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Part Three. Judicial decisions on questions relating to the United Nations and related
intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Italy

SUPREME COURT OF CASSATION (PLENARY FOR CIVIL MATTERS)

MRS. C. v. INTERGOVERNMENTAL COMMITTEE FOR EUROPEAN MIGRATION (ICEM):
DECISION OF 7 JUNE 1973¹

Jurisdictional immunity of subjects of international law—Distinction made by the courts of Italy² and other countries between private law activities and exercise of public functions—The Convention on the Privileges and Immunities of the Specialized Agencies is not intended to extend immunity to private law activities—Acts regarding the internal structure of an international organization, including the employment relationship with members of its staff, fall within the sovereign powers of subjects of international law and are therefore exempt from the jurisdiction of Italian courts

The plaintiff, an Italian who had worked as stenographer at the ICEM office in Rome, claimed after the termination of her contract the difference between the terminal emoluments received from ICEM and the amount that would be due to her under Italian labour law.

The defendant intergovernmental organization entered a plea of immunity from jurisdiction relying on an agreement with the Italian Government which rendered applicable to ICEM the Convention on the Privileges and Immunities of the Specialized Agencies.³

The Court of first instance rejected the plea of immunity and the ICEM appealed on the ground (i) that the immunity enjoyed by it under the Convention was not subject to the distinction drawn in Italian judicial practice between private and public law activities of international organizations and (ii) that even applying this distinction, the employment relationship between the organization and its staff would fall into the second category and hence be covered by the immunity.

The Supreme Court of Cassation rejected the first ground of appeal, reconfirming the distinction between private law activities and public law functions, drawn in Italy and, as the Court indicated, in other countries, including the United States, and adding that the Convention on the Privileges and Immunities of the Specialized Agencies contained nothing that would extend immunity also to private law activities.

With regard to the second ground of appeal, on the other hand, the Court held that acts by which an intergovernmental organization arranges its internal structure, including the rules laid down by it in respect of the employment relationship with the staff, were manifestations of

¹File No. 19/70 of civil matters before the Supreme Court of Cassation.

²See judgement of the Rome Court of first instance of 25 June 1968 in an analogous case reported in the *Juridical Yearbook* 1969, p. 238. See also the opinion of the Legal Counsel of the United Nations, reproduced in the *Juridical Yearbook* 1965, pp. 236-237 and that of the Legal Counsel of FAO, reproduced in the *Juridical Yearbook* 1970, pp. 189-193.

³United Nations, *Treaty Series*, vol. 33, p. 262; Italy acceded to the Convention pursuant to Law No. 1740 of 24 July 1951, but the instrument of accession contained certain reservations on account of which Italy is not considered by the United Nations as having acceded to the Convention, see FAO document C 69/40, July 1969, p. 15.

the organization's powers under international law, just as such acts of the Italian State itself constituted acts in the exercise of the latter's authority governed by public law.

The Court concluded, therefore, that the provisions and measures adopted by the ICEM, also in so far as they regarded terminal emoluments, were governed by the organization's own system of rules; they were consequently not subject to the Italian legal system and were exempt from the jurisdiction of Italian Courts. Accordingly, the Court quashed the judgement of first instance and dismissed the case for lack of jurisdiction.

2. United States of America

NEW YORK COUNTY SUPREME COURT SPECIAL TERM: PART I

MATTER OF MENON⁴

Application pursuant to article 78 of the Civil Practice Law and Rules to compel judges of another court to issue an order to show cause— Dismissal of the application on the ground that whether an order to show cause shall issue involves the exercise of judicial discretion, not a ministerial act— The sovereign status of the United Nations is beyond the court authority to challenge

Mrs. Esterya Menon, the estranged wife of a non-resident United Nations employee, was challenging the refusal of Family Court judges to order the United Nations to show cause why Mr. Menon's salary should not be sequestered to provide support for herself and her minor child. Her application pursuant to article 78 of the Civil Practice Law and Rules (CPLR) in the nature of mandamus, to compel the Family Court judges to issue an order to show cause, was dismissed by a decision reading in part as follows:

"CPLR 7801 specifically excepts from article 78 'challenge [of] a determination . . . 2. Which was made in a civil action in criminal matter . . .' where the relief sought is review of such a determination . . .

"Whether an order to show cause shall issue involves the exercise of judicial discretion, not a ministerial act. Accordingly, the Family Court judges cannot be compelled to issue an order to show cause where in their discretion they find such procedure is not warranted.

"Petitioner has litigated this matter extensively. While the court is sympathetic to an abandoned wife and child, the law specifically exempts a sovereign from the jurisdiction of our courts, unless the sovereign consents to submit itself. The United Nations holds sovereign status and may extend that protection over its agents and employees. Various courts have repeatedly so advised this very petitioner (*Means v. Means*, 60 Misc. 2d 538;⁵ *Menon v. Weil*, 66 Misc. 2d 114⁶).

"What can be done for petitioner in terms of financial assistance this community is doing. However, as has been ruled on her prior application, the sovereign status of the United Nations, concerning its personnel and its financial agents, is beyond this or the Family Court authority to challenge."

⁴Decision reproduced in the *New York Law Journal* of 28 November 1973.

⁵See *Juridical Yearbook*, 1969, p. 243.

⁶See *Juridical Yearbook*, 1971, p. 249.