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1. *Milan Tribunal, 22 April 1997* ..... 630  
 Under Art. 147, second paragraph of the Law on insolvency, a German corporation may be declared insolvent in Italy in its capacity as shareholder of an Italian stock corporation holding unlimited liability for the corporation's obligations.
2. *Trieste Pretore, 29 May 1997* ..... 332  
 Italian courts have jurisdiction in respect of an action concerning the payment of certain salary components brought by an Italian employee against the International Centre for Theoretical Physics since it is a purely proprietary matter, since the applicant's activity was not within the scope of that entity's institutional purposes, and since the agreement on privileges and immunities between Italy and the International Agency on Nuclear Energy only applies to the Centre insofar as it is compatible with the treaty pursuant to which it was established.
3. *Court of Cassation (plenary session), 25 September 1997 No. 9433* ..... 60  
 The fact that a foreign law is incompatible with public policy prevents the application of such law by Italian courts, but it does not impinge upon the criteria establishing jurisdiction.  
 In the context of the recognition of a foreign judgment, the question as to whether a foreign law is contrary to public policy may only arise through the application of Art. 797 No. 7 of the Code of Civil Procedure.
4. *Court of Cassation (plenary session), 3 October 1997 No. 9655* ..... 117  
 Art. 10, first paragraph, of Decree Law 30 December 1989 No. 416, as amended by confirming Law 28 February 1990 No. 39, lays down a general rule, concerning all non-EU citizens having a university degree or diploma obtained in Italy or legally recognized in Italy (who are allowed to undertake professional qualification exams and to request the enrolment in the professional rolls, as an exception to the rules requiring Italian citizenship for the practice of certain professions), and does not provide for any further limitation on their presence in the territory of the State.
5. *Court of Cassation, 3 October 1997 No. 9667* ..... 119  
 Unlike the solution contained in Art. 1693 of the Civil Code, in the light of the provisions contained in Arts. 17 and 18 of the Geneva Convention of 19 May 1956 on Carriage of Goods by Road (CMR), the damaging event may not automatically be imputed to the carrier if there is a likelihood that the damage derives from any of the risks listed in Art. 17, paragraph 4.
6. *Court of Cassation, 3 October 1997 No. 9670* ..... 120  
 Though Art. III No. 3 of the Brussels Convention of 25 August 1924 on the Unification of Certain Rules on Bills of Lading only provides for the faculty, under certain conditions, of omitting from bills of lading the number, quantity and weight of the goods, it must be interpreted so as to allow the inclusion in the bill of lading of clauses containing the carrier's reservations, along the lines of Art. 462 of the Maritime Code.
7. *Venice Court of Appeal, 14 November 1997* ..... 951  
 If the requirements set forth by Art. 64 of Law 31 May 1995 No. 218 are satisfied and no objection has been raised, the competent public registrar is under a duty to directly enter and record the foreign divorce judgment in the public records; its recognition through a judicial decision is not necessary

8. *Court of Cassation, 20 November 1997 No. 11571* ..... 121  
 The ban on night-time work for women is unlawful only for the purposes of the relationships between employees and State employers since Council Directive 76/207 EEC of 9 February 1976 on the implementation of the principle of equality between men and women as regards working conditions only has vertical direct effect; such ban is anyhow incompatible with ILO Convention No. 89 of 9 July 1948.
9. *Court of Cassation, 24 November 1997 No. 11753* ..... 125  
 Pursuant to Art. 7, third paragraph of the agreement on social security entered into between Italy and the United States in Washington on 23 May 1973, the social security contributions of an Italian worker who is employed in the United States by a foreign company that is controlled by an Italian company are governed by Italian law and are due by the controlling company; the agreement further provides that also the working periods elapsed before its entry into force must be taken into account.
10. *Venice Court of Appeal, 26 November 1997* ..... 631  
 Since Art. 67 of Law 31 May 1995 No. 218 does not indicate that the *in camera* proceedings must be followed for the enforcement of foreign judgments, and since no opposition procedure is provided for against the Italian decision on the enforcement of the foreign judgment, recourse must be made to the general principle whereby actions seeking to ascertain a legal relationship must follow the ordinary proceedings.
11. *Milan Tribunal, 4 December 1997* ..... 63  
 For the purposes the application of Art. 5 n. 1 of the Brussels Convention of 27 September 1968, the place of performance of the obligation in question must be identified according to the law which, on the basis of the choice of law rules of the forum, applies to such obligation.  
 Under Art. 4, paragraph 2, of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations, the characteristic performance of a bank guarantee is the obligation of the guarantor.  
 For the purposes of the choice of the law applicable to a bank guarantee, it is irrelevant that the underlying contract is more closely connected, under Art. 4, paragraph 5 of the Rome Convention, with a country different from that in which the party who is to effect the characteristic performance has its central administration.  
 Italian courts have no jurisdiction in respect of a controversy over a bank guarantee issued by a bank having its central administration in Germany to a bank having its central administration in Italy if the place of performance of the guarantor's obligation, ascertained on the basis of the applicable German provisions, is in Germany.
12. *Constitutional Court, order 17 December 1997 No. 411* ..... 127  
 The question of constitutional legitimacy of Art. 20, first paragraph of Presidential Decree 15 July 1988 No. 574 – raised with reference to Arts. 6 and 24 of the Constitution – in so far as it does not grant German speaking Italian citizens the faculty to modify in any subsequent instance of the proceedings the language initially chosen for a judicial action brought before the courts of the district of Bolzano, is manifestly unfounded.
13. *Constitutional Court, 30 December 1997 No. 443* ..... 128  
 Art. 30 of Law 4 July 1967 No. 580 is conflicting with Arts. 3 and 41 of the

Constitution, and is therefore constitutionally illegitimate, in so far as it does not allow undertakings established in Italy to use, in the production and marketing of *pasta*, ingredients that are lawfully used in the territory of the European Community in accordance with Community law.

14. *Milan Court of Appeal, 9 January 1998* ..... 334  
 A Californian divorce judgment must be enforced if all the conditions set forth in Art. 797 of the Code of Civil Procedure are met and the foreign court has reached its decision having ascertained that the dissolution of the relationship between the spouses is irremediable.
15. *Court of Cassation, 17 January 1998 No. 381* ..... 67  
 For the purposes of the recognition of an Austrian judgment ordering the payment of a sum of money, the competence of the Austrian court must be established on the sole basis of the criteria laid down in the Italian-Austrian Convention of 16 November 1971, which require an autonomous interpretation. Therefore, the criterion of the *forum destinatae solutionis* foreseen by Art. 5 n. 3 may be followed only where the plaintiff and the defendant agree that the place of performance of the obligation is in Austria, and any different interpretation of such criterion on the basis of domestic provisions or of other international conventions is irrelevant.
16. *Turin Tribunal, 26 January 1998* ..... 557  
 Under Art. 25 of the Code of Civil Procedure and Art. 63 of Royal Decree 9 July 1939 No. 1238, the competence in respect of an action brought by a subject that is resident abroad in order to establish his Italian citizenship is vested in the court of the place of birth of the plaintiff, as the forthcoming judgment shall have to be entered in the relevant public records there; conversely, the competence on similar actions brought by citizens that are born and resident abroad is vested in the Rome Tribunal.  
 Pursuant to decision No. 87 of 16 April 1975 of the Constitutional Court, an Italian citizen by birth who had lost Italian nationality by virtue of Art. 10, third paragraph, of Law 13 June 1912 No. 555 because of the acquisition of a foreign nationality following her marriage, must be regarded as having continuously held the Italian nationality as though the loss of that *status* had never occurred.  
 Art. 219 of Law 19 May 1975 No. 151, that foresees the reacquisition of Italian nationality that has been lost following a marriage, contemplates a declaration that has the nature of a mere assessment of the will of the party and allows the registration of the Italian spouse in the relevant public records.
17. *Court of Cassation (plenary session), 13 February 1998 No. 1514* ..... 953  
 Under Art. 54, first paragraph of the Lugano Convention of 16 September 1988, the Convention only applies to actions brought after its entry into force in the State of origin.  
 Questions on the interpretation of the 1988 Lugano Convention may not be submitted to the Court of Justice of the European Communities.  
 For the purposes of Art. 21 of the 1988 Lugano Convention, the notion of *lis alibi pendens* does not contemplate the mere beginning of the two proceedings, but rather requires the establishment of a true procedural relationship between the parties that have taken part to the first proceedings or have been summoned to intervene into the second proceedings.  
 For the purposes of Art. 21 of the 1988 Lugano Convention, the jurisdiction of the court first seized may not be held as conclusively

- established if the appeal brought against the judgment on the merits rendered in first instance is still pending, even though the court's jurisdiction has not been challenged.
18. *Court of Cassation, 23 February 1998 No. 1937* ..... 1029  
 The Geneva Convention of 19 May 1956 on International Carriage of Goods by Road must not be mandatorily applied to the international transports it contemplates, but rather its application depends upon the will of the parties.
19. *Milan Court of Appeal, 27 February 1998* ..... 563  
 Under Art. 64 of Law 31 May 1995 No. 218, an Egyptian decision ordering the payment of a sum of money shall have no effects in Italy if the applicant may only prove, along with the other requirements, that the decision is provisionally enforceable, as letter *d* of that provision requires it to be final.
20. *Court of Cassation, 9 March 1998 No. 2622* ..... 633  
 In accordance to Art. 31 of the Preliminary Provisions of the Civil Code, the principle of favour of the employee forms part of public policy and, as such, it bars the application of a foreign law that is less favourable to the worker; hence, a foreign law (in this instance, Liberian law) allowing the employer to withdraw freely from a maritime employment contract is contrary to public policy since under Italian law the same relationship is regulated so as to grant the worker a more effective protection.
21. *Trieste Court of Appeal, 11 March 1998* ..... 566  
 An action seeking a declaration that a foreign arbitration award is not enforceable in Italy is not admissible.
22. *Milan Court of Appeal, 13 March 1998* ..... 570  
 Since Art. 64 of Law 31 May 1995 No. 218 (as well as the following Arts. 65 and 66) provides for the recognition of foreign judgments without requiring the commencement of any judicial proceedings, the registrar, having ascertained that all the requirements contemplated by that provision are met, may enter in the relevant public records an English judgment declaring the divorce of two Italian nationals.  
 Art. 67 of Law 31 May 1995 No. 218 provides for the competence of the court of appeal for the purposes of the recognition of a foreign judgment only when the judgment (or the foreign probate decision) is not complied with, when its recognition is challenged or resisted, or when its enforcement is sought.  
 Pursuant to Art. 67 of Law 31 May 1995 No. 218, an action brought before the court of appeal by two divorced spouses seeking the recognition of the parts of an English divorce judgment on the custody and maintenance of the children is not admissible if there is no dispute between the parties as concerns such recognition and its enforcement is not contested at present.
23. *Court of Cassation, 20 March 1998 No. 2946* ..... 71  
 Following the Constitutional Court judgment of 24 July 1996 No. 303, the requirement relating to the maximum age difference for adoption – that under Art. 6 of Law 4 May 1983 No. 184 was established in forty years – is no longer part of the fundamental principles of Italian family law and minors law for the purposes of Art. 32, letter *c* of that same Law, regulating the recognition of foreign adoption rulings.

24. *Court of Cassation, 20 March 1998 No. 2954* ..... 74
- Though they both aim to safeguard the interests of minors from the damages deriving from their undue transfer, the Luxembourg Convention of 20 May 1980 is intended to facilitate the recognition and enforcement of rulings on the custody of minors under sixteen years of age, whereas the Hague Convention of 25 October 1980 on the Civil Aspects of International Minor Abduction operates regardless of a foreign custody ruling and is intended to protect custody as a factual status, whose breach is remedied by the immediate return of the minor in his country of residence.
- According to Art. 15 of the Hague Convention of 25 October 1980, judicial and administrative authorities may, before ordering the repatriation of the minor, require that the applicant produce a decision or declaration from the authorities of the country of residence of the minor to the effect that his transfer, or failure to repatriate, was unlawful under Art. 3 of the Convention.
- Where it becomes necessary to promptly re-establish the custody of a minor under the provisions of the Hague Convention of 25 October 1980, neither Arts. 65 and 66 of Law 31 May 1995 No. 218 nor the Luxembourg Convention of 20 May 1980 apply.
25. *Court of Cassation, 24 March 1998 No. 3106* ..... 83
- Art. 38 of Law 4 May 1983 No. 184 provides that the Ministry of foreign affairs, acting together with the Ministry of justice, may authorize public entities or other organizations to carry out the procedures for international adoption.
- A foreign adoption ruling may be recognized in Italy also where the foster parents did not have recourse to an entity holding an authorization under Art. 38 of Law 4 May 1983 No. 184 because that provision is not referred to among the requirements laid down in Art. 32 of the same Law.
- Following the Constitutional Court decisions of 1 April 1992 No. 148 and of 24 July 1996 No. 303, the requirement relating to the age difference for adoption – for the purposes of the recognition of a foreign adoption ruling concerning two brothers – must be severally ascertained in relation to both minors, first the younger, and then the elder.
26. *Court of Cassation, 27 March 1998 No. 3221* ..... 335
- Under Art. 6 of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance Obligations, the intermediary authority that has been charged of the recovery by the requesting authority (acting upon the creditor's request) may settle the claim, begin a fresh action or else apply for the recognition of the foreign decision.
27. *Milan Court of Appeal, 27 March 1998 [No. 894?]* ..... 960
- Under Art. 31 of Law 31 May 1995 No. 218, divorce is governed by the common national law of the spouses.
- Art. 65 of Law 31 May 1995 No. 218, on the recognition of foreign decisions on the status and legal capacity of natural persons, on the existence of family relationships and on personality rights, provides that the recognition of foreign decisions is subject to the condition that they have been adopted by the authorities of the State whose law would apply to the matter in question under Law No. 218 or that they produce effects in that State, provided always that they are not contrary to public policy and that the essential rights of defence have been respected.
- According to its Art. 72, Law No. 218 of 1995 applies to all actions brought after its entry into force.

According to its Art. 72, Law No. 218 of 1995 applies to all actions brought after its entry into force.

Art. 65 of Law No. 218, that applies to foreign divorce judgments, derogates to Art. 64, and consequently it is not possible to have recourse to the latter in matters falling within the scope of the former.

In respect of a divorce of two Italian nationals declared by a foreign court, the application of Italian law is foreseen by a principle that is upheld in international legal instruments, both in this specific field (see Art. 19 No. 1 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations) and within the European Union (see Art. 27 No. 4 of the Lugano Convention of 16 September 1988 and the same article of the Brussels Convention of 27 September 1968).

In the absence of bilateral conventions between Italy and Kenya, under Art. 65 of Law No. 218 the divorce of two Italian nationals declared in the latter State may not be recognized if the foreign court has applied the *lex fori* (in this instance, the court relied upon the preceding separation of the spouses, that lasted two years, and upon the husband's cruelty).

28. *Court of Cassation, 4 April 1998 No. 3481* ..... 88

For the purposes of the application of Art. 797 No. 5 of the Code of Civil Procedure, the action seeking the recognition of a foreign judgment is barred only where the domestic action has already been resolved with a final judgment, whereas the mere fact that the domestic court has rendered a judgment may not prevent recognition.

A divorce judgment rendered by an Italian court whereby one of the spouses was granted an allowance (to be disbursed by the other spouse) for the maintenance of their minor son, does not bar the recognition, with effect until when the Italian judgment becomes final, of the part of the foreign divorce judgment, rendered before the Italian judgment and now final, granting the same spouse an allowance for the maintenance of the minor (and equally charging it upon the other spouse) for a different amount and in respect of a period of time running up to the date of the Italian judgment.

29. *Court of Cassation, 6 April 1998 No. 3539* ..... 635

In accordance to Art. 3 of the Convention of 12 April 1961 on Social Security between Italy and Argentine, the supreme administrative authority of the State in which the work is being performed has a discretion, with respect to relationships lasting more than twelve months, to grant an exemption from the contributions due to the local social security fund.

30. *Court of Cassation, 20 April 1998 No. 4017* ..... 1030

The fact that the State of Canada brings an appeal before the Court of Cassation against a judgment rendered against the Canadian general consulate in Milan may not be regarded as an instance of substitution of parties since the latter is not a separate subject from its own State but an organ representing it; however, Italian courts lack jurisdiction over the dismissal by the Canadian general consulate of an employee that acted as commercial officer since his duties fall within the notion of consular functions as provided for by Art. 5, letters *b* and *c* of the Vienna Convention of 24 April 1963 on Consular Relations, and since, even though the applicant merely brought proprietary claims, they would involve an evaluation of the exercise of the sovereign powers of a foreign State.



31. *Milan Tribunal, 23 April 1998* ..... 275
- Since shareholders' liability for the obligations of a corporation is governed by the law of the place where it has its place of business, Art. 2362 of the Civil Code may not be relied upon in order to assert the liability of an Italian company for the obligations incurred by certain foreign companies of which it is the sole shareholder.
- The principle laid down in Art. 2362 of the Civil Code on the liability of the sole shareholder does not form part of public policy.
32. *Court of Cassation, 29 April 1998 No. 4371* ..... 573
- Under Art. 33 of Law 4 May 1983 No. 184, if a foreign adoption ruling has been given effect in Italy as a pre-adoption custody decision, the juvenile court may render the adoption decree once the minor has resided in Italy for a year with his prospective foster parents.
- Art. 6, first paragraph of Law 4 May 1983 No. 184 provides that adoption is allowed only to spouses that have been married for no less than three years and are not separated.
- If the prospective foster parents become separated and only one of them applies to adopt the minor, the juvenile court must re-evaluate the matter and may reject the adoption application made by one spouse even if the one year period running from the pre-adoption custody decision has not yet expired.
33. *Court of Cassation, 4 May 1998 No. 4417* ..... 277
- The condition set forth by Art. IV, first paragraph, litt. *b* of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, pursuant to which the party seeking recognition must lodge, simultaneously, the application and the original copy of the arbitration clause, or a true copy thereof, does not affect the right of action but rather the procedural regularity; hence, a judgment establishing the failure to comply with that condition does not preclude a fresh application for the recognition of the same award.
34. *Court of Cassation, 6 May 1998 No. 4541* ..... 282
- Since Law 4 May 1983 No. 184 contains no provisions on the recording of international adoptions in public records, reference must be made to Royal Decree 9 July 1939 No. 1238, that must be combined with the general rules set forth in the said Law No. 184.
- The possibility - allowed by Art. 66 of Royal Decree 9 July 1939 No. 1238 - of recording the birth certificates of foreign minors adopted by Italian citizens as a result of the procedure provided for by Art 32 et seq. of Law 4 May 1983 No. 184 is not based upon the foreign adoption ruling but rather upon the Italian ruling that recognizes it.
- A birth certificate made abroad that is incompatible with the findings of the Italian adoption ruling may not be entered into the public records (this instance concerned a birth certificate made in Romania asserting that a Romanian minor was born in the town of residence of the Italian couple that adopted her).
35. *Court of Cassation, 8 May 1998 No. 4668* ..... 290
- On the basis of Art. 5 No. 1 of the Brussels Convention of 27 September 1968 and of Art 57, first paragraph, letter *a* of the Vienna Convention of 11 April 1980 on International Sale of Goods, Italian courts have jurisdiction over a controversy between an Italian seller and a French buyer regarding the payment of the price of the sale since the payment obligation had to be performed at the place of business of the seller.

36. *Court of Cassation, 12 May 1998 No. 4770* ..... 294  
 Pursuant to Art. 797 No. 1 of the Code of Civil Procedure, a Mexican divorce decision rendered against an Italian citizen may not be recognized in Italy since foreign courts never have jurisdiction over Italian citizens that are resident in Italy, notwithstanding the fact that the Italian defendant had expressly accepted the jurisdiction of the foreign court.
37. *Court of Cassation, 22 May 1998 No. 5145* ..... 966  
 Under Art. 18 of the Lugano Convention of 16 September 1988, an objection to the jurisdiction of the Italian court that was raised in the first defence, though made together with the defences on the merits, is not barred by forfeiture; for this purposes, it is irrelevant that the objection has not been referred to in the final part of the defence, since the latter must be evaluated in its entirety.  
 In an action for damages in tort brought against a Swiss surgeon following a surgery operation made in Switzerland – allegedly with serious negligence on the part of the surgeon – Italian courts have jurisdiction under Art. 5 No. 3 of the 1988 Lugano Convention since the claim is not based upon the event that gave rise to the damage (the surgical operation made in Switzerland) but on a damage that is a consequence of that event (and is not part thereof), namely the worsening of the physical conditions of the plaintiff, that has taken place in Italy after a substantial delay from the operation.
38. *Court of Cassation, 28 May 1998 No. 5295* ..... 296  
 Art. 8 of the Italian-Swiss Convention of 3 January 1933 on Recognition and Enforcement of Judicial Decisions, pursuant to which the courts of any of the contracting States may not declare their competence where the same claims are the object of a proceedings already pending before the courts of the other State, only concerns instances of *lis alibi pendens*, and is not applicable to related actions or to actions whose object is only partially identical.  
 An action seeking to establish that a certain obligation does not exist and an action seeking to ascertain that the same obligation is valid and effective and asking an award of damages against the other party for breach of contract do not share the same cause of action, and hence *lis alibi pendens* must be excluded.  
 Under Art. 3 of the Code of Civil Procedure, which applies in this case according to Art. 72 of Law No. 218 of 1995, the fact that the same action or a related action is pending before a foreign court does not exclude the jurisdiction of Italian courts.  
 Under the Art. 4 No. 2 of the Code of Civil Procedure, which applies in this case according to Art. 72 of Law No. 218 of 1995, Italian courts have jurisdiction in respect of the obligations arising from an exchange contract under which the delivery of the securities took place in Italy and redelivery was equally to take place there, since, in the light if such circumstances, the contract was made and had to be performed in Italy.  
 Art. 54 of the Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters lays down a transitional régime only as to the recognition and enforcement procedures and does not concern the ascertainment of the court with which jurisdiction is vested in respect of proceedings commenced prior to the entry into force of the Convention.
39. *Turin Court of Appeal, 3 June 1998* ..... 975  
 Art. 1 of the Munich Convention of 5 September 1980 on the Law

45. *Venice Tribunal, 6 July 1998* ..... 92
- Though Italian law does not provide for interim measures to safeguard the compliance with the rights established by a foreign arbitral award not yet declared enforceable, the general rules laid down in Arts. 669-ter of the Code of Civil Procedure, in particular those on the *ante causam* interim measures, may apply.
- Until the application for the declaration of enforcement of a foreign arbitral award is lodged, under Arts. 669-ter of the Code of Civil Procedure the action for interim measures must be brought before the competent court of the place where the interim measure will be enforced.
- Under Art. 25 of Law 31 May 1995 No. 218 the law of the place of incorporation of the corporation governs its corporate name.
- Since both Italy and the Netherlands are contracting Parties of the Hague Convention of 5 October 1961 on the Abolition of the Legalization of Foreign Public Documents, such legalization is not required for a power of attorney granted through a notary in the Netherlands.
- Under Art. 51 of Law 31 May 1995 No. 218, Ukrainian Law is applicable to the questions regarding the ownership of an Ukrainian ship seized in Italy and to the question as to whether she may be subject to interim measures.
- Under Art. 14 of Law 31 May 1995 No. 218, the court may have recourse to the counsel of an expert in order to ascertain the contents of the foreign applicable law.
- According to Ukrainian law, goods owned by the State whose economic management is entrusted upon State companies may not be subject to seizure.
- Since Ukrainian provisions on the seizure of goods owned by the State are contrary to public policy and may not be applied under Art. 16 of Law 31 May 1995 No. 218, the seizure of an Ukrainian ship is governed by Italian law.
46. *Bari Juvenile Court, decree 8 July 1998* ..... 579
- Under Arts. 1 and 2 of the Hague Convention of 5 October 1961 on the International Protection of Minors, referred to by Art. 42, first paragraph of Law 31 May 1995 No. 218, the competence for the adoption of protective measures on the property of minors is vested in the courts of the country where the minors have their habitual residence.
- Under Art. 7 of the 1961 Hague Convention and under Art. 4 of Law 15 January 1994 No. 64 (which implemented the Convention), rulings adopted by a French court concerning property located in France that was inherited by minors resident in France may be recognized in Italy.
47. *Court of Cassation, 10 July 1998 No. 6713* ..... 314
- In accordance with the general principle set forth by Art. 796, first paragraph of the Code of Civil Procedure (a provision that has now been repealed), juvenile courts' decisions recognizing foreign adoption rulings (or pre-adoption custody rulings) under Art. 32 of Law 4 May 1983 No. 184 may only be rendered on the basis of an application of those who intend to avail themselves of the ruling.
- The *pubblico ministero* is not empowered to request a negative decision on the recognition in Italy of the foreign adoption ruling since Art. 32 of Law 4 May 1983 No. 184 merely provides that his intervention is required in the *in camera* procedure.
48. *Milan Court of Appeal, 21 July 1998* ..... 978
- Under Art. 840, third paragraph, No. 4 of the Code of Civil Procedure, it is

not possible to evaluate whether the arbitration procedure complied with the law of the State where the arbitration award has been rendered if this issue has already been settled by a similar decision rendered, between the same parties, in a proceedings before the judicial authorities of the State where the arbitration decision has been rendered.

It is not necessary to stay the proceedings for the recognition and enforcement of a foreign arbitral award, under Art. 840, fourth paragraph of the Code of Civil Procedure, if in the State where the arbitration award has been rendered an appeal for the annulment or the stay of the arbitration award is pending in third instance, and the two previous decisions on the merits have been against the appellant.

49. *Court of Cassation, 27 July 1998 No. 7367* ..... 338

Under Art. 797 No. 1 and No. 7 of the Code of Civil Procedure, a foreign divorce judgment may be enforced in Italy when the foreign court exercised its jurisdiction on the basis of the criterion of the defendant's elected domicile (in the light of the rule set forth in Art. 4 of the Code of Civil Procedure) and when the fact that the counsel of one of the parties represented it before the court (though not being its agent) is not incompatible with public policy.

50. *Court of Cassation, 28 July 1998 No. 7398* ..... 319

The rigorous requirements set forth by Art. II of the New York Convention of 10 June 1958 on the Recognition of Foreign Arbitral Awards, whereby arbitration clauses must be made in writing and must indicate with precision the object of the future disputes contemplated therein, do not permit to extend the scope of an arbitration clause contained in a contract for the sale of aluminium to disputes that are only indirectly related thereto since they concern a discrete legal relationship flowing from a complex stock-market transaction.

Pursuant to Art. 5 No. 1 of the Lugano Convention of 16 September 1988, Italian courts have jurisdiction in respect of a controversy arisen between an Italian company and a Swiss company on a stock-market contract if the place of performance of the obligation in question (to be determined under Art. 4 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations, on the basis of the closest connection criterion) is situated in Italy.

51. *Milan Court of Appeal, 28 July 1998* ..... 102

Pursuant to Art. 36 of the Lugano Convention of 16 September 1988 on Jurisdiction and Enforcement of Foreign Judgments in Civil and Commercial Matters, the service of the decision declaring the foreign judgment enforceable is valid even if it did not enclose a copy of the relevant application because it sufficiently safeguards the possibility of the defendant to exercise its own rights of defence, especially where adequate reference is made to the application for enforcement of the foreign decision and to the foreign court's rulings in respect of which enforcement has been sought and then allowed.

Pursuant to its Art. 54, the Lugano Convention of 16 September 1988 is applicable where the judgments whose enforcement is sought have been rendered after the entry into force of the Convention, on the basis of actions commenced before that date, if the competence of the foreign court may be justified on the basis of the rules of the Convention.

A Swiss judgment may be declared enforceable in Italy where the court has established its own jurisdiction on the basis of the criterion of the place where the event that gave rise to the damage has occurred.

Pursuant to Art. 27 No. 1 of the Lugano Convention of 16 September 1988,

a Swiss judgment that forbids the production of certain goods in order to protect the intellectual property of the holder of an industrial design is not contrary to public policy because it does not infringe the principle of the freedom of economic activity sanctioned by Art. 41 of the Constitution.

52. *Court of Cassation (plenary session), 6 August 1998 No. 7714* ..... 583  
 Italian courts have jurisdiction over a dispute between an Italian distributor and a Spanish producer on the breach of an exclusivity clause contained in the distribution contract entered into between the parties since Italy is the place of performance (on the basis of the law applicable to the contract under Art. 4 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations) of the *non facere* obligation that is relevant for the purposes of Art. 5 No. 1 of the 1968 Brussels Convention.
53. *Court of Cassation (plenary session), 7 August 1998 No. 7759* ..... 586  
 The jurisdiction of Italian courts in respect of a dispute between an Italian seller and an Austrian buyer for the payment of the price of the sale is neither governed by the Italian-Austrian Convention of 16 November 1971, since it only contemplates the recognition and enforcement of judgments, nor by Law 31 May 1995 No. 218, which applies for the determination of Italian jurisdiction only to proceedings commenced after its entry into force on 1<sup>st</sup> September 1995. To this purpose, according to Art. 8 of Law No. 218 and to Art. 5 of the Code of Civil Procedure, the date of commencement of the proceedings refers to the original writ of summons and not to the action for the ruling on jurisdiction before the Court of Cassation.  
 Italian courts have jurisdiction in respect of a dispute between an Italian seller and an Austrian buyer for the payment of the price of the sale on the basis of Art. 4 No. 2 of the Code of Civil Procedure and of Art. 57 No. 1 of the Vienna Convention of 11 April 1980 on the International Sale of Goods, since the fact that the seller usually accepted to receive the price at the buyer's own premises does not amount to an agreement between the parties establishing that payments had to be made in a place other than that indicated by Art. 57 No. 1 of the Convention, namely the place of business of the seller.
54. *Rome Tribunal, 18 September 1998* ..... 323  
 A foreign ruling on the change of a person's family name must be regarded as having the nature of a probate jurisdiction decision.  
 When a foreign probate jurisdiction ruling must be entered or indicated in Italian public records, it must be submitted to the competent registrar who shall ascertain whether the conditions laid down in Art. 66 of Law 31 May 1995 No. 218 are met.  
 If the registrar deems that the conditions laid down in Art. 66 of Law 31 May 1995 No. 218 are not met, and hence arises one of the cases in which Art. 67 of the same Law applies, the interested party shall have to bring its application for recognition of the foreign ruling before the court of appeal and may not have recourse to the rectification procedure provided for by Italian law for entries in public records.
55. *Court of Cassation, 23 September 1998 No. 9499* ..... 590  
 Pursuant to Art. 13, first paragraph, litt. *b* of the Hague Convention of 25 October 1980 on the Civil Aspects of International Abduction of Minors, the requested State may refuse to adopt the repatriation order of a minor if, because of his repatriation, it is reasonable to foresee that the latter might suffer physical or psychic harm or face an intolerable situation.

Art. 13 of the 1980 Hague Convention, whereby the burden to prove the circumstances it contemplates lies on the party opposing repatriation, does not limit in any way the evidence that the court may take into account.

In accordance to Art. 7, third paragraph of Law 15 January 1994 No. 64 (that has implemented the 1980 Hague Convention), in the *in camera* proceeding on the question as to whether the repatriation of the minor is advisable the court may take its decision merely on the basis of the information available to it.

The evidence, *lato sensu*, obtained from the country of residence of the minor must be evaluated with the same criteria applied in respect of the evidence obtained from the requested State, without giving greater weight to the former.

56. *Court of Cassation, 25 September 1998 No. 9615* ..... 983

Art. 27 No. 2 of the Brussels Convention of 27 September 1968, whereby foreign judgments may not be recognized if the writ of summons has not been properly served or communicated to the defendant that has not appeared in court allowing him enough time to present its defences, must be interpreted as requiring the compliance with the procedural law only in respect of the service of the summons, whereas the time for defence must merely be adequate, its adequacy being ascertained on the basis of the existing circumstances, independent of the provisions of each system of law.

The reasoning of the Italian judgment on recognition is incorrect if it bases its holding on the inadequacy of the time for defence merely upon the observation that it was shorter than that provided for by Italian law, without taking into account the existing circumstances.

57. *Court of Cassation, 19 October 1998 No. 10351* ..... 595

Under Italian provisions of private international law (Art. 26, in connection with Art. 17, of the Preliminary Provisions of the Civil Code), marriages made abroad between Italian nationals or between Italian nationals and foreigners have immediate validity and effect in our system of law provided that they have been made in compliance with the applicable rules of the foreign law and that the substantive requirements on the spouses' *status* that are set forth by Italian law are satisfied.

The principle whereby marriages made abroad are immediately effective in Italy is not tied to the condition that Italian rules on its registration (under Art. 51 of Royal Decree 9 July 1939 No. 1238) be respected, since registration does not itself give rise to the effects of marriage but merely records its existence.

The conditions set forth by Art. 797 of the Code of Civil Procedure for the enforcement of a foreign divorce judgment may be examined, even if the marriage in question has not been registered in Italy since its registration may be made at any time, also together with the registration of the enforcement decision.

58. *Court of Cassation (plenary session), 28 October 1998 No. 10730* ..... 986

Also after the repeal of Art. 37, second paragraph of the Code of Civil Procedure under Art. 73 of Law 31 May 1995 No. 218, the special Court of Cassation proceeding on jurisdiction may be instituted to resolve the question of the jurisdiction of Italian courts over foreigners.

Italian courts have jurisdiction over a dispute brought by an Italian maritime worker against a foreign shipowner for the payment of certain allowances related to an employment contract that was ended in Italy and that, under Art. 9 of the Maritime Code, was governed by Italian law by virtue of the common intention of the parties.

Taking into account the fact that Art. 9 of the Maritime Code does not

adopt the nationality of the ship as its exclusive connecting factor and that under Art. 17 of the Brussels Convention of 27 September 1968 jurisdiction clauses do not require the specific written acceptance required by Art. 1341 of the Civil Code, for the purposes of Art. 9 of the Maritime Code the intention of the parties to a maritime employment contract may be conclusively inferred from the reference to notions that are peculiar of Italian law, such as the thirteenth month's salary and the severance pay and from the use of the Italian language.

Under Art 5 No. 1 of the 1968 Brussels Convention, Italian courts have jurisdiction in respect of an action brought by an Italian maritime worker in order to obtain from his employer – whose place of business is in Germany – the payment of the thirteenth month's salary and the allowances due upon rescission of the employment contract, since these are monetary obligations that have to be performed at the domicile of the creditor at the time when they become payable.

59. *Milan Tribunal, order 10 November 1998* ..... 598

Under Art. 10 of Law 31 May 1995 No. 218, Italian courts lack jurisdiction for the adoption of interim measures – in respect of an application for seizure brought against a foreign company – if, by virtue of a valid agreement between the parties, the jurisdiction on the merits of the dispute has been conferred to a foreign court.

60. *Court of Cassation, 12 November 1998 No. 11422* ..... 989

Art. 801 of the Code of Civil Procedure, whereby the recognition of foreign probate jurisdiction rulings is governed by Arts. 796 and 797 of the Code of Civil Procedure “insofar as they are applicable” may not be interpreted as allowing to exclude wholly or partially the application of those provisions, but rather it means that they must be adapted to the peculiar nature of such rulings, to the extent that they are compatible with the latter.

For the purposes of Art. 801 of the Code of Civil Procedure, the condition foreseen by Art. 797 of the Code of Civil Procedure, whereby the foreign judgment must be final pursuant to the law of the place where it has been rendered, has to be interpreted as requiring that foreign probate jurisdiction rulings must have the same effect as that foreseen by Art 741 of the Code of Civil Procedure, whereby such rulings become effective if they have not been challenged within the time-limit set forth by the law.

A foreign ruling on pre-adoption custody, though being provisional as it may or it may not lead to an adoption decision, may be recognized in Italy.

61. *Court of Cassation (plenary session), 19 November 1998 No. 11718* ..... 994

An appeal in cassation challenging the jurisdiction of Italian courts is admissible if from its content the intention to raise this question may be unequivocally inferred, irrespective of whether it has not been couched as an autonomous point of the appeal.

Under Art. 5 No. 2 of the Italian-Austrian Convention of 16 November 1971 on the Recognition and Enforcement of Judicial Decisions in Civil and Commercial Matters, Italian courts have jurisdiction if the defendant has or has had an establishment or a commercial branch or a branch of another nature in Italy and the dispute concerns the operation of such branch or establishment.

62. *Court of Cassation (plenary session), 27 November 1998 No. 12056* ..... 601

The repeal of Art. 37, second paragraph of the Code of Civil Procedure by virtue of Art. 73 of Law 31 May 1995 No. 218 does not exclude the possibility to promote the special Court of Cassation proceeding on jurisdiction in respect of the question of the jurisdiction of Italian courts over foreigners.

Art. 3, second paragraph of Law 31 May 1995 No. 218 provides that, with reference to disputes which lay outside the scope of the 1968 Brussels Convention, the jurisdiction of Italian courts may be based on Italian law criteria governing venue.

Art. 18 of the Code of Civil Procedure, that lays down the criterion of the plaintiff's residence, applies equally in respect of Italian citizens and of foreigners; Art. 32 of Law 31 May 1995 No. 218 makes reference to that provision in referring directly to Art. 3 of the same Law.

Italian courts have jurisdiction in respect of an action for judicial separation of spouses brought by the foreign spouse resident in Italy against the foreign spouse resident abroad.

63. *Court of Cassation (plenary session), 27 November 1998 No. 12061* ..... 998

If the ruling on the constitutional illegitimacy concerned a provisions that is contained in a law or other act adopted before the entry into force of the Constitution and is based upon its inconsistency with the provisions or the principles of the Constitution, the ruling may not have any effect before 1<sup>st</sup> January 1948, also in relation to legal relationships that were not conclusively settled at that date.

Constitutional decision No. 87 of 1975, whereby Art. 10, third paragraph of Law 13 June 1912 No. 555 (on the loss of the Italian nationality for Italian wives of foreigners) had been declared illegitimate, may not affect marriages made before 1<sup>st</sup> January 1948.

The issue of constitutional legitimacy – raised in relation to Art. 3 of the Constitution – concerning the alleged disparity of treatment between the two régimes set forth by Art 2, first paragraph of Law 13 June 1912 No. 555 (on the acquisition of Italian nationality for natural children of an Italian citizen) and by Art. 12, first paragraph of the same Law (on the acquisition of the Italian nationality for the children of a person who acquired the Italian nationality after their birth), is manifestly unfounded.

64. *Milan Court of Appeal, 11 December 1998* ..... 112

The Vienna Convention of 11 April 1980 on the International Sale of Goods is applicable to a contract of sale entered into between a company having its place of business in Italy and a company having its place of business in France.

Art. 7 of the Vienna Convention of 11 April 1980 not only requires the uniform application of the convention and the observance of good faith in international trade, but also provides that those questions that are not expressly settled by the convention shall be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

In respect of the questions that are not settled by the Vienna Convention of 11 April 1980, an international contract of sale entered into between a seller having its place of business in Italy and a buyer having its place of business in France is subject to domestic Italian law since it is the law of the place of business of the seller under of Art. 3 of the Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods.

65. *Florence Juvenile Court, decree 23 December 1998* ..... 1008

Under paragraph 111 B of the Australian Family Law Act, each parent of a minor, even though they are separated, must be regarded as holding the minor's custody.



Under Art. 3 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Abduction of Minors, the transfer of a minor or the failure to repatriate him is regarded as unlawful when it occurs in breach of the custody rights held jointly or individually by a person in accordance to the law of the State where the minor had his habitual residence.

Under the Hague Convention of 25 October 1980, the fact that the minor might enjoy a better situation in the country where he or she has been transferred is irrelevant for the purposes of his or her repatriation in the State of origin, and only the proven risk (under Art. 13 of the same law) of physical or psychic damage following repatriation or the minor's contrary intention may be taken into account.

66. *Constitutional Court, 30 December 1998 No. 454* ..... 55

On the basis of the provisions of Art. 1 of Law 30 December 1986 No. 943, on the treatment and the placement of immigrant workers from non-EU countries, which provides for the equal treatment and equality of rights between non-EU immigrant workers and national workers with respect to the treatment and placement rights of non-EU workers (provisions that are now restated and specified in Art. 2, paragraphs 2 and 3 of the consolidated law on immigration and on the treatment of foreigners enacted through Legislative Decree 25 July 1998 No. 286), once non-EU workers are authorized to be stably employed in Italy and have a residence permit, they enjoy all the rights that are bestowed upon national workers and they may not lose such rights by the mere fact of becoming unemployed; notwithstanding the absence of a specific statutory provision, among such rights must be included that of being allowed to enrol, where the necessary requirements are met, in the placement lists for the compulsory engagement of the disabled provided for by Law 18 April 1968 No. 482.

The issue of constitutional legitimacy of Arts. 1 and 5 of Law 30 December 1986 No. 943, now replaced by Arts. 2, 3, fourth paragraph, and 21 of Legislative Decree 25 July 1998 No. 286 - with reference to Arts. 2, 3 and 10, first and second paragraphs of the Constitution (with respect to ILO Convention No. 143 of 24 June 1975, on the equal treatment and equal opportunities of migrant workers) is unfounded because the alleged legislative *lacuna* does not exist.

67. *Court of Cassation (plenary session), 30 December 1998 No. 12907* ..... 1012

Art. 17 of the Brussels Convention of 27 September 1968 provides for the prorogation of the jurisdiction of the courts of a contracting State only if the parties are domiciled in different States and that the court elected is in the State where one of the parties is domiciled.

A jurisdiction clause in favour of a foreign court, that is void under the Art. 2 of the Code of Civil Procedure (which is no more in force), may be regarded as valid under Art. 4 of Law 31 May 1995 No. 218, which, under its Art. 72, first paragraph, is applicable if the judicial action has been brought after its entry into force, irrespective of the time when the clause has been stipulated.

Since the liquidator must be regarded as a third party when he acts for the protection of the bankruptcy assets through an *actio pauliana* brought as a counterclaim, a private contract (between a creditor and the insolvent debtor) containing a jurisdiction clause in favour of a foreign court does not bind him.

In accordance to Art. 5 of the Code of Civil Procedure and to Art. 8 of Law 31 May 1995 No. 218 the jurisdiction of Italian courts, though not justified on the basis of the writ of summons, may be upheld if the circumstances and the

provisions on which it may be grounded come into existence in the course of the proceedings.

The bringing of a counterclaim is an element that may give grounds to Italian jurisdiction, that was otherwise unjustified – or, at least, challenged – at the time of the commencement of the action.

68. *Milan Court of Appeal, 5 February 1999* ..... 327

If an express reference to the laws of a foreign State may be derived from the clauses or the conditions of sale of an international contract, this amounts to a choice of the applicable law for the purposes of Art. 2 of the Hague Convention on International Sales of Goods, irrespective of whether such foreign State is not party to the Convention.

The issue of the determination of the substantive law applicable to a contract does not exclude the relevance of the question of the validity of the arbitration clause contained in the same contract. This question is subject to Italian law.

Art. II, first paragraph of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Decisions simply requires, for the validity of the arbitration agreement contained in the contract, a written agreement.

Since it is neither admissible nor correct to construe the rules laid down in international conventions on the basis of legal concepts and notions of domestic law, the further conditions set forth by Art. 1341 of the Civil Code are wholly irrelevant for the application of Art. II, first paragraph of the 1958 New York Convention.

Italian courts lack jurisdiction where a valid agreement has been made conferring jurisdiction to an international arbitration.

69. *Court of Cassation, 6 February 1999 No. 1062* ..... 605

In the absence of specific implementing measures through legislative acts or collective labour agreements, Art. 3, third paragraph of ILO Convention No. 146 of 29 October 1976 - whereby the annual paid leave for maritime workers may not be less than thirty days for each year of duty - is not a self-executing provision.

70. *Court of Cassation, 9 February 1999 No. 1101* ..... 610

Before the reform enacted by Law 31 May 1995 No. 218, the law governing the recognition of a natural child had to be determined on the basis of Art. 17 of the Preliminary Provisions to the Civil Code and not of Art. 20 (also in the light of Art. 35 of Law No. 218).

Before the entry into force of Law No. 218 of 1995, the law governing the form of the act whereby a natural child is recognized had to be determined in accordance with Art. 26 of the Preliminary Provisions to the Civil Code.

71. *Court of Cassation, 2 March 1999 No. 1739* ..... 613

Pursuant to Art. 115 of the Civil Code, to Arts. 17 and 26 of the Preliminary Provisions to the Civil Code and to Art. 50 of Royal Decree 9 July 1939 No. 1238, a marriage between Italian nationals made abroad according to the foreign law and in compliance with the requirements set forth in Italian law on the status and legal capacity of natural persons is immediately valid and effective in Italy, irrespective of the fact that the bans of marriage were not published and the marriage was not registered.

A polygamic marriage abroad of an Italian national is not contrary to Art.

31 of the Preliminary Provisions to the Civil Code and does not become invalid unless its validity is challenged on the basis of Art. 117 et seq. of the Civil Code.

72. *Santa Maria Capua Vetere Tribunal, decree 5 March 1999* ..... 1019

Under Art. 13 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, there is no obligation to recognize a trust whose principal elements are all situated in Italy and are unconnected to the foreign law chosen by the settler; such a trust must be regarded as a purely domestic trust and is subject to Italian law.

An application for the registration in the companies' register of the passage of a person's status from holder of shares in one's own name to holder of the same shares in trust is inadmissible or, at least, unfounded since, under Art. 2188 of the Civil Code and under Art. 7, second paragraph, letter *b* of the Decree of the President of the Republic 581/1995, the public filings régime is based upon the principle of the *numerus clausus*.

73. *Rome Pretore, order 13 April 1999* ..... 1025

A trustee that has lost the physical possession of the share certificates belonging to a trust has a right to be returned in their possession under Art. 1168 of the Civil Code; for this purpose the fact that in the meantime the trustee's authority has been withdrawn since he is the only person that is allowed to endorse the shares to the new trustee.

74. *Court of Cassation (plenary session), 28 April 1999 No. 274* ..... 619

In respect of a dispute on an exclusive distribution agreement pending concurrently before Italian and Greek courts, it is inadmissible to bring the ruling on the jurisdiction of the Italian court - which has to be evaluated according to Art. 5 No. 1 of the Brussels Convention of 27 September 1968 - before the Court of Cassation because this question must be dealt with after the question of the chronological precedence of the two cases pursuant to Art. 21 of the Convention, which must be decided by the court of the merits; the decision on jurisdiction of the Court of Cassation would otherwise render ineffective the régime set forth in the Convention for instances of *lis alibi pendens*.

75. *Constitutional Court, 18 May 1999 No. 172* ..... 939

The issue of constitutional legitimacy of Art. 1, first paragraph, letter *c* of Presidential Decree 14 February 1964 No. 237 and of Art. 16, first paragraph of Law 5 February 1992 No. 91 - raised in relation to Arts. 52 and 10 of the Constitution - is manifestly unfounded since the extension of the compulsory military service to stateless persons is not unreasonable.

76. *Court of Cassation (plenary session), 25 May 1999 No. 293* ..... 625

Although the new text of Art. 37 of the Code of Civil Procedure no longer contains the second paragraph of its previous version, that dealt with the lack of jurisdiction of Italian courts over foreigners, the application contemplated by Art. 41 of the Code of Civil Procedure may nevertheless be submitted.

Pursuant to Art. 21 of the Brussels Convention of 27 September 1968, as it has been interpreted by the Court of Justice of the European Communities, *lis alibi pendens* not only arises when the two causes of actions are identical but also when they derive from the same legal relationship.

According to Arts. 2 and 21 of the 1968 Brussels Convention, the Italian court of the domicile of the defendant has jurisdiction over an action seeking the payment of the contract price even if a second action for the rescission of the

same contract is brought before a Spanish court after the seizing of the Italian court.

77. *Court of Cassation (plenary session), 27 May 1999 No. 313* ..... 628

By virtue also of Art. 43 of the Vienna Convention of 24 April 1963 on Consular Relations, Italian courts have jurisdiction over an action for the payment of certain sums of money brought by an employee against a foreign consulate if the relevant employment relationship may not be qualified as an exercise of governmental powers of the foreign State.

Italian courts have no jurisdiction over actions whose decision, though seeking the payment of a sum of money, would lead the court to evaluate whether, in the exercise of its governmental powers, the foreign State acted lawfully.

78. *Santa Maria Capua Vetere Tribunal, decree 4 July 1999* ..... 1019

Since a trust whose principal elements are all situated in Italy and are unconnected to the foreign law chosen by the settler cannot be recognized under Art. 13 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, it must be considered as a purely domestic one and is subject to Italian law; it therefore must be denied an application for its registration in the companies' register.

79. *Rome Tribunal, order 8 July 1999* ..... 1028

The order returning a trustee in the possession of certain share certificates must be set aside if the trustee's authority has been withdrawn in accordance to the trust deed.

80. *Constitutional Court, 9 July 1999 No. 283* ..... 944

Art. 30 of Law 4 May 1983 No. 184 makes reference to Art. 6, second paragraph in order to indicate the conditions required for the declaration of fitness for an international adoption.

Art. 6, second paragraph of Law 4 May 1983 No. 184 is constitutionally illegitimate in so far as it does not foresee that the court, taking exclusively into account the interests of the minor, may allow the adoption when the age of the prospective foster parents exceeds by more than forty years the minor's age (though such age difference is held to be within the norm), if the failure to allow the adoption may inflict the minor a serious damage that could not otherwise be avoided.

#### EUROPEAN COMMUNITIES CASES

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1. *Court of Justice, 20 March 1997, case C-57/95* ..... 149  
 A Commission Communication characterized by imperative wording, that cannot be regarded as being intended simply to clarify the EC Treaty provisions on freedom to provide services, freedom of establishment and free movement of capital which are applicable to institutions for retirement provision, not withstanding the fact that it was not notified to the Member States, constitutes an act intended to have legal effects of its own, distinct from those already provided for by the Treaty provisions on freedom to provide services, freedom of establishment and free movement of capital, with the result that an action for annulment will lie against it.
2. *Court of Justice, 17 July 1997, case C-242/95* ..... 358  
 It is for the domestic legal order of each Member State to lay down the detailed procedural rules, including those relating to the burden of proof, governing actions for safeguarding rights which individuals derive from the direct effect of Article 86 of the Treaty, provided that such rules are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law.
3. *Court of Justice, 17 September 1997, case C-54/96* ..... 152  
 The Federal Public Procurement Awards Supervisory Board, issued by the German Haushaltsgrundsatzgesetz, is to be regarded as a court or tribunal within the meaning of Article 177 of the Treaty.  
 It does not follow from Article 41 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts that, where that directive has not been transposed by the end of the period laid down for that purpose, the appeal bodies of the Member States having competence in relation to procedures for the award of public works contracts and public supply contracts may also hear appeals relating to procedures for the award of public service contracts. However, in order to observe the requirement that domestic law must be interpreted in conformity with Directive 92/50 and the requirement that the rights of individuals must be protected effectively, the national court must determine whether the relevant

provisions of its domestic law allow recognition of a right for individuals to bring an appeal in relation to awards of public service contracts. In circumstances such as those arising in the present case, the national court must determine in particular whether such a right of appeal may be exercised before the same bodies as those established to hear appeals concerning the award of public supply contracts and public works contracts.

4. *Court of Justice, 17 September 1997, case C-117/96* ..... 637

Where the employer is established in a Member State other than that in which the employee resides and was employed, the guarantee institution responsible, under Article 3 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, for the payment of that employee's claims in the event of the employer's insolvency is the institution of the State in which, in accordance with Article 2(1) of the directive, either it is decided to open the proceedings for the collective satisfaction of creditors' claims or it has been established that the employer's undertaking or business has been closed down.

5. *Court of Justice, 16 October 1997, case C-177/96* ..... 674

With reference to a decision imposing a provisional or definitive anti-dumping duty a change in the name or political organization of the geographical area referred to as the country of origin or of export has no impact on the economic purpose of the duty imposed and cannot therefore by itself remove products originating in that geographical area from the duty's field of application. Consequently a decision imposing a definitive anti-dumping duty on imports of certain steel products 'originating in Yugoslavia' and that was intended at the time of its adoption to apply to the entire territory of the Socialist Federal Republic of Yugoslavia continues to designate the same geographical area which was once co-extensive with that republic and now corresponds to the territory of the new States. Rules of international law governing State succession are immaterial as anti-dumping duties do not constitute State debts but charges payable by individuals.

6. *Court of First Instance, 22 October 1997, joined cases T-213/95, T-18/96* ..... 362

It is a general principle of Community law that the Commission must act within a reasonable time in adopting decisions following administrative proceedings relating to competition policy. Accordingly, without there being any need to rule on the question whether Article 6(1) of the European Convention on Human Rights is, as such, applicable to such administrative proceedings, the reasonable duration of an administrative proceeding must be determined in relation to the particular circumstances of each case and, in particular, its context, the various procedural stages followed by the Commission, the conduct of the parties in the course of the procedure, the complexity of the case and its importance for the various parties involved.

7. *Court of Justice, 4 November 1997, case C-337/95* ..... 371

Where a question relating to the interpretation of the the First Council Directive of 21 December 1988 (89/104/EEC) to approximate the laws of the Member States relating to trade marks is raised in proceedings in one of the Benelux Member States concerning the interpretation of the Uniform Benelux Law on Trade Marks, a court against whose decisions there is no remedy under national law, as is the case with, both the Benelux Court and the Hoge Raad, must make a reference to the Court of Justice under the third paragraph of

- Article 177 of the Treaty. However, that obligation loses its purpose and is thus emptied of its substance when the question raised is substantially the same as a question which has already been the subject of a preliminary ruling in the same national proceedings.
8. *Court of Justice, 27 November 1997, case C-57/96* ..... 679  
 A Member State may not make payment of a social advantage within the meaning of Article 7(2) of Regulation No. 1612/68 dependent on the condition that recipients be resident within its territory.
9. *Court of Justice, 2 December 1997, case C-336/94* ..... 340  
 In proceedings for determining the entitlements to social security benefits of a migrant worker who is a Community national, the competent social security institutions and the courts of a Member State must accept certificates and analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question.
10. *Court of Justice, 2 December 1997, case C-188/95* ..... 684  
 Community law precludes actions for the recovery of charges levied in breach of Directive 69/335, as amended, from being dismissed on the ground that those charges were imposed as a result of an excusable error by the authorities of the Member State inasmuch as they were levied over a long period without either those authorities or the persons liable to them having been aware that they were unlawful.  
 Community law, as it now stands, does not prevent a Member State which has not properly transposed Directive 69/335, as amended, from resisting actions for the repayment of charges levied in breach thereof by relying on a limitation period under national law which runs from the date on which the charges in question became payable, provided that such a period is not less favourable for actions based on Community law than for actions based on national law and does not render virtually impossible or excessively difficult the exercise of rights conferred by Community law.  
 Article 10 of Directive 69/335, as amended, in conjunction with Article 12(1)(e) thereof gives rise to rights on which individuals may rely before national courts.
11. *Court of Justice, 17 March 1998, case C-45/96* ..... 690  
 On a proper construction of the first indent of Article 2 of Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, a contract of guarantee concluded by a natural person who is not acting in the course of his trade or profession does not come within the scope of the directive where it guarantees repayment of a debt contracted by another person who, for his part, is acting within the course of his trade or profession.
12. *Court of Justice, 16 June 1998, case C-53/96* ..... 694  
 Although measures envisaged by Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) and the relevant procedural rules are those provided for by the domestic law of the Member State concerned for the purposes of the national trade-mark, the Court has jurisdiction to interpret this provision since the Community is a party to the TRIPS Agreement, that agreement applies to the Community trade-mark and national courts, when called upon to apply national rules with

a view to ordering provisional measures for the protection of rights arising under a Community trade-mark, are required to do so in the light of the wording and purpose of Article 50 of the TRIPS Agreement.

It should be regarded as a "provisional measure" within the meaning of Article 50 of the TRIPS Agreement a measure whose purpose is to put an end to alleged infringements of a trade-mark right and which is adopted in the course of a procedure distinguished by the following features: a) the measure is characterised under national law as an "immediate provisional measure" and its adoption must be required "on grounds of urgency"; b) the opposing party is summoned and is heard if he appears before the court; c) the decision adopting the measure is reasoned and given in writing following an assessment of the substance of the case by the judge hearing the interim application; d) an appeal may be lodged against the decision, and e) although the parties remain free to initiate proceedings on the merits of the case, the decision is usually accepted by the parties as a "final" resolution of their dispute.

13. *Court of Justice, 16 June 1998, case C-162/96* ..... 1038

As held by the International Court of Justice the principle that a change of circumstances may entail the lapse or suspension of a treaty and the conditions and exceptions to which it is subject have been embodied in Article 62 of the Vienna Convention on the Law of Treaties which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances.

The jurisdiction of the Court to give preliminary rulings under Article 177 of the Treaty concerning the validity of acts of Community institutions cannot be limited by the grounds on which the validity of those measures may be contested; therefore the Court is obliged to examine whether their validity may be affected by reason of the fact that they are contrary to a rule of international law.

The Court has consistently held that a provision of an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.

The European Community must respect international law in the exercise of its powers. It is therefore required to comply with the rules of customary international law when adopting a regulation suspending the trade concessions granted by, or by virtue of, an agreement which it has concluded with a non-member country.

For it to be possible to contemplate the termination or suspension of an agreement by reason of a fundamental change of circumstances, customary international law, as codified in Article 62(1) of the Vienna Convention, lays down two conditions: first, the existence of those circumstances must have constituted an essential basis of the consent of the parties to be bound by the treaty; secondly, that change must have had the effect of radically transforming the extent of the obligations still to be performed under the treaty.

Specific procedural requirements laid down by Article 65 of the Vienna Convention do not form part of customary international law.

14. *Court of Justice, 16 July 1998, case C-171/96* ..... 344

The rule on equal treatment set out in Article 4 of Protocol No. 3 on the Channel Islands and the Isle of Man annexed to the Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland, and the United Kingdom of Great Britain and Northern Ireland to the European Economic



Community and to the European Atomic Energy Community and the Adjustments to the Treaties does not have the effect of prohibiting the deportation from Jersey of nationals of a Member State other than the United Kingdom, even though British citizens, including those who are not Channel Islanders within the meaning of Article 6 of Protocol No. 3, are not liable to be deported from Jersey.

Article 4 of Protocol No. 3 is not to be interpreted as limiting the reasons for which a national of a Member State other than the United Kingdom may be deported from Jersey to those justified on grounds of public policy, public security or public health, laid down by Article 48(3) of the EC Treaty and set out in detail by Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. Article 4 of Protocol No. 3 does, however, prohibit the Jersey authorities from making a deportation order against a national of another Member State by reason of conduct which, when attributable to citizens of the United Kingdom, does not give rise on the part of the Jersey authorities to repressive measures or other genuine and effective measures intended to combat such conduct.

15. *Court of Justice, 27 October 1998, case C-51/97* ..... 131

An action by which the consignee of goods found to be damaged on completion of a transport operation by sea and then by land, or by which his insurer who has been abrogated to his rights after compensating him, seeks redress for the damage suffered, relying on the bill of lading covering the maritime transport, not against the person who issued that document on his headed paper but against the person whom the plaintiff considered to be the actual maritime carrier, falls within the scope not of matters relating to a contract within the meaning of Article 5(1) of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the 1978 Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the 1982 Convention on the Accession of the Hellenic Republic and by the 1989 Convention on the Accession of the Kingdom of Spain and the Portuguese Republic, but of matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of that Convention.

The place where the consignee of the goods, on completion of a transport operation by sea and then by land, merely discovered the existence of the damage to the goods delivered to him cannot serve to determine the "place where the harmful event occurred" within the meaning of Article 5(3) of the 1968 Brussels Convention, as interpreted by the Court.

Article 6(1) of the 1968 Brussels Convention must be interpreted as meaning that a defendant domiciled in a Contracting State cannot be sued in another Contracting State before a court seised of an action against a co-defendant not domiciled in a Contracting State on the ground that the dispute is indivisible rather than merely displaying a connection.

16. *Court of Justice, 17 November 1998, case C-391/95* ..... 140

On a proper construction of Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, and by the 1982 Convention on the accession of the Hellenic Republic, the court which has jurisdiction by virtue of that provision also has

jurisdiction to order provisional or protective measures, without that jurisdiction being subject to any further conditions.

Where the parties have validly excluded the jurisdiction of the courts in a dispute arising under a contract and have referred that dispute to arbitration, no provisional or protective measures may be ordered on the basis of Article 5(1) of the 1968 Brussels Convention.

Where the subject-matter of an application for provisional measures relates to a question falling within the scope *ratione materiae* of the 1968 Brussels Convention, that Convention is applicable and Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, or may be, commenced on the substance of the case and even where those proceedings are to be conducted before arbitrators.

On a proper construction, the granting of provisional or protective measures on the basis of Article 24 of the 1968 Brussels Convention is conditional on, *inter alia*, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought.

Interim payment of a contractual consideration does not constitute a provisional measure within the meaning of Article 24 of the 1968 Brussels Convention unless, first, repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful as regards the substance of his claim and, second, the measure sought relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which application is made.

17. *Court of Justice, 24 November 1998, case C-274/96* ..... 353

The right conferred by national rules to have criminal proceedings conducted in a language other than the principal language of the State concerned falls within the scope of the EC Treaty and must comply with Article 6 thereof.

Article 6 of the Treaty precludes national rules which, in respect of a particular language other than the principal language of the Member State concerned, confer on citizens whose language is that particular language and who are resident in a defined area the right to require that criminal proceedings be conducted in that language, without conferring the same right on nationals of other Member States travelling or staying in that area, whose language is the same.

18. *Court of Justice, 19 January 1999, case C-348/96* ..... 641

Articles 48, 52 and 59 of the EC Treaty and Article 3 of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health preclude legislation which, with certain exceptions, in particular where there are family reasons, requires a Member State's courts to order expulsion for life from its territory of nationals of other Member States found guilty on that territory of the offences of obtaining and being in possession of drugs for their own personal use.

19. *Court of Justice, 9 March 1999, case C-212/97* ..... 647

It is contrary to Articles 52 and 58 of the EC Treaty for a Member State to refuse to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office but in which it conducts no business where the branch is intended to enable the company in question to carry on its entire business in the State in which that branch is to be created, while avoiding the need to form a company there, thus evading

application of the rules governing the formation of companies which, in that State, are more restrictive as regards the paying up of a minimum share capital. That interpretation does not, however, prevent the authorities of the Member State concerned from adopting any appropriate measure for preventing or penalising fraud, either in relation to the company itself, if need be in cooperation with the Member State in which it was formed, or in relation to its members, where it has been established that they are in fact attempting, by means of the formation of a company, to evade their obligations towards private or public creditors established in the territory of the Member State concerned.

20. *Court of Justice, 16 March 1999, case C-222/97* ..... 654

Article 73 B of the EC Treaty precludes the application of a national rule such as the Austrian Decree of 16 November 1940 on fixed-value rights, requiring a mortgage securing a debt payable in the currency of another Member State to be registered in the national currency.

21. *Court of Justice, 27 April 1999, case C-99/96* ..... 658

Article 13, first paragraph, point 1, of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, and by the 1982 Convention on the Accession of the Hellenic Republic, must be construed as not applying to a contract between two parties having the following characteristics, that is to say, a contract: relating to the manufacture by the first contracting party of goods corresponding to a standard model, to which certain alterations have been made; by which the first contracting party has undertaken to transfer the property in those goods to the second contracting party, who has undertaken, by way of consideration, to pay the price in several instalments; and in which provision is made for the final instalment to be paid before possession of the goods is transferred definitively to the second contracting party.

It is in this regard irrelevant that the contracting parties have described their contract as a "contract of sale". A contract having the characteristics mentioned above is however to be classified as a contract for the supply of services or of goods within the meaning of Article 13, first paragraph, point 3, of the Brussels Convention. It is for the national court, should the need arise, to determine whether the particular case before it involves a supply of services or a supply of goods.

A judgment ordering interim payment of contractual consideration, delivered at the end of a procedure such as that provided for under Articles 289 to 297 of the Netherlands Code of Civil Procedure by a court not having jurisdiction under the Brussels Convention as to the substance of the matter is not a provisional measure capable of being granted under Article 24 of that Convention unless, first, repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful as regards the substance of his claim and, second, the measure ordered relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which application is made.

22. *Court of Justice, 29 April 1999, case C-224/97* ..... 1048

Article 59 of the EC Treaty must be interpreted as precluding a Member State from prohibiting the manager of a boat harbour, on pain of prosecution, from renting moorings in excess of a specified quota to boat-owners who are resident in other Member States.

A prohibition which is contrary to the freedom to provide services, laid

down before the accession of a Member State to the European Union not by a general abstract rule but by a specific individual administrative decision that has become final, must be disregarded when assessing the validity of a fine imposed for failure to comply with that prohibition after the date of accession.

23. *Court of Justice, 29 April 1999, case C-267/97* ..... 669

The term 'enforceable' in the first paragraph of Article 31 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the 1982 Convention on the Accession of the Hellenic Republic and by the 1989 Convention on the Accession of the Kingdom of Spain and the Portuguese Republic, is to be interpreted as referring solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may be executed in the State of origin.

It is for the court of the State in which enforcement is sought, in appeal proceedings brought under Article 36 of the Brussels Convention, to determine, in accordance with its domestic law including the rules of private international law, the legal effects of a decision given in the State of origin in relation to a court-supervised liquidation.

24. *Court of First Instance, 20 May 1999, case T-220/97* ..... 1069

When the Court of Justice rules in proceedings under Article 234 EC (former Article 177) that an act adopted by the Community legislature is invalid, its decision has the legal effect of requiring the competent Community institutions to adopt the measures necessary to remedy that illegality as it happens in the case of a judgment annulling a measure or declaring that the failure of a Community institution to act is unlawful because the obligation laid down by Article 233 EC (former Article 176) applies by analogy. This obligation requires the institutions not only to adopt the essential legislative or administrative measures but also to make good the damage which has resulted from the unlawful act, subject to fulfilment of the conditions laid down in the second paragraph of Article 288 EC (former Article 215), namely the presence of fault, harm and a causal link.

25. *Court of Justice, 1<sup>st</sup> June 1999, case C-126/97* ..... 1053

A national court to which application is made for annulment of an arbitration award must grant that application if it considers that the award in question is in fact contrary to Article 81 EC (former Article 85), where its domestic rules of procedure require it to grant an application for annulment founded on failure to observe national rules of public policy.

Community law does not require a national court to refrain from applying domestic rules of procedure according to which an interim arbitration award which is in the nature of a final award and in respect of which no application for annulment has been made within the prescribed time-limit acquires the force of *res judicata* and may no longer be called in question by a subsequent arbitration award, even if this is necessary in order to examine, in proceedings for annulment of a subsequent arbitration award, whether an agreement which the interim award held to be valid in law is nevertheless void under Article 81 EC (former Article 85).

26. *Court of Justice, 1<sup>st</sup> June 1999, case C-302/97* ..... 1076

Article 56 EC (former Article 73b) and Article 70 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and

the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded does not preclude a scheme for acquiring land such as that introduced by the 1993 *Tiroler Grundverkehrsgesetz*, unless that Law was deemed not to form part of the domestic legal system of the Republic of Austria on 1<sup>st</sup> January 1995 while it precludes a scheme such as that introduced by the 1996 *Tiroler Grundverkehrsgesetz* 1996.

It is in principle for the national courts to assess whether a breach of Community law is sufficiently serious for a Member State to incur non-contractual liability vis-à-vis an individual.

In Member States with a federal structure, reparation for damage caused to individuals by national measures taken in breach of Community law need not necessarily be provided by the federal State in order for the obligations of the Member State concerned under Community law to be fulfilled.

27. *Court of Justice, 17 June 1999, case C-260/97* ..... 1062

An acknowledgement of indebtedness enforceable under the law of the State of origin whose authenticity has not been established by a public authority or other authority empowered for that purpose by that State does not constitute an authentic instrument within the meaning of Article 50 of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the 1978 Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the 1982 Convention on the accession of the Hellenic Republic.

28. *Court of Justice, 22 June 1999, case C-412/97* ..... 1066

Article 34 of the EC Treaty (now, after amendment, Article 29 EC) does not preclude national legislation which excludes recourse to the procedure for obtaining summary payment orders where service on the debtor is to be effected in another Member State of the Community.

A national procedural provision, such as that in question in the main proceedings, does not constitute a restriction on the freedom to make payments.

29. *Court of Justice, 21 September 1999, case C-378/97* ..... 1079

As Community law stood at the time of the events in question in the main proceedings, neither Article 7A nor Article 8A of the EC Treaty (now, after amendment, Articles 14 EC and 18 EC) preclude a Member State from requiring a person, whether or not a citizen of the European Union, under threat of criminal penalties, to establish his nationality upon his entry into the territory of that Member State by an internal frontier of the Community, provided that the penalties applicable are comparable to those which apply to similar national infringements and are not disproportionate, thus creating an obstacle to the free movement of persons.

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Council Regulation No. 2081/92 establishing a system for the registration and supervision of Community-protected designations of origin is only intended to set a framework to set up a uniform approach and fair competition among competitors rather than a precise statement of rights and obligations having direct effect in Member States and being here actionable in courts.

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