The independence of the courts and the validity of judgements vis-à-vis government and administrative agencies. Notes in connection with decisions in Italy on the case of the Royal House of Aragon, Majorca and Sicily.

Through rulings by courts of law in Italy, the representative of the aforesaid mediaeval Royal House has been granted precisely defined princely prerogatives, rights and powers and the House has as such been designated as a separate subject of international law. I have been asked the question of whether Italian authorities, above all the Ministry of Foreign Affairs, are bound by these decisions. According to information received, there has been noted a certain resistance on the part of the Ministry to accept these judgments, which establish rights with regard to status, princely privileges and powers.

First, I would like to summarise again the main points of the judgements (1), then outline general historical trends of relevance in this context (2). A limited study of Italian and Swedish constitutional texts, shedding light on the independent and impartial position of the courts relative to the State and public administration merits general attention and comment (3). Finally, space is given to a brief summary and overall reflections and conclusions (4).

1. Judgements from Italian courts in 1952 (Bari) and 1964 (Pistoia) established via the procedure of criminal law that the representative of the Royal House of Aragon is entitled to confer noble status, to be heirs to the House of Paternò Castello Guttadauro di Emmanuel and legitimate holders of that family's rights, including the exercise of *ius honorum*, that are sustained via the family tradition and cannot become void as a result of dethronement.

Particular attention should be focused on an arbitration judgment from 2003 by Tribunale Ordinario di Ragusa, according to which Francesco Nicola Roberto Paternò Castello di Carcaci was awarded several precisely defined prerogatives in his capacity as direct descendent and heir to the collateral line to the last Sovereign of the Royal House of Aragon, as legitimate heir and pretender to the throne, namely:
a) The quality of Royal Highness and Royal Prince of the Royal House of Aragon, Majorca and Sicily.
b) The right to designate himself Sovereign and Head of the Name and Arms of the Royal House of Aragon, Majorca and Sicily, never renounced, with the right for himself and his successors for an unlimited period to all the qualities, prerogatives, attributes and styles of that rank and with the ability to use coats of arms, titles and designations that belong to him by heredity right.
c) Noble rank accompanying a number of titles associated with the Royal House and sovereign grandmastership relating to Orders of Aragon stated.
d) The sovereign prerogatives known as *jus majestatis* and *jus honorum*, with the ability to confer noble titles, with or without predicates, noble arms, honorific titles and chivalric distinctions relating to the hereditary dynastic Orders.
e) The quality of a subject of international law and of Grand Master of non-National Orders within the terms of the Italian law of 31 March 1951, no.178.
f) The present judgment has an irrevocable character under Italian law. As regards its geographical extent, reference was made to the New York Convention of 10 June 1958 (concerning the recognition and enforcement of foreign arbitral awards).

In summa, the above-mentioned legally binding judgements support the notion of a consistently positive view by the courts, that is also legalistically well founded, on the continuing existence *in concreto* of extensive hereditary princely prerogatives, their recognition and enforcement. Their irrevocable nature is emphasized, and reference is made to an international convention that has been ratified by Italy and is of extreme importance to the current social activities of the Royal House concerned. The status of a subject of international law gives rise to the observation that, in Professor Jacob Sundberg's view (statement of opinion dated 15 September 2006) the representative of the Royal House concerned must «be considered as having rank equal to a head of state».

2. Constitutional ideologies were emphasized and intensively aired in European and Anglo-Saxon political philosophy during the Age of Enlightenment, heavily influenced by Montesquieu *et al.* (Charles Louis de Secondat, Baron de La Brède et de Montesquieu; 1689–1755). During this period, theories of separation of powers crystallized, in which the fundamental principle was that all concentration of power leads to abuse of power and legal uncertainty, whereas a separation of the state into different institutions able to balance and control each other fosters liberty and legal certainty for a country's citizens.

Theories of separation of powers and associated lists of civil liberties and rights eventually became the foundation for later constitutional ideologies, where one indispensable constituent is the independence of the courts vis-à-vis the governing and executive functions. The former must of course duly implement enacted laws, but in various systems have a right, to varying extents, to scrutinize laws. Without a fundamentally fully independent judiciary not susceptible to influence, enforcement of civil liberties and rights appears to be a fantasy. (On the subject of the political philosophical background and the effect thereof in developing European constitutions in the 16th, 17th and 18th Centuries, see Lex. Bramstång, *1809 års regeringsform och de administrativa frihetsberövandena* (The 1809 Instrument of Government and the Administrative Elimination of Liberties), *Skrifter utgivna av Institutet för rättshistorisk forskning*, (Papers Published by the Institute of Legal Historical Research) Lund 1982).

While in Sweden the 1809 Instrument of Government was manifestly influenced by the theory of separation of powers, the current Instrument of Government, dating from 1974, is said to rest on the separation of functions principle. This terminological shift appears, in practice, to be minute. The essential point *in concreto* consists of the constitutional statute that in both Italy and Sweden may be considered to express the independence granted to the courts and the respect that on this basis should be accorded to their decisions by representatives of governing and executive institutions. Of course, laws and ordinances may be amended in democratic order, but then with the avoidance (one hopes) of unacceptable consequences in the form of negative retroactivity and infringement of «acquired rights». An ultimate line of defence against the latter-mentioned wrongs may be sought at the European Court of Human Rights or the European Court of Justice.

3. The Italian constitution of 1947, which I have consulted in English, is hardly surprising in giving expression to a separation of powers or functions. The republic's organization consists of Parliament, the government and the public administration, plus the legal system with the judiciary. The independence and impartiality of the courts are emphasized in several articles: «Judges are», states Art. 101, «subject only to the law». Art. 104 is particularly clear: «The Judiciary is a branch that is autonomous and independent of all other powers» (my italics). The independence and impartiality of the judicial power can hardly be expressed more clearly.

Under the heading «Rules on Jurisdiction», several thought-provoking provisions are set forth on the scope of the important capacity of the judiciary from the viewpoint of legal certainty.

In this context, Art. 113 should be noted, with its introductory paragraph: «The judicial safeguarding of *rights and legitimate interests* before the bodies of ordinary or administrative justice is always permitted against *acts of the public administration*». It continues: «Such judicial protection may *not be excluded or limited* to particular kinds of appeal or for particular categories of acts.» (All italics mine).

The conclusions that may be drawn from the above as regards the independent role of the Italian courts vis-à-vis governing, executive and administrative institutions on the whole may now be compared with observations concerning Sweden's 1974 constitution; in part sparsely worded but essentially resting on a traditional foundation influenced by the philosophy of the Age of the Enlightenment. Attention is focused above all on Instrument of Government (*RF*), Ch. 11, with its introductory declaration in subsection 4, that the courts' administration of justice functions and the main characteristics of their organization are prescribed by law; unlike the administrative agencies, they are not accountable to the government (cf subsection 6). Permanent judges may not be removed from their position.

In the case of the *administrative agencies*, higher government agencies are specifically prohibited from deciding how lower agencies should rule on issues that arise from the exercise of public authority vis-à-vis the individual or that relate to the implementation of a law (*RF*, Ch. 11, subs. 7). *A fortiori* the *principle of impartiality* prohibits any (attempted) influence by Parliament, the government or any administrative authority over any decision by a court. (For more on the independent status of the courts, see *Håkan Strömberg, Sveriges Författning* (Sweden's Statutes), 17 edition, Lund 2001, p. 64 *et seq.*)

In summa, the autonomy of the courts is guaranteed conclusively in the text of the Italian constitution and the comparable part of the Swedish constitution. It follows from this that the government in the countries concerned here, together with the administrative authorities and other institutions with a status or remit governed by public law must respect *in general* the integrity of courts and *in particular* legally binding rulings by courts, unless such decisions are tainted by objectively established *nullity*; i.e. are affected by clear, grave and indisputable irregularities. This is not in any way the case with Italian judgments of relevance here, establishing as they do confirmed inherited rights that have never been renounced.

Repudiating decisions by the courts is a *different matter entirely* from the government's traditional authority to grant *pardon and dispensation* and the existence of a system of checks based in constitutional law with regard to the official functions of judges and others exercising public authority.

The above immediately draws one's attention to Article 6 of the European Convention on Human Rights, which guarantees everyone, in the determination of their civil rights, a fair and public hearing within a reasonable time by an *independent and impartial tribunal* established by law. Such requirements have *in concreto* been satisfied, most recently via the 2003 arbitral award. Any *administrative rejection* of this judgment (wholly or partly) would *clearly conflict* with the said Article and also acquires the character of *discrimination* under Article 14. (Cf. also *ratione materia* Article 8 regarding protection of privacy, including respect for inherited and judicially confirmed *moral rights*.) An (admittedly difficult to imagine) action along these lines could without a doubt raise the issue of a breach of the convention. As a principle, the rules of the European Court of Justice take precedence over the laws of Member States.

4. In the above points, the rulings by the Italian court have been presented with the emphasis on the most recent arbitral award in 2003, which established important prerogatives and status relationships (point 1). A general background to contemporary constitutional ideologies and constitutions has been sketched, in which separation of powers or functions is a basic principle of the utmost importance for the enforcement of civil liberties and rights. In this context, independent and impartial courts stand out as an essential constituent, as does *respect for their legally binding decisions*, including in cases where politicians in power may be less than enthused. Not least in the establishment of the legal position and legitimate interests of individuals, the importance of respecting court rulings emerges as binding and prescriptive (point 2). The constitutions of both Italy and Sweden express unequivocally this way of thinking, which also characterizes the European Convention on Human Rights and EU law, of which the above-mentioned Convention forms part (point 3).

Harmonized European law provides a basis for the following considerations and conclusions *in concreto*.

If the Italian authorities refuse to respect the 2003 arbitral award (and the preceding, above-mentioned judgments), the procedure will conflict uncomfortably with *domestic law* and will in addition will be *sharply at variance with the New York Convention*, whose ratification must reasonably be assumed to rest on the *basic premise* that the Member States recognize the validity of the rulings of their own courts. Otherwise, the absurd consequence *in casu* is risked, that the status and rights of HRH Don Francesco and the Royal House of Aragon are recognized, leading to concrete enforcement in all States signed up to the Convention other than in the country concerned, Italy.

The Italian judgments observed above – not least the arbitral award – refer to the confirmation of *inherited personal rights*, protected by the European Convention on Human Rights with a requirement (in Article 6) for a

full and fair (in this case already completed) hearing in a court of law. Any infringement (in whole or in part) of HRH Don Francesco's rights as confirmed by the court could consequently result in Italy being sued at the European Court of Human Rights for breach of the convention – a situation that certainly should be avoided and is only pointed out as «*ultima ratio*».

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