

The Living Dead Convention

Reports of the death of the 1968 Brussels Convention have been greatly exaggerated.



In some parts of Europe, it is still possible to enjoy the application of old Article 5.1 of the Convention and to determine the place of performance of the obligation in question for a basic sale of goods.

One such example is Italy, where the Convention has risen from the dead. This happened a year ago, in Rome.

Italian Private International Law Act, 1995

In 1995, Italy reformed its private international law and adopted a new statute reforming the Italian System of Private International Law. Article 2 of the 1995 Statute provides that international conventions prevail over domestic rules. Thus, jurisdiction of Italian courts over disputes falling within the scope of the Brussels I Regulation is governed by the said Regulation.

Article 3 of the Statute provides a remarkable rule for disputes in civil and commercial matters falling outside the territorial scope of European law, i.e. when the defendant is not domiciled within the jurisdiction of a Contracting state. Instead of laying down its own rules of jurisdiction, the Italian lawmaker decided to apply further the 'Brussels Convention'. Article 3 provides that the heads of jurisdiction provided by the Convention remain applicable. In other words, Italy extended the territorial scope of the Convention to civil and commercial disputes where the defendant is domiciled outside of a contracting state.

Art. 3 Ambito della giurisdizione.

2. La giurisdizione sussiste inoltre in base ai criteri stabiliti dalle Sezioni 2, 3 e 4 del Titolo II della Convenzione concernente la competenza giurisdizionale e l'esecuzione delle decisioni in materia civile e commerciale e protocollo, firmati a Bruxelles il 27 settembre 1968, resi esecutivi con la L. 21 giugno 1971, n. 804, e successive modificazioni in vigore per l'Italia, anche allorché il convenuto non sia domiciliato nel territorio di uno Stato contraente, quando si tratti di una delle materie comprese nel campo di applicazione della Convenzione.

That was all fine in 1995, when the Brussels Convention was alive and kicking. But when the Convention was replaced by the Brussels I Regulation, an issue arose. Was the reference to the '1968 Brussels Convention and its successive modifications in force in Italy' to be interpreted as a reference to the new Regulation? Did it matter that Denmark kept on for a while applying the Brussels Convention? and that it has now stopped?

Legal Miracle

The question was put forward to the Italian supreme court for private matters (*Corte di Cassazione*) last year. An Italian firm was suing a company incorporated in Monaco in a dispute involving a sale of goods. Monaco is neither a member of the European Union, nor a party to any Lugano Convention. Would jurisdiction be determined by establishing where the obligation in question had been performed, or by reference to the place of delivery of the goods?

In October 2009, the *Corte di Cassazione* held that the reference to the Brussels Convention could not be interpreted as designating the Brussels I Regulation. It thus applied old article 5.1 of the Brussels Convention.

Any comment from Italian readers wishing to explain how international conventions can be resurrected is most welcome!