by that Member State.

20. *Court of First Instance, 22 January 1997, case T-115/94* 1020

In a situation where the Communities have deposited their instruments of approval of an international agreement and the date of entry into force of that agreement is known, traders may rely on the principle of protection of legitimate expectations in order to challenge the adoption by the institutions, during the period preceding the entry into force of that agreement, of any measure contrary to the provisions of that agreement which will have direct effect on them after it has entered into force.

Article 6 of the EEA Agreement provides that the provisions of the EEA Agreement which are identical in substance to the Community rules are to be interpreted in conformity with the rulings of the Court of Justice and of the Court of First Instance given prior to the date of signature of the Agreement.

By deliberately adopting a regulation which creates a situation in which two contradictory rules of law will co-exist and by deliberately backdating the issue of the *Official Journal* in which the regulation was published the Council has infringed the principle of legal certainty.

21. *Court of Justice, 23 January 1997, case C-29/95* 998

Article 6 of the EC Treaty precludes national legislation adopted in implementation of Council Regulation (EEC) No. 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport and Council Regulation (EEC) No. 3821/85 of 20 December 1985 on recording equipment in road transport which, in cases of infringement, imposes only on non-residents who opt for continuation of the normal criminal proceedings against them rather than for immediate payment of the prescribed fine the obligation to deposit a fixed sum by way of security in respect of each offence, which is higher than that fixed in the case of immediate payment, in default of which their vehicle will be impounded.

22. *Court of Justice, 30 January 1997, case C-178/95* 1028

By virtue of the principle of legal certainty, the national court is bound by the Commission's decision addressed to the owner of a vessel, finding that his vessel is not a specialized vessel within the meaning of Article 8 (3) (c) of Council Regulation (EEC) No. 1101/89 of 27 April 1989 on structural improvements in inland waterway transport, and the addressee has not brought an action under the fourth paragraph of Article 173 of the EC Treaty against the decision within the time-limit prescribed.

23. *Court of Justice, 20 February 1997, case C-106/95* 775

The third hypothesis in the second sentence of the first paragraph of Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, as amended by the 1978 Accession Convention must be interpreted as meaning that, under a contract concluded orally in international trade or commerce, an agreement conferring jurisdiction will be deemed to have been validly concluded under that provision by virtue of the fact that one party to the contract did not react to a commercial letter of confirmation sent to it by the other party to the contract or repeatedly paid invoices without objection where those documents contained a pre-printed reference to the courts having jurisdiction, provided that such conduct is consistent with a practice in force in the field of international trade or commerce in which the parties in question

operate and the latter are aware or ought to have been aware of the practice in question. It is for the national court to determine whether such a practice exists and whether the parties to the contract were aware of it. A practice exists in a branch of international trade or commerce in particular where a particular course of conduct is generally followed by contracting parties operating in that branch when they conclude contracts of a particular type. The fact that the contracting parties were aware of that practice is made out in particular where they had previously had trade or commercial relations between themselves or with other parties operating in the branch of trade or commerce in question or where, in that branch, a particular course of conduct is generally and regularly followed when concluding a certain type of contract, with the result that it may be regarded as being a consolidated practice.

The 1968 Brussels Convention must be interpreted as meaning that an oral agreement on the place of performance which is designed not to determine the place where the person liable is actually to perform the obligations incumbent upon him, but solely to establish that the courts for a particular place have jurisdiction, is not governed by Article 5 (1) of the Convention, but by Article 17, and is valid only if the requirements set out therein are complied with.

24. *Court of Justice, 20 February 1997, case C-344/95* 1030

By requiring nationals of other Member States who are seeking employment in Belgium to leave its territory after a period of three months; by issuing, during the first six months of their residence, to persons holding employment for a period of at least one year two successive registration certificates instead of a residence permit for a national of a Member State and by requiring payment for those certificates; and by issuing to employed persons and to seasonal workers whose activity is expected to last for more than three months a document relating to their residence and by requiring payment for that document, the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EC Treaty and under Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

25. *Court of Justice, 27 February 1997, case C-220/95* 783

A decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, as amended by the 1978 and the 1982 Accession Conventions, if its purpose is to ensure the former spouse's maintenance. The fact that in its decision the court of origin disregarded a marriage contract is of no account in this regard.

26. *Court of Justice, 20 March 1997, case C-295/95* 788

The first limb of Article 5 (2) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, as amended by the 1978 and the 1982 Accession Conventions, must be interpreted as meaning that the term "maintenance creditor" in the first part of Article 5 (2) must be interpreted as meaning any person who brings a claim for maintenance by way of principal application.

27. *Court of Justice, 20 March 1997, case C-323/95* 1003

Article 6 of the EC Treaty must be interpreted as precluding a Member State from requiring security for costs to be furnished by a national of another

Member State who has brought an action in one of its civil courts against one of its nationals where that requirement may not be imposed on its own nationals who have neither assets nor a residence in that country, in a situation where the action is connected with the exercise of fundamental freedoms guaranteed by Community law.

28. *Court of Justice, 29 May 1997, case C-299/95* 1007

Where national legislation is concerned with a situation which, as in the case at issue in the main proceedings, does not fall within the field of application of Community law, the Court cannot, in a reference for a preliminary ruling, give the interpretative guidance necessary for the national court to determine whether that national legislation is in conformity with the fundamental rights whose observance the Court ensures, such as those deriving in particular from the Convention for the Protection of Human Rights and Fundamental Freedoms.

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