

▪ Newsletter 2002-01

Arbitrati Nazionali ed Internazionali

On the 14th February 2002, a conference dedicated to alternative dispute resolution driven by new technology will be held in Florence, at the historical seat of Banca Toscana, Via del Corso 6. The conference will be introduced by the Honorary Consul of Luxembourg, Francesco Olivieri. Speakers will include, Jean-Claude Najar (General Counsel of General Electric) Roberto Ghezzi (Entrepreneurs Association) and Silvano Gori (President of the Chamber of Commerce of Prato). The legal aspects of hi-tech ADR will be covered by Sigvard Jarvin (former General Counsel of ICC), Bruce Harris (Joint Managing Director of the International Dispute Resolution Centre, London), Iacopo Monaci Naldini (Law Firm Olivieri Ciapetti & Partners, Florence office), Jonathan Cohen (Law Firm Duane Morris, London office) and Mark Lipowicz (Duane Morris LLP, Philadelphia Office). The technical issues and the advantages of employing technology to make the process more cost-effective and expedient for commerce, will be examined by Martin Odams De Zylva, CEO of [Word & Bond](#), the first and only company to have re-engineered the dispute resolution process to suit the new medium. Word & Bond in conjunction with Duane Morris will later present a practical demonstration of high-tech ADR using their innovative industry standard. In conclusion, Vinicio Bernardini from [Digital Identity](#), will present the most recent technology available to the market.

The conference has been designed to to emphasize the advantages to commerce offered by new technology in resolving disputes b2b and b2c, in light of, particularly, the recent or forthcoming legislative amendments such as the EU Dir. 31/2001 and Brussels Regulation. The conference is sponsored by [Banca Toscana](#), [Word & Bond](#) e [Digital Identity](#), promoted by the Luxembourg Consulate of Tuscany, Chartered Accountants Association of Florence, Entrepreneurs Association and made in co-operation with Law Firm Olivieri Ciapetti & Partners and [Duane Morris LLP](#).

[Hotel Cavour](#) in Florence will provide reduced rates for conference participants.

The conference and materials are provided free of charge. Please make your booking in advance.

The conference may be attended live via Internet.

Further info and programme, please contact i.naldini@olcilaw.com

GIURISPRUDENZA

Arbitrati Nazionali ed Internazionali

Corte Costituzionale, N. 376, 28 November 2001.

In Italy the body called Corte Costituzionale (Constitutional Court) has the duty of judging the constitutional legitimacy of laws and the power to cancel rules of law contrary to the Constitution.

The judges must address themselves to the Court when they consider that a law that has to be applied during a trial is unconstitutional (accidental way).

The Constitutional Court can decide in the sense of illegitimacy of the denounced regulation (accepted sentences) or reject the constitutionality doubts (rejected sentences).

So far, only State judges have been entitled to require the intervention of the said Court.

Further to the Judgment of the Corte Costituzionale N. 376, 28 November 2001, arbitrators too, have now the possibility to suspend the proceedings to let the Court pronounce about the constitutional legitimacy of a law that affects the arbitration.

The Corte Costituzionale has accepted to hear the case proposed by the arbitrators on the grounds that:

- arbitration is a method of disputes resolution regulated by the Code of Civil Procedure whereby it is granted impartiality and due process

and

- arbitrators, like State judges, must interpret the law in accordance with the Costituzione.

According to the approach given by the arbitration law N.25 /1994, the Italian Authorities continue, under many aspects, to recognise to arbitration the same status of the State trial.

GIURISPRUDENZA

Redazione e revisione di contratti e transazioni internazionali

European Court of Justice - Judgment 22 November 2001 C-541/99

The European Directive 93/13 states that the unfair contractual terms agreed upon between a consumer and a seller or supplier acting for purposes relating to his trade, business or profession are not binding on the consumer. The European Court of Justice confirmed, with judgment held on 22 November 2001, that the notion of consumer refers only to natural persons.

GIURISPRUDENZA

Diritto civile e contenzioso

European Court of Human Rights, Second Section, Judgment nr. 41879/98, 25th October 2001, Saggio v. Italia, available on the Internetsite of the Court (in French version only)
<http://www.echr.coe.int/hudoc>

The recent judgment is related to the field of Bankruptcy Law, dealing with the version of the so-called Italian Law "Prodi" effective until 1999. According to this law enterprises of a large scale bankrupt were run by a state governmental extraordinary administration for a duration of maximum five years. The said procedure managed the creditors' rights, also, and therefore the latter could not enforce their said rights during this period of administration. Neither was there a possibility to proceed against their decisions made.

The case

A former employee of a bankrupt firm had an open salary credit and incurred damages due to the long duration of the procedure. He, thus, addressed himself to the European Court of Human Rights in Strasburg evidencing a violation of the Convention on Human Rights.

The protection of property

At the first intervention the Court refers to Article 1 of the additional protocol of the Convention: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions (...)". According to the Courts' interpretation, the possessions in this case consist of the salary credit. As the credit was held by the State governmental administration interesting itself in the Claimant's right of property, an application of Art. 13 is therefore considered justified.

The right to an effective remedy

Decisive for the case is then the question if the Italian Law violates Art. 13 of the Convention ("Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority....."). For a period of four years and two months, the Court points out, the claimant did not have any possibility to take legal steps in order to enforce his rights to recover his salary credit. Furthermore the Claimant could not contest the decisions of the administration nor solicit an examination of his dossier. The Court therefore has declared that in contrast to the applicable law the Claimant had the right to enforce his own rights in front of a competent Tribunal to obtain an appropriate protection.

Final remarks

Even if the judgment regulates a case which was ruled by a law effective until August 1999, nevertheless it has a present value. Concluding, it can be argued that this decision of Strasburg strenghtens the creditors' position of bankrupt enterprises. Moreover the judgment can be considered as a reference for national legislators regarding possible modifications in this area.

We thank Bruno Micolano, lawyer from Bologna, for kindly transmitting to us the case he personally followed.

GIURISPRUDENZA

Diritto della fiscalità internazionale

European Court of Justice - Judgment 12 July 2001 C-262/99

At European level, the residence, for tax purposes, of an individual who has connections with more than one Member State, shall not be determined in accordance to Member States domestic law but on the ground of the criteria indicated by the European Court of Justice which gives primacy to the place of closest personal ties. The Court held on 12 July 2001 (C-262/99) that "where a person has both personal and occupational ties in two Member States, his normal residence, determined in the context of an overall assessment by reference to all the relevant facts, is that where the permanent centre of interests of that person is located; in the event that such an overall assessment does not result in its determination, primacy must be given to personal ties".

LEGISLAZIONE

Diritto della fiscalità internazionale

D.L. 25/09/2001 n. 350, art 11-21: overseas capital inflow.

Individuals, non-commercial entities and partnerships can repatriate capital illegally held abroad, subject to the payment of a penalty (2,5% of the repatriated capital), without being prosecuted by competent Authorities. Deadline 28 February 2002, subject to extension.

LEGISLAZIONE

Diritto della fiscalità internazionale

D.Lgs. 21/11/2001 n. 429 - Controlled Foreign Corporations (CFC)

The Italian "Controlled Foreign Corporation" (CFC) legislation will come into force on January 1, 2002

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