



STATES IMMUNITY OF ASSETS FROM THE EXECUTIVE AND PRECAUTIONARY JURISDICTION UNDER INTERNATIONAL AND ITALIAN LAW

The article deals with the immunities, provided for by international and Italian law, enjoyed by a State from the executive and precautionary jurisdiction of national Courts, in respect of the assets owned or possessed by the same State for whatever reason or in relation to the exercise of the functions of its diplomatic or consular missions.

As regards the customary international law it appears difficult to find appropriate solutions in all circumstances when we consider that the number of commercial transactions in which States are engaged increase constantly and it is not always easy to draw a line based on the traditional distinction between *acta jure imperii* and *acta jure gestionis*.

Furthermore the rules on the State immunity in respect of the possibility to obtain, before a national Court, a pre-judgement constraint are different from those concerning the jurisdiction on the merits. In this respect we may note that even the International Court of Justice in its judgement of 3 February 2012 stated that “ *the rules of customary international law governing immunity from enforcement and those governing jurisdictional immunity are distinct and must be applied separately*” (par. 113). In this respect we have stressed that the response of Italian national Courts to the said judgement of the International Court of Justice has been prompt and comprehensive.

Recently the UN Convention of New York, not yet in force, on Jurisdictional immunities of States and their properties of 2 December 2004, has attempted to clarify some rules already generally accepted as principles of customary law and to enact new rules in order to improve the legal framework of the matter. However many questions remain unanswered especially if we want to recognize, according to the Italian Constitutional Court, an *effective protection* to the fundamental human rights.

At the end we reached the conclusion that, with exclusive reference to the executive and cautionary jurisdiction, what is relevant for giving effect to State immunity is the destination of the asset or property to be taken by a measure of constraint and not the legal qualification of the act or relationship that gave rise to the claim against the same State. In this respect the content of the said New York Convention, has been analysed in particular the specific rules for properties of State which shall be considered in use for commercial purposes or for a dual use (commercial and government non- commercial use).

As regards the Italian legislation all the applicable rules of international private law and civil procedural code have been examined in order to establish the criteria followed by national Courts to grant or to deny the immunity from executive or precautionary measures to foreign States.