

RAPPORTS NATIONAUX ITALIENS

**au XV^{eme} Congrès International
de Droit Comparé**

Bristol 1998

ITALIAN NATIONAL REPORTS

**to the XVth International Congress
of Comparative Law**

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FOREWORD

The fifteenth conference of the International Academy of Comparative Law which will be held in Bristol between July 26th and August 1st, 1998 reconnects with and maintains a tradition that started in the 1930's. This conference follows the ones held in the Hague (1932 and 1937), London (1950), Paris (1954), Brussels (1958), Hamburg (1962), Uppsala (1966), Pescara (1970), Teheran (1974), Budapest (1978), Caracas (1982), Sydney (1986), Montreal (1990) and Athens (1994). There have been too many changes in the world and in the vision comparative law offers us of this world to be able to explain here. The international conferences called by the International Academy of Comparative Law are much more universal and crowded than the first one. The more recent ones that have taken place in Europe and Australia, in North as well as in South America, clearly show the world vocation for such meetings. In a time of globalization, this is almost natural but to have been ahead of the times is something to be proud of.

Nevertheless, the legal dimension of the rapprochement between legal systems and regulations presents something specific. Ideas and models are transplanted from one experience to another, creating chaotic flows among the different legal traditions. New and dynamic supranational institutions promote a standardization of legal principles that support the economic areas involved in the whirlpool of transnational and transcontinental exchanges. Modernization and standardization of legal systems seem to proceed at the same pace. But the waves of modernization of legal systems, where everyone is involved, combine with the underlying legal

mentalities which are instead diversified and resistant. If examining this situation, the main problem faced by our times coincides with the problem of legal transplants. The problem is to introduce legal models that are both innovative and extraneous in subsistent systems that must include what is new without losing their balance and coherence. This is a difficult and complex problem even for the Italian system which is not going through an epos of impetuous changes or vortical reception of models as the Eastern European countries, but is merely involved in a tranquil process of harmonization of the law, promoted by the European Union.

There is, however, a red line that unites the legal experiences to the present day. If we were to venture into the dangerous operation of summarizing, in a few words, the direction of the legal dynamics for the last half of the twentieth century, we should say that we are living in times of the denationalization of law. In the beginning of the century the store of wisdom of the jurists was still based on a profound study of one's own national system and a scarce and fragmentary knowledge of neighbouring legal systems. The idea of the universality of law that had dominated the minds of jurists for centuries seemed to have completely vanished. At the sunset of our century, not only has the knowledge of comparative studies greatly increased, but we can notice a desire for knowledge about the experience of others.

Not only curiosity but also need dominate the scene. In the beginning of the century, most of the legal business was confined within the customs barriers of each single state. Except for sporadic exceptions, the word of the practitioner was based on his national experience more than the research of scholars. Today, we can note that Gino Gorla's predictions are coming true: the need for transnational legal dialogue is felt even in forensic studies.

The volume presented here is the seventh in a series that dates back to the Teheran Conference of 1974. The Italian papers that have been presented at International Conferences of comparative law for a quarter of a century have been collected in a single volume. For the first time you can find AIDC and the Italian National Lawyers Council standing side by side. It is a sign of the

times. It is not only from the present that the Italian Bar has shown a responsiveness to the transnational dimension of law.

The aim of this series is eminently informative. It wants to inform the audience, interested in the Italian legal experience, but who for linguistic reasons does not have direct access to the source, about the situation in our country in reference to the many themes the International Academy confronts all the comparatists with.

As many other legal experiences, even our Italian system is going through a time of transformation. If we realize this and remain open to what is happening in our country, we can make a contribution, even a humble one, to the dialogue that involves us all.

The decision to publish the Italian National Reports in the new series of the « Quaderni della Rassegna Forense » stems from an overall commitment of the Council of the Italian Bar Association towards a modern approach of the legal profession. This does not only mean that Italian lawyers must be, at the same time, also European lawyers, but also that the basic rules that govern the legal profession (from access to it, to the organisation of law firms) are confronted with many competing models. Comparative law therefore not only is a fundamental subject in any law student's curriculum, but also a vital necessity to enhance the centuries old tradition of Italian law practice. This joint initiative, moreover, highlights one of the characters of the Italian legal tradition: the very strong relationship between legal scholars and legal practitioners: many of Italy's most eminent scholars have been and are practising lawyers, and in such way they have favoured mutual understanding between the Laws Schools and the Bar and promoted both research and innovation.

This volume has been edited by Prof. Maria Donata Panforti, with the invaluable help of Dr. Silvia Sonelli whom we wish to thank.

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