Opera romana pellegrinaggi, whose main argument was based on the fact that the request filed by Mr. De Orsi concerned organizational aspects of the employment relationship.

The Supreme Court firstly highlighted that neither the international personality of the *Opera romana pellegrinaggi* nor its subjection to the State laws with regard to non-religious activities (see Art. 7, para. 3, of the Convention between Italy and the Holy See, 18 February 1984) were being questioned. Rather, the Court was to establish whether an international entity, such as the present one, is entitled to immunity with respect to employment relationships. In this regard, the Supreme Court made a distinction based on the content of the decision and said it was to upheld the immunity of the defendant, if the decision would cause interference with the organization of a subject of international law, while denying immunity if the employee was only asking for pecuniary remunerations.

In this light, the petition was upheld, since the immunity rule prevented Italian judges from exercising jurisdiction. In the Court of Cassation's view, a judgment imposing a payment (as that by the Tribunal of Rome) did not have a mere economic content when this ruling, as in the case at issue, implied previous ascertainment of the damage deriving from termination of the employment relationship. Such a judgment would produce the effect of *res judicata* with regard to both the obligation to pay and the obligation to stipulate employment contracts of an open-ended nature.

FULVIO MARIA PALOMBINO

Immunity of international organisations – European University Institute – Jurisdiction over disputes concerning employment matters – Alternative dispute settlement mechanisms

Corte di Cassazione (Sezioni Unite civili), 28 October 2005, No. 20995
Pistelli v. European University Institute

In holding that the European University Institute is immune from suit in relation to employment disputes, the *Corte di Cassazione* reversed in part its previous judgment of 18 March 1999 in *Piette v. European University Institute* (cf. IYIL, 1999, p. 155 ff., note by IOVANE).

In the first part of the *Pistelli* case, the Italian Supreme Court confirmed the precedent just mentioned. According to the Court, the fact that the European University Institute has been granted legal personality under both national and international law does not entail that it can be assimilated to a foreign State. Notably, sovereign immunities cannot be automatically extended to the Institute because "the establishment of an international custom extending to all [international organizations] the principle *par in parem non habet iurisdictionem* – in force between States and incorporated into national law by Article 10, para. 1, of the Constitution – is not certain". (para. 9).

By upholding the principle established in the *Piette* case, the Court confirmed the tendency to reject the plain analogy between States and international organisations and the idea that immunity is a necessary consequence of any international personality. This attitude of the Court is worth noting because the assimilation of other international entities to States for the purpose of jurisdictional immunity had been previously asserted in Italian case-law (see, for example, Judgment No. 8433 of 18 August 1990, reproduced in RDIPP, 1992, p. 143 ff.). This attitude had been severely criticized by authoritative scholars (see CASSESE, "L'immunité de juridiction civile des organisations internationales dans la jurisprudence italienne", AFDI, 1984, p. 556 ff.).

Once rejected the application of the State immunity rule, the Court did not evaluate if international practice supports the development of an independent customary rule granting international organisations immunity for their activity (in favour of such a rule see CONFORTI, *Diritto internazionale*, 6th ed., Napoli, 2002, p. 259; *contra* SINGER, "Jurisdictional Immunity of International Organisations: Human Rights and Functional Necessity Concerns", Virginia Journal of International Law, 1995, p. 53 ff., pp. 98-100; for an in depth analysis of this issue see REINISCH, *International Organisations before National Courts*, Cambridge 2000, pp. 145-157). Rather, the Court directly affirms that, in the absence of a general norm, "privileges and immunities of international organisations can only be inferred from specific written texts, as provided for by article 11 of the Constitution".

So far as the European University Institute is concerned, the Court has to rely principally on the Convention of 19 April 1972 setting up the Institute and the related Protocol on Privileges and Immunities, and the 1975 Headquarters Agreement with the Italian Government. When it analysed these rules in 1999, the Court came to the conclusion that the EUI was not immune from Italian jurisdiction; in the present decision the Court holds exactly the opposite.

In the Convention setting up the European University Institute, only Article 4 deals with jurisdictional immunities. Under this rule, "the Institute and its staff shall enjoy such privileges and immunities as are necessary for the performance of their tasks, under the conditions laid down in the Protocol annexed to this Convention". An argument in favour of immunity from suit with respect to employment disputes can also be drawn from Article 6, paragraph 5, letter *c*), according to which "the High Council shall [...] draw up the service rules of the staff of the Institute; these service rules shall lay down the procedure for settling disputes between the Institute and persons covered by them". Under Article 29, any dispute between contracting States and the Institute will be submitted to arbitration.

The Court considers the articles of the Convention just mentioned together with the relevant provisions of the Protocol on Privileges and Immunities. In particular, the Court examines Article 1 of the Protocol. Even though this latter rule grants the European University Institute immunity from enforcement only and not from jurisdiction, the Court asserts that the formulation of the article presupposes immunity from jurisdiction. As a matter of fact, the exceptions to the immunity provided for in the second part of Article 1 relate to specific activities, rather than particular

goods. This conclusion seems to be supported also by Article 3 of the Protocol, excluding any administrative or provisional judicial constraint on the Institute's property and assets, except for the cases enumerated in Article 1. Furthermore, Article 9 provides the executive and teaching staff functional immunity from jurisdiction, and Article 14 stresses that such immunity shall be accorded solely in the interests of the Institute, and not for the personal advantage of beneficiaries. Finally, under Article 3 of the Headquarters Agreement, Italian law shall apply within the Institute "without prejudice to the Convention, the Protocol, this Headquarters Agreement and the regulations laid down by the High Council pursuant to article 6 of the convention".

According to the Court, a systematic reading of these rules permits to conclude that the Institute is immune from suits. Indeed, in the Court's opinion, "it would be illogical to grant jurisdictional immunity to the staff and deny it to the Institute itself". It is to be noticed that the Court does not distinguish between functional and absolute immunity, nor investigates on the function and limits of the immunity acknowledged. Even though Article 4 of the Convention limits privileges and immunities to what is necessary for the performance of the Institute's tasks, the Court does not mention how the exercise of jurisdiction in the case under review would hinder the realisation of the Institute's educational and cultural aims. Conversely, the circumstance that the exercise of jurisdiction on employment disputes would not hamper the pursuit by the Institute of its tasks was one of the arguments used to exclude immunity in the *Piette* judgment. Finally, the Court only fleetingly mentions the circumstance that the "applicant's claims are not merely financial", and consequently if any application of restrictive immunity should be conceivable it would not be relevant.

Having interpreted relevant international instruments as granting the Institute immunity from Italian jurisdiction, the Court checks the compatibility of this interpretation with the right of access to justice granted by Article 24 of the Italian Constitution. In so far as the immunity of international organisations is granted by international agreements and not by customary law, the act implementing the agreement must respect the limits imposed by the Constitution. This part of the Court's motivation invites some criticism. The Court seems to consider that the fundamental right of access to justice, granted by Article 24 of the Italian Constitution and by Article 6 of the European Convention on Human Rights, is relevant in the case under discussion *only* because immunity is allowed in application of a conventional norm, implemented by ordinary legislation which by definition must yield to the Constitution. Conversely, the Court seems to imply that, in the case of customary rules, application of Article 24 would be excluded *in radice*. In accord with the majority of scholars, we do think that fundamental values and human rights safeguarded by the Constitution should never be completely sacrificed, not even in relation with international customary rules.

In so far as the European University Institute is concerned, the departure from the constitutional right to jurisdictional protection is not absolute. Indeed, in the

Court's opinion, although the Convention exempts the Institute from the jurisdiction of Italian courts, "it grants jurisdictional protection before an impartial and independent judge, even though established by procedures and rules different from those in force in the national system" (para. 14.1).

In fact, under Article 1 of the Common Provisions concerning teaching and administrative staff, any staff member may submit a request to the Institute's President. Furthermore, if staff members are not satisfied with the President's decision, they can apply to an Appeals Board composed by external independent jurists appointed by the High Council for six years from a list drafted by the European Court of Justice (Article 2 of the Common Provisions as implemented by High Council Decision No. 8/81 of 18 June 1981). Finally, Annex II to the Convention provides that the High Council may designate the European Court of Justice as the body entrusted with the settlement of disputes between the Institute and its staff. According to the Court, such norms confirm the idea that Italian judges are not the convenient forum for the settlement of disputes between the Institute and its employees. Furthermore, the provision of an independent dispute settlement body permits to avoid the incompatibility of immunity with Article 24 of the Italian Constitution by granting an equivalent protection. (The Italian text of the decision has been published in RDI, 2006, p. 247 ff.).

FRANCESCA DE VITTOR

X. TREATMENT OF ALIENS AND NATIONALITY

Alien – Worker from a country outside the European Union – Regularization – Denunciation of a criminal offence involving arrest in flagrante delicto *– Automatic rejection of the request – Unconstitutionality*

Corte Costituzionale, 18 February 2005, No. 78

By this decision, the *Corte Costituzionale* censured the automatic refusal to regularize non-European Union workers following a charge for offences involving arrest *in flagrante delicto* (such as fraud and robbery).

The Court had been called to decide on the constitutional legitimacy of two provisions (one concerning household workers, the other concerning companies' employees: Art. 33(7)(c) of Law No. 189/2002, about domestic workers, and Art. 1(8)(c) of DL No. 195/2002, about companies' employees) by various tribunals, which had invoked the violation of numerous articles of the Constitution, including Art. 2, concerning the protection of the individual's fundamental rights, Art. 3, proclaiming the principle of formal and substantive equality, Art. 4, on the right to work and Art. 27, on the presumption of innocence.

The *Corte Costituzionale*, after deciding to join all of these proceedings, since the terms of the question were not different for household workers and companies'