CHAPTER 13

Italian Courts and the Immunity of International Organizations

Beatrice I. Bonafè

Abstract

Italian case law on the immunity of international organizations is quite extensive, even though there are only a few international organizations headquartered in Italy. The first cases—mainly labour disputes—date back to the 1930s. While one might expect Italian case law to involve only a few lines of reasoning consistently developed, in fact the relevant cases can be characterised mainly by their inconsistency. This paper first considers the way in which Italian courts have addressed the central issues entailed by the granting of immunity to international organizations: its foundations and scope. It will then analyse the increasingly restrictive approach of the Italian courts, in particular the case law concerning employment claims and the right of access to court.

Keywords

immunities – international organizations – employment – scope of immunity – access to court

1 Introduction

Italian case law on the immunity of international organizations is quite extensive, even though there are only a few international organizations headquartered in Italy. The first cases date back to the 1930s, and they mostly concern labour disputes. In principle, one could expect Italian case law to be characterized by a few lines of reasoning consistently developed. By contrast, the relevant cases can be characterized mainly by their inconsistency. Over the years, it is

possible to find judgments contradicting precedents, lower courts refusing to adopt the same approach as higher courts, decisions of the Supreme Court explicitly reversing its own precedents, and so on. Inevitably, what follows is just an attempt to identify some general trends that emerge from the Italian case law, and perhaps to turn ‘confusion’ into ‘evolution’ by interpreting the cases in their chronological succession.

For the sake of clarity, the relevant case law can be divided into four main groups. First, there are cases in which domestic courts could rely on detailed treaty provisions expressly dealing with international organization immunity. For example, the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty2 and the Agreement between the Government of the Italian Republic and the Supreme Allied Commander in Europe (‘AFSOUTH’) on the Special Conditions Applicable to the Establishment and Operation on Italian Territory of International Military Headquarters which are or may be there Installed (signed in Paris on 26 July 1961),3 provide for specific provisions on the immunity of the North Atlantic Treaty Organization’s (‘NATO’s’) headquarters in Naples,4 with particular regard to employment claims.5 The same can be said with respect to the Constitution of the International Refugee Organization (signed in Geneva on 15 December 1946).6 Therefore,

---

3 Decree of the President of the Republic, 18 September 1962, No. 2083, Gazetta Ufficiale 9 July 1963.
4 In 2004, AFSOUTH was reorganized as the Allied Joint Force Command (‘JFC’) in Naples.
5 Art. 8 of the 1961 Paris Protocol draws a distinction between employees having an international status (the relevant claims are covered by NATO HQ immunity) and employees having a local status (the relevant claims fall under the jurisdiction of the Italian courts).
6 See Art. 13 of the Constitution of the International Refugee Organization (‘IRO’):

"1. The Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its objectives.
2. (a) The Organization shall enjoy in the territory of each of its members such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its objectives.
(b) Representatives of members, officials and administrative personnel of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.
3. Such legal status, privileges and immunities shall be defined in an agreement to be prepared by the Organization after consultation with the Secretary-General of the United Nations. The agreement shall be open to accession by all members and shall continue in force as between the Organization and every member which accedes to the agreement."

The IRO ceased its operations in 1952, and was replaced by the UN High Commission for Refugees.