Regarding status, legal powers and nobiliary rights that accrue to the representative of the dethroned mediaeval Royal House of Aragon, Majorca and Sicily with specific reference to the legitimacy of those on whom the latter has conferred nobility with associated titles

The present statement of opinion is preceded by two earlier studies, dated 12 August 2008 and 30 October 2009, respectively. The former was occasioned by questions concerning the substance and quality that in the perspective of international public law should be attributed to agreements *(family pacts/treaties*) within dethroned royal and princely houses with specific reference to their occurrence within the above-mentioned legal subjects. A study of the underlying principles and specific conditions, together with a related comparison with the *House Laws* ("Hausgesetze"), which governed the affairs of the numerous - for example in Germany - ruling princely houses, during the 19th Century and some way into the 20th Century, emanated in the following conclusion: If dethroned, unified princely houses are recognized as *separate subjects under public law* , they acquire thereby a power, through the above-mentioned pacts, to implement dynastic measures regarding order of succession etc. **In casu**, there exists a family pact dated 14 June 1853 made out to, and approved and officially registered by, King Ferdinand II of the Two Sicilies, containing well-supported recommendations and decisions on the *order of succession* within the Royal House referred to herein. The document has been considered and approved by courts of law in Italy. It may be mentioned in this respect that in 1860 Ferdinand II's successor, King Francesco II, approved a recommendation from a royal commission on nobiliary titles, to the effect that the sovereign of the dethroned Royal House of Aragon should have the right *to confer "chivalric distinctions".*

In the following statement of opinion, the focus is on the *independence of the courts and the validity of rulings* vis-à-vis parliament, government and administrative agencies. Through rulings by courts of law in Italy, representatives of the Royal House concerned have been granted precisely defined princely prerogatives, rights and powers, and the House has as such been designated as a *separate subject of international law*. The question then put to me of whether Italian authorities would be bound by these legally binding judgments has on the basis of explicitly formulated, clarifying articles in the Italian Constitution of 1947 been answered in the affirmative, without the slightest cause for doubt.

Against the background of the *responsa* briefly related in the above, petition has been made for a further *responsum* focusing on the *legitimacy of nobility and associated titles*, conferred by former ruling royal and princely Houses, in particular the Royal House of Aragon concerned here.

In response to this multi-dimensional question, previously addressed in general terms, it is intended in the following to outline schematically the changing meaning over time of *nobiliary dignity*, legitimate *acquisition* of the same and the meaning in that context of a *sovereignty requirement* that varies over time (1). Space is then allocated for recapitulation of the principal points, relative to previous studies, of *the relationship between administrative and judicial organs of the State*, such as is *explicitly* expressed in current constitutions and *in concrete terms* in both the text of Italian law and rulings arising therefrom regarding the situation of HRH Don Francesco and the Royal House of Aragon(2). At this point, there is merit in renewed observation *inter alia* of the arbitration judgement in Ragusa, cited by me on several occasions, for the purposes of clarification (3). It may be appropriate to present a concise *résumé* along with *legal considerations* with references to articles in the European Convention (5), followed by final conclusions (6).

l. While the origins and development of the European nobility display a number of national distinguishing characteristics a number of *main features* may be distinguished. (See, for example, *Inga von Corswant-Naumburg, Den europeiska adelns historia* (History of the European Nobility), in *Ointroducerad Adels kalender* (Calendar of the Unintroduced Nobility), 2005, pp. 255 et seq.)

Nobility (in the broad sense) was *de facto* bestowed as *naturally inherited* to the members of certain eminent *patrician* or *noble families* (Roman Empire and Nordic countries, respectively) but over time became associated with *personal contributions* in the form of cavalry service, through the provision, in times of war, of horsemen and horses to the country's ruler. A tax-exempt, worldly "*frälse*" (Nordic, approximately a class of "freed men") became established (in the case of Sweden, see King Magnus Ladulås and the Ordinance of Alsnö, 1280).

From the 16th Century onwards, ennoblement and the *privileges* arising therefrom (extended, but then gradually reduced and abolished) were based on military or civil/administrative services. Chivalric houses were established for assemblies and for registration of the estate of the nobility. The former "warrior nobility" was joined by a growing bureaucratic nobility and "court nobility". It shall be observed in the latter respect that the *court* - at least in Sweden - was for a considerable period into the 19th Centry regarded as a *central part of the State administration*. (For more on this point, see *Bramstång, Kungl. Maj:ts Ordens rättsliga status* (The Legal Status of His Majesty the King), in *Festskrift till Fredrik Sterzel (*Festschrift to Fredrik Sterzel*)*, 1999, Uppsala, p. 83 et seq., especially p. 91 et seq.)

The conferment of legitimate nobiliary dignity assuredly requires *qualifications* on the part of both conferrer and acquirer. In the above-mentioned work by Inga von Corswant-Naumburg (p. 257, it is asserted that the right to confer "genuine" nobility or nobiliary titles falls only to a *sovereign, such as a Head of State of a country.* Appended hereto is a list of the few European States that still confer nobility on individuals and in which *all* Heads of State hold their office through *monarchic orders of succession*. The restriction described emerges as in principle *non-negotiable,* irrespective of the fact that a president can *de facto* possess considerably greater powers than a ruling prince and in some cases can actually appear to act in an absolute or "sovereign" manner, in the most exaggerated sense of the word. Under the influence of the doctrines of separation of powers from the Age of Enlightenment, incidentally, the *prerequisite of sovereignity* in constitutions established later gradually became diluted.

Following this general introduction, the ability of dethroned monarchies to ennoble will be discussed under the following points, with the emphasis on the capacity of HRH Don Francesco to confer nobiliary dignity and associated titles on individual persons, who in their dealings with the dethroned Royal House have made themselves deserving thereof.

2. As was discussed in the statement of opinion dated 30 October 2009, a study of the Italian constitution in 1947 indicates that it - in common with its Swedish counterparts in 1809 and 1974 - is based on a *system of separation of powers or functions* rooted in the Age of Enlightenment. The independence and impartiality of courts relative to parliament, government and administration are emphasized in several articles.

"Judges are", states Art. 101, "subject only to the law". Art. 104 is unambiguously clear, thus: "The Judiciary is a branch that is *autonomous and independent of all other powers*" (my italics). Reference is furthermore made to Art. 113.

In the aforesaid statement of opinion, we look for comparison at Sweden's Instrument of Government, Section **11** and paragraphs indicated. The conclusion is *unambiguous and inevitable:*

Court judgments with binding effect shall in their capacity of mandatory decrees and lines of action be *respected by parliament, government and subordinate administrative authorities;* particularly if they refer to civic freedoms and rights protected by the European Convention.

Attention will be drawn, in what follows immediately hereafter, to some points, relevant in the context, among those in the earlier response to the judgments concerned, through which HRH Don Francesco was granted precisely defined status as well as princely prerogatives, rights and powers

specified in detail accruing to him under the *law of inheritance*.

3. In criminal law proceedings at the Court of Law in Bari, Italy, it was noted on the basis of a detailed historical and heraldic argument in a ruling of 13 March 1952 on U.Z.'s disputed claim of a ducal title conferred by representatives of the royal house concerned, that the *award* and *bearing* of this title was legally and legitimately irreproachable. In the ruling, emphasis was placed on "jus sanguinis" in the first-mentioned respect and the consequent "fons honorum", confirmed in 1860 by Francesco II of the Two Sicilies.

A subsequent ruling with in concreto significance was issued by the *Pistoia Court of Appeal* on 5 June 1964, wherein the right of representatives of the Royal House to confer legitimate nobiliary and honorary titles, as well as chivalric distinctions and decorations, was endorsed as a result of an action by representatives of the Royal House. The higher court ruling is carefully reasoned and documented, for example taking into account the family pact approved by Ferdinand II of the Two Sicilies and the papal approbation, as well as the in toto dormant *jus honorum* as a nobiliary right maintained by family tradition.

In the above-mentioned rulings, it was *explicitly* endorsed that the then representative in his capacity as head of name and arms of a *sovereign* dynasty (the Royal House of Aragon) had been entitled to confer nobiliary status in the capacity of heir and legitimate holder of the House's rights, including*jus honorum,* which had been maintained through family tradition and which *cannot become void as a result of dethronement.*

Noteworthy in terms of content and timing in this connection is the arbitration judgment of January 2003 between the Higher Institute of Nobiliary Law and HRH Don Francesco by the Tribunale Ordinario di Ragusa, which was discussed in the aforesaid statements of opinion in 2008 and 2009. Certain vital aspects of the ruling will be recapitulated in brief in the following with regard to the issues *now* raised.

Firstly, Don Francesco is granted *the right, never renounced,* to designate himself *sovereign* and claim those *qualities and prerogatives* following from the title *that accrue to him through the right of inheritance,* the latter known as *jus majestatis* and *jus honorum*.

Secondly, an ability follows from this to confer *nobiliary titles*, with or without predicates, *coats of arms, honorific titles* and *chivalric distinctions* relating to hereditary dynastic orders.

Thirdly, the quality of a *subject of international law* and of *Grand Master of non-National Orders* is noted.

Fourthly, it is declared that the court ruling in question has an irrevocable character under Italian law.

Fifthly, and finally, reference is made on the issue of the geographical scope of the ruling to the *New York Convention* of 10 June 1958 concerning the recognition and enforcement of foreign arbitral awards, ratified by a large number of States, either without reservation or with qualifications. Italy and Sweden, among others, fall into the *former* category. As far as the *latter* category is concerned, it should be observed parenthetically that any reservations/qualifications that exist as to the scope *in concreto* of *this* convention are not sustainable, since the question centres on *personal rights* bestowed, backed by three legally binding rulings by courts in Italy and protected by the *universal* European Convention.

4. In the above points, a number of brief general observations have been made, against the background of earlier statements of opinion, regarding the requirements of sovereignty and legitimacy in ennoblement, the autonomous and authoritative position of courts in relation to other organs of the State in general and *in concreto;* in addition, relevant Italian court rulings have been summarized, in

which the sovereign status and the nobiliary rights *(jus majestatis* and *jus honorum)* which, through the *right of inheritance* and as *never having been renounced*, accrue to HRH Don Francesco are discussed in detail, with explicit effect and convincingly. In his capacity of pretender and head of name and arms of the dethroned Royal House of Aragon, the latter represents a *subject of international public law* with the capacity *inter alia* to ennoble and award other distinctions.

Above-mentioned court rulings *with significantly action-determinative effect* in various forms of legal process have endorsed HRH Don Francesco's *inherited legitimacy*, with sovereignty as representative of a separate subject of public law, to *confer "genuine" "nobility* with (i) "geographical" validity defined in the Ragusa ruling, and *(ii)* above all under the protection of the universal Bill of Rights in the *European Convention*, which offers effective protection in the assertion *of personal* freedoms and rights confirmed *unambiguously* through the courts.

5. Questioning or dispute of HRH Don Francesco's capacity to confer valid nobiliary titles and other honorary symbols will assuredly lead to *negative consequences* to both *conferer* and *acquirer*. Administrative rejections of the former's status, rights and powers, endorsed via legally binding court rulings, are in violation of his *sphere of protection*, including respect for various aspects of inherited rights, endorsed explicitly by courts of law (Article 8 of the European Convention, cf Article 6). The first-mentioned Article was ruled *per se* to be applicable in the dispute *Sigvard Bernadotte v. Sweden* (ruling by the European Court of Justice on 3 June 2004) regarding the annulled birth title of "prince", but the case was rejected with reference to the six-month time limit stipulated in Article 35. *A fortiori* , a more serious violation, not rendered null and void by reason of lapse of time, of Don Francesco's rights stipulated by *courts*(Art. 6) must be noted *in casu*. In the latter's case, the setting aside of the inherited birthright also acquires the character of *discrimination*, i.e. unjustified special treatment in relation to other heirs of titles, status, rights and powers (Article 14).

It should be added that HRH Don Francesco, as Grandmaster of the chivalric Militare Ordine del Collare di Sant' Agata (MOC) for which membership eligibility is hereditary, conducts via the MOC Foundation a *large-scale humanitarian aid operation* of an international nature and in different forms, based on *an independent administration and donations* from individuals, companies and organisations. The basis for this diversified international activity is undoubtedly jeopardised by *legally unjustified* attacks on Don Francesco's legitimacy, laid out clearly in the foregoing and confirmed by courts of law. In addition, instances of frivolous questioning based on lack of knowledge or on negligence also represent a violation of the latter's and the aforementioned foundation's *protection of property* guaranteed by Article 1 of the 1952 Supplementary Protocol to the European Convention, which is emphasized in point 4 of the statement of opinion of 12 August 2008. *Indirectly*, those engaged at the MOC Foundation and *not least donors* are affected by the above-mentioned legally and objectively unjustified attempts to devalue the legitimacy behind HRH Don Francesco's arrangements.

6. On the basis of the aspects described above, I conclude that any dispute or questioning of HRH Don Francesco's legitimacy, endorsed by legally binding court rulings, to ennoble, confer nobiliary and honorary titles, as well as chivalric distinctions, is in clear conflict with Articles 6, 8 and 14 of the European Convention and Article 1 of the 1952 Supplementary Protocol to that Convention. In relation to the 2003 arbitration judgment (Ragusa), attention may also be drawn in an international context to the New York Convention of 1958.

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