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1. *Corte di Cassazione, 24 June 1996 No. 5832* 784

The rules of Quebec law on successions, made applicable under Art. 23 of the Preliminary Provisions to the Civil Code, that do not reserve a share of the deceased's estate to some of the heirs do not conflict with Italian public policy under Art. 31 of the same Provisions.

2. *Corte di Cassazione, 4 March 1998 No. 2394* 445

The reference to the first paragraph, rather than to the second paragraph, of Art. VII of the Brussels Convention of 29 November 1969 on civil liability in respect of damages arising from pollution by hydrocarbons, contained in Art. 1 of Presidential Decree 27 May 1978 No. 504 in order to identify the certificate issued by the flag State proving the insurance against civil liability in respect of damages from pollution, must be ascribed to a mistake of the legislator in implementing the Convention in domestic law. It is possible to remedy such mistake by way of interpretation, considering that several provisions of the same Decree refer to the certificate as contemplated by the second paragraph of Art. VII of the Convention.

Art. 6 of Presidential Decree No. 504 of 1978, sanctioning the case in which the certificate issued by the flag State on the insurance against civil liability in respect of damages from pollution is not kept on board irrespective of whether such formal breach is accompanied by the material breach to the obligation to stipulate such insurance, is in compliance with Art. VII of the 1969 Brussels Convention, pursuant to which said certificate must be on board the ship.

3. *Corte di Cassazione (plenary session), 10 March 1998 No. 2642* 506

Under Art. 17 of the Brussels Convention of 27 September 1968, a jurisdiction clause written in a bill of lading is invalid if the consent of the party which did not draft it is not adequately proved, if the second instance judge has not indicated the reasons upon which it believes that a usage of international trade exists whereby such clause may be deemed valid, and if,

- from the wording of the clause, it is impossible to identify with certainty the court to which jurisdiction is conferred.
4. *Corte di Cassazione, 2 September 1998 No. 8713* 179
 Transport of goods by land and sea, even if sea transport is largely predominant, does not fall within the scope of application of the Brussels Convention of 25 August 1924 on the unification of certain provisions on bills of lading, whose rules on liability, under its Art. 1, *litt. e*, apply after the goods have been laden on board the vessel and until they are downloaded.
5. *Corte di Cassazione, 9 October 1998 No. 10035* 180
 A court required to render a decision on the merits of the case following a decision by the Corte di Cassazione setting aside a previous judgment and establishing the rule of law that must be applied to the matter must, if the European Court of Justice has subsequently rendered a judgment that is incompatible with the rule set forth by the Corte di Cassazione, disregard the indications of the latter and apply the rule suggested by the European Court of Justice.
6. *Corte di Cassazione (plenary session), 5 November 1998 No. 11088* 508
 Under Art. 57, first paragraph of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, and Art. 4 n. 2 of the Code of Civil Procedure, Italian courts have jurisdiction over an action concerning the payment of the price of an international sale if it has to be paid at the seat of the seller in Italy.
7. *Corte di Cassazione, 21 November 1998 No. 11780* 181
 Though not expressly mentioned, severance payment is included among the revenues contemplated by Art. 19 of the Decree of the President of the Republic of 29 September 1973 No. 597, which, as regards the application of income tax to non residents, stipulates that employment compensation paid by the State, by resident subjects or by permanent establishments in Italy of non resident subjects are deemed as revenues generated in the State, and are hence subject to a withholding; the same rule may be drawn from Art. 15, n. 2, *litt. b* of the Italian-Greek Convention made in Athens on 19 March 1965, which provides that when the employer is resident in a contracting State and the work is carried out in the other State, the employment compensation is taxable in the State where the employer has its seat.
8. *Milan Court of Appeal, 1 December 1998* 103
 The recognition of a foreign arbitration award pursuant to Art. 840, third paragraph, n. 3 of the Code of Civil Procedure is not barred by the fact that the foreign arbitrators, though bound to apply foreign rules of procedure, have rendered a decision on an action brought pursuant to Art. 2932 of the Civil Code, through which a seller sought the transfer and delivery of shares of a corporation in order to obtain the payment of the price.
 The *iura novit curia* principle does not encompass the provisions of a foreign law which is relevant for the purposes of Art. 840, third paragraph, n. 4 of the Code of Civil Procedure. Therefore the parties have to prove any alleged irregularities in the establishment of the arbitration panel or in the arbitration procedure under the law of the State where the award has been rendered.
9. *Milan Court of Appeal, 4 December 1998* 110
 A Swiss judgment on maintenance obligations may be enforced in Italy

pursuant to Art. 67 of Law 31 May 1995 No. 218 if the conditions set forth in Art. 64 of the same law are satisfied.

Following the repeal of Art. 798 of the Code of Civil Procedure by virtue of Art. 73 of Law No. 218 of 1995, the review of the merits of the foreign decision is no longer possible.

10. *Milan Court of Appeal, order 11 December 1998* 451

Under both Art. 69 of Law 31 May 1995 No. 218 and Art. 9, first paragraph, *litt. f* and last paragraph, of the Convention between Italy and the United Kingdom of Great Britain and Northern Ireland of 17 December 1930 on Judicial Assistance in Civil and Commercial Matters, a request for judicial assistance may only be refused if, in the State where the evidence must be taken, the object of the request does not fall within the competence of judicial authorities, or if the special procedure requested is incompatible with the law of the same Country.

Under both Art. 69 of Law No. 218 of 1995 and Art. 9, first paragraph, *litt. f* and last paragraph of the Italian-British Convention of 1930, in order to determine if a request for judicial assistance can be admitted it has to be ascertained if the execution of the foreign court's provision is compatible with the principles of Italian law.

A request may not be deemed incompatible with the principles of Italian law merely because the procedural rules or the means of discovery provided for by the foreign law are different from those of Italian law, but only if an irreconcilable conflict arises with the domestic principles of public policy.

A means of evidence requested through the channels of judicial assistance does not have an exclusively private and "pre trial" nature; therefore, it falls within the competence of Italian judicial authorities if it is instrumental to the outcome of the judicial proceedings before the foreign court.

The inquisitorial nature of the procedure commenced pursuant to a request of judicial assistance is not incompatible with domestic public policy since also Italian civil procedure contains provisions that derogate from the principle of the free disposability of evidence, and admit certain inquisitorial powers on matters of evidence.

11. *Corte di Cassazione (plenary session), 17 December 1998 No. 12616* 456

In an instance of assignment of a *crédit* stemming from a contract that provides for an international arbitration clause, such clause may not be relied upon by the assignee against the debtor since it must properly be viewed as an agreement that is autonomous from the contract in which it is written.

Under Art. 5 No. 1 of the 1968 Brussels Convention, in an action for termination of a contract, the "obligation in question" is that which binds the party against whom the breach of contract is being invoked.

Under Art. 5 No. 1 of the 1968 Brussels Convention, the place of performance of the obligation must be determined on the basis of the law applicable to the contract.

12. *Corte di Cassazione, 12 January 1999 No. 254* 509

Art. 5 n. 5 of the European Convention on Human Rights of 4 November 1950, pursuant to which victims of arrest or detention made in breach of any of the provisions of such article of the Convention have a right to damages, establishes a general right to damages, but it does not further specify its detailed regulation; therefore, it cannot apply directly and merely creates an obligation on for the Contracting States to implement it through legislative instruments of domestic law.

13. *Corte di Cassazione, 28 January 1999 No. 746* 461
 The person who, instead of acting directly before the competent authorities under Art. 29 of the Hague Convention of 25 October 1980 of the civil aspects of international abduction of minors, has applied to the Central Authority under Arts. 8 and 21 of the Convention seeking the return of the minor under the custody of the person from whom he had been abducted, or the re-establishment of the effective exercise of the right to visit the minor, must necessarily be part of the proceedings promoted by the *pubblico ministero* in the interest of the Italian Central Authority pursuant to Art. 7 of Law 15 January 1994 No. 64.
 If such applicant to the Central Authority was not allowed to be party to the proceedings promoted by the *pubblico ministero* in the interest of the Italian Central Authority pursuant to Art. 7 of Law 15 January 1994 No. 64, he may appeal to the Corte di Cassazione on the grounds of the failure to summon him in the proceeding.
14. *Corte di Cassazione (plenary session), 1 February 1999 No. 6* 112
 Since Art. 41 of the Code of Civil Procedure incorporates by reference Art. 37 of the same Code, the latter is still part of the former in its original text, as it was before its second paragraph was repealed by Art. 73 of Law 31 May 1995 No. 218. Therefore, the issue of the jurisdiction of Italian courts over foreigners may still be raised through the preliminary jurisdiction proceeding, without having resort to the appeal regulated by Art. 362 of the Code of Civil Procedure.
 Under Art. 5 No. 1 of the Brussels Convention of 27 September 1968 – as construed in the light of Art. 4 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations – Italian courts have jurisdiction over an action concerning a sale and purchase agreement if the principal place of business of the seller is in Italy and the obligation on which the action is founded must be performed there.
15. *Corte di Cassazione (plenary session), 1 February 1999 No. 16* 468
 According to Art. 17, fourth paragraph of the 1968 Brussels Convention, if a jurisdiction clause was concluded for the benefit of only one of the parties, such party retains the right to bring proceedings in any other court having jurisdiction under the Convention; such common intention of the parties must be clearly expressed from the clause itself, from other elements that may be drawn from the contract or from the circumstances in which the latter has been entered into.
 If a jurisdiction clause confers jurisdiction upon a foreign court in accordance with Art. 17 of the Brussels Convention, jurisdiction may be tacitly conferred to Italian courts by the parties, pursuant to Art. 18 of the Convention, only if the defendant does not contest the jurisdiction of the court seized, or if it contests it together with other arguments of defence, whether on the merits or other, that have not been stated to be subordinate to the objection to jurisdiction.
16. *Corte di Cassazione (plenary session), 12 February 1999 No. 52* 119
 Resort may not be had to the special preliminary jurisdiction proceeding in respect of enforcement proceedings brought by an Italian citizen against a foreign State since the foreign State's immunity from enforcement proceedings may adequately be safeguarded through the general remedy of the opposition to the enforcement action.
17. *Corte di Cassazione, 16 February 1999 No. 1301* 787
 Before examining the requirements set forth by domestic law and

international conventions, the court requested of the recognition of a foreign arbitral award as per Art. 800 of the Code of Civil Procedure has to evaluate the compliance with the conditions for instituting the enforcement proceedings. Within these, it has to control that the parties to this proceedings are the same parties to the arbitral proceedings abroad, as well as their heirs.

18. *Corte di Cassazione, 24 February 1999 No. 1584* 510

The one-year limitation period provided for by Art. 3 n. 6 of Brussels Convention of 25 August 1924 on bills of lading is not applicable to an action against a sea carrier, brought by an Italian company to which a cargo of goods was sent, in respect of damages caused by the predating of the bill of lading made by the former.

19. *Corte di Cassazione, 3 March 1999 No. 1769* 122

The reference to public policy of the State in which enforcement is sought, as per Art. 27 No. 1 of the Brussels Convention of 27 September 1968, does not concern only the contents of the foreign decision and the procedure through which the decision was reached, but also the effects of ordinary means of appeal and the establishment of the *res iudicata*.

The ascertainment of the principles of Italian public policy under Art. 27 n. 1 of the 1968 Brussels Convention is not a matter of construction of the Convention but of interpretation of Italian law, and hence falls within the competence of Italian courts rather than within that of the European Court of Justice.

The right to appeal before the Corte di Cassazione is not a rule of public policy, and, as such, a limit to the recognition of foreign judgments, as Art. 111 of the Constitution only concerns the structure of our judicial system and excludes such right of appeal in certain instances.

Art. 31 of the 1968 Brussels Convention allows the recognition of a French judgment in respect of which the President of the French Cour de Cassation has ordered, upon an application of the respondent, that an appeal brought against such judgment be removed from the court register because the appellant had not previously complied with the judgment.

20. *Corte di Cassazione, 6 March 1999 No. 1917* 182

Though the relationships arising from the conduction of a family undertaking (under Art 230-*bis* of the Civil Code) may be subject to a foreign law, under Art. 25, first paragraph of the Preliminary Provisions to the Civil Code, such foreign law does not apply if the interested party does not submit to the Corte di Cassazione a description of the foreign provisions that allegedly have been breached.

21. *Corte di Cassazione, 8 March 1999 No. 1951* 130

Under Art. 17 of the Preliminary Provisions to the Civil Code, if the alleged parent and the alleged child are citizens of different States, the establishment of filiation, be it legitimate or natural, is governed by both national laws.

Art. 16 of the Preliminary Provisions to the Civil Code, whereby the enjoyment of civil rights by foreigners is subject to reciprocity, does not apply to the rights concerning family relationships.

Moroccan provisions of law that, on one hand, do not provide for the instrument of the recognition of a natural child and, on the other hand, punish women seeking such recognition are contrary to Italian public policy. Therefore, Italian law applies to an action for the recognition of a natural child brought by a Moroccan woman against an Italian national.

22. *Corte di Cassazione (plenary session), 12 March 1999 No. 120* 134
 In respect of a claim brought by an employee against the *Ecole française de Rome*, Italian courts lack jurisdiction as concerns the dismissal and the related action for damages; nonetheless, Italian courts have jurisdiction over the action concerning the pay of the employee.
23. *Corte di Cassazione (plenary session), 15 March 1999 No. 138* 788
 Under Art. 6 of the Luxembourg Convention of 12 April 1957, establishing the European School of Varese-Ispra, the School has the nature of a public body of domestic law and not of international law, and, as such, enjoys no immunity from Italian jurisdiction.
24. *Corte di Cassazione (plenary session), 18 March 1999 No. 146* 135
 A lawyer national of a Member State of the European Community who wishes to exercise the legal profession in Italy, whether permanently or temporarily, may request to the Bar Council to be entered, respectively, either in the register contemplated by Art. 12 of Law 9 February 1982 No. 31 (implementing directive 77/249/EEC), on the freedom to provide services, or in the Bar Register pursuant to Legislative Decree 27 January 1992 No. 115 (implementing directive 88/84/EEC), provided that his university qualifications are recognized and that he passes a professional exam.
 Since the delay of the Italian legislature in implementing directive 88/84/EEC is irrelevant, the permanent exercise of the legal profession before the enactment of the Italian law implementing such directive must be deemed in excess of the limits laid down in Law No. 31 of 1982.
25. *Corte di Cassazione (plenary session), 18 March 1999 No. 149* 472
 Italian courts have jurisdiction in respect of a claim concerning certain aspects of employment compensation brought by an employee of the European University Institute because, in the uncertainty on the existence of a rule of customary international law extending the principle *par in parem non habet iurisdictionem* to all international organizations, the European University Institute may only enjoy immunity from civil proceedings pursuant to specific written rules of international law. The fact that the European University Institute has been granted legal personality in international law under the seat agreement of 19 April 1972 in order to reach its purposes of scientific and cultural advancement, does not itself allow it to be assimilated to a foreign State, and does not therefore justify the sacrifice of an individual's right of access to justice as safeguarded by Art. 24 of the Constitution.
26. *Corte di Cassazione (plenary session), 18 March 1999 No. 150* 789
 Italian courts have no jurisdiction over an action brought against the Association of the Italian knights of Malta (ACISMOM) in relation to the ways in which such charity performs its activities.
27. *Lombardy Administrative Tribunal, 26 March 1999* 144
 The refusal to grant Italian nationality to a foreign citizen married to an Italian woman is unlawful if the decision on the existence of serious and proven reasons concerning national security, as per Art. 6, first paragraph, *lett. c* of Law 5 February 1992 No. 91, is not based upon an adequate scrutiny nor on objective factors.
28. *Genoa Pretore, decree 29 March 1999* 147
 In relation to a sailor, the criterion of territorial venue based upon the place

of residence in Italy of the foreign citizen, laid down by Art. 11, paragraph 9 of Law 6 March 1998 No. 40 for the purposes of the opposition to the administrative expulsion decision, may be identified with the place in Italy where stands the ship he is embarked on.

In the absence of the regulation implementing Law No. 40 of 1998, and by virtue of ILO Convention n. 108 of 13 May 1958 on sailors' identity cards, the administrative decision expelling a non-community sailor who entered Italy (on board an Italian ship entered into the international register) with a maritime card and a passport, and never disembarked in Italy, is unlawful.

29. *Turin Tribunal, 12 April 1999* 152
 The repeal of Art. 1 of Law 13 June 1912 No. 555 in the part in which it excluded the transmission of the Italian nationality by the Italian mother, pursuant to judgment No. 30 of 1983 of the Constitutional Court, is effective only after 1 January 1948.
 Since Art. 1 of Law No. 555 of 1912 (as also Art. 1 of Law 5 February 1992 No. 91) does not refer to birth but rather to filiation for the purposes of the acquisition of Italian nationality, the child of an Italian mother born before 1 January 1948 must be regarded as an Italian national since, at that date, the Italian mother became entitled to transmit her nationality to her children.
30. *Constitutional Court, order 16 April 1999 No. 132* 790
 As regards the service abroad of an interim relief decision, the question of the constitutional legitimacy of Arts. 142, third paragraph and 669-*sexies*, second and third paragraphs of the Code of Civil Procedure, raised in relation to Arts. 3 and 24 of the Constitution, is manifestly unfounded.
31. *Naples Court of Appeal, order 21 April 1999* 163
 An action for the recognition of a foreign divorce decision pursuant to Art. 67 of Law 31 May 1995 No. 218 promoted through an application and not through a writ of summons is inadmissible.
32. *Milan Court of Appeal, 4 May 1999* 480
 The Constitutional Court judgment of 16 April 1975 No. 87 has struck out from the instances in which Italian nationality may be lost the marriage of Italian women with foreigners (whose *status civitatis* may extend to their spouses).
 Art. 219 of Law 19 May 1975 No. 151, on the declaration for the re-acquisition of the Italian nationality by Italian women married to foreigners, only governs the conditions set forth in order to exercise the nationality rights.
33. *Corte di Cassazione, 6 May 1999 No. 4528* 792
 An American company owning an international trade mark may not apply against the registration of the same trade mark in Italy by its Italian distributor if, at the time of the application for registration by the Italian company, the latter did not yet have any contractual relationship with the American company, since the scope of application of Art. 6-*septies* of the Paris Union Convention of 20 March 1883 may not be extended by way of analogy so as to cover such matter.
34. *Corte di Cassazione, 18 May 1999 No. 4817* 486
 In order to determine whether the domestic court has the power, and the duty, not to apply domestic provisions that are incompatible with an EC directive (that has not been timely implemented in domestic law and that fulfils the criteria required for its direct application), the analysis must not be limited to the conclusion that the parties to the relationship brought before the

court are private individuals, but the real nature of the interests at stake must be established.

Art. 9 of Law 9 May 1985 No. 204, prohibiting the exercise of the profession of commercial agent to all persons that are not entered in the required register, may not apply as it conflicts with Council directive 86/653/EEC of 18 December 1986 on the co-ordination of the laws of the member States on commercial agency, even if the parties to the relationship brought before the court are private individuals: that provision, in fact, concerns the relationship between the State, on one hand, and the agents and the principals on the other hand, and therefore does not limit the principle of party autonomy in furtherance of exclusively private interests but rather in the light of interests of the public administration.

35. *Corte di Cassazione (plenary session), order 26 May 1999 No. 64* 494
 The special proceedings for a preliminary ruling on jurisdiction may not be promoted by a foreign State arguing the lack of jurisdiction of Italian courts over the seizure of monies deposited with a bank of its own embassy, since such objection must be proposed as an opposition to the enforcement proceedings.
36. *Corte di Cassazione, 2 June 1999 No. 5362* 1090
 The three-year limitation period established by Art. 13, second paragraph of the Presidential Decree of 26 October 1972 No. 641 - that applies to any instance of repayment of undue taxes and therefore also to actions for the repayment of taxes levied in breach of EC law - is compatible with the principles of EC law in so far as it applies equally to repayment actions based on EC law and to the corresponding actions based on domestic law.
37. *Corte di Cassazione (plenary session), 12 June 1999 No. 328* 727
 Italian courts have no jurisdiction over an action for damages in respect of an instance of miscarriage of justice brought by an Italian national against a foreign State.
38. *Corte di Cassazione (plenary session), 12 June 1999 No. 331* 728
 Art. 11 of Law 31 May 1995 No. 218 governs the way in which the lack of jurisdiction of Italian courts may be raised.
 For the purposes of qualifying the nature of a legal entity regard must be had to its position in the system of law to which it belongs; therefore, a Kuwaiti information agency must be viewed as a public law body.
 The principle of the immunity from Italian jurisdiction applies not only to the foreign State, but also to the public law bodies through which the foreign State indirectly furthers its purposes.
 Italian courts have no jurisdiction over an action, having a patrimonial character, brought by an employee against a foreign public law body if the adjudication of the merits of such action requires the scrutiny and evaluation of the way in which it has exercised its public law powers.
39. *Corte di Cassazione, 14 June 1999 No. 5912* 1091
 In order to benefit from the so called "*neutralizzazione*" of working periods spent abroad pursuant to Art. 3 of the Presidential Decree of 31 December 1971 No. 1432, Italian nationality is required.
40. *Milan Court of Appeal, 18 June 1999* 732
 According to Art. 25, second paragraph of the preliminary provisions of the Civil Code, Liberian law is applicable to the *ex lege* liability of an Italian bank for

the obligations of a Liberian bank of which the former is the sole shareholder, since the fact of becoming sole shareholder of the Liberian bank and the insolvency of the latter both occurred in Liberia.

41. *Milan Court of Appeal, 22 June 1999* 1093
- The reciprocity rule laid down in Art. 16 of the Preliminary Provisions to the Civil Code does not apply to fundamental rights, which include the right to health contemplated by Art. 3 of the Constitution, that has full effect in the relationships among private individuals; in any event, such provision does not apply to foreigners regularly resident in Italy since it has been implicitly repealed by Art. 2, second paragraph of Law 6 March 1998 No. 40, granting to such foreigners the civil rights awarded to Italian nationals.
42. *Corte di Cassazione (plenary session), 30 June 1999 No. 366* 738
- The lack of jurisdiction of the Italian courts over foreigners may be raised by way of the special proceedings for a preliminary ruling on jurisdiction before the Corte di Cassazione.
- Under Art 2, first paragraph of Law 31 May 1995 No. 218, the new choice of law rules do not prevent the application of international conventions that are in force in Italy.
- Under Art. 57 of Law 218 of 1995, contractual obligations are governed in all instances by the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations.
- According to Art. 5 No. 1 of the Brussels Convention of 27 September 1968 Italian courts are not competent to hear a claim action brought by an Italian company against its French agent for the termination of the exclusive sale agency agreement because the obligation stemming from the agreement has to be performed in France.
43. *Corte di Cassazione (plenary session), 30 June 1999 No. 369* 741
- Under Art. 3, first paragraph, of Law 31 May 1995 No. 218, Italian courts have jurisdiction if the defendant has appointed in Italy a legal representative who is empowered to appear in court on his behalf.
- For the purposes of excluding the jurisdiction of Italian courts Art. 4, second paragraph, of Law No. 218 of 1995 requires written proof of such agreement and that it concerns rights which the parties may dispose of.
- In the light of the mandatory nature of the provisions established for the protection of commercial agents (that have been laid down in Art. 1751 of the Civil Code pursuant to EEC directive No. 86/653), the rights provided for thereby must be regarded as non-disposable for the purposes of Art. 4, second paragraph of Law No. 218 of 1995.
- The validity of a clause of a contract excluding the jurisdiction of Italian courts must be determined on the basis of Art. 4, second paragraph, of Law No. 218 of 1995 even though it was entered into before the entry into force of such law, since such clause only becomes effective when the a legal action is brought.
44. *Corte di Cassazione (plenary session), 30 June 1999 No. 370* 745
- Under Art. 10 *lit. c* of the Hague Convention of 15 November 1965 on the service abroad of judicial documents, the service upon a British company of the application for the preliminary ruling on jurisdiction is properly made if the application is served directly through government agents, officers or other competent persons of the addressee State.
- Italian courts have jurisdiction over an action for the ascertainment of a sham contract brought by an Italian company against two defendants domiciled

in Italy and two companies established in Britain because, under Art. 6 n. 1 of the Brussels Convention of 27 September 1968, an action against several defendants may be promoted before the court of the place where anyone of them is domiciled.

45. *Corte di Cassazione (plenary session), 30 June 1999 No. 373* 748

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 affect the reference made to it by Art. 41 of the Code of Civil Procedure, and does not therefore bar the promotion of the special proceedings for a preliminary ruling on jurisdiction before the Corte di Cassazione.

Art. 3, second paragraph of the of the Brussels Convention of 27 September 1968 expressly derogates to Art. 2 of the Code of Civil Procedure.

Under Art. 16 No. 1 *lit. a* of the 1968 Brussels Convention, Italian courts have no jurisdiction over a dispute concerning the failure to pay the rent due for the lease of flats located in Spain.

Since jurisdiction agreements may not derogate from the mandatory jurisdiction criteria laid down in Art. 16 of the Brussels Convention, an agreement conferring jurisdiction to the courts to which jurisdiction is mandatorily conferred by such provision is not necessary.

46. *Milan Court of Appeal, 2 July 1999* 165

Under an arbitration clause granting jurisdiction over the dispute to an arbitration panel to be established in one State if the seller is plaintiff and in another State if the buyer is plaintiff, it must be excluded that, once an arbitration panel has been established at the instance of one of the parties, the other party must necessarily bring its claims before that same panel.

Art. 840, third paragraph, n. 4 of the Code of Civil Procedure does not bar the recognition of the award rendered in the second arbitration proceeding because it cannot be concluded that, once one of the proceedings has commenced, the other one could not be promoted, and that, if such second proceeding has also commenced, its commencement was incompatible with the agreement between the parties.

A foreign arbitration award that is contrary to an award rendered in another State that was already recognized in Italy may itself be recognized in Italy, since such circumstance do not bar recognition under Arts. 839 and 840 of the Code of Civil Procedure.

47. *Corte di Cassazione, 7 July 1999 No. 7025* 751

A principle that is generally accepted in international conventions, and notably by Art. 15, eighth paragraph of the Hamburg Convention of 31 March 1978 on transport of goods by sea (which, in any event, is not applicable to the case), stipulates that the lack of indication of the place of destination of the cargo, and of the place and date of delivery, does not affect the validity of the bill of lading as a negotiable instrument incorporating the right to the delivery of the cargo.

Since the issuance of a bill of lading has a unilateral nature and since the right to the delivery of the cargo is tied to the possession of the bill and not to the contract of transport, the right to the delivery of the cargo is governed by the law indicated by Art. 25, second paragraph of the preliminary provisions to the Civil Code, which is not derogated from by the special rule set forth in Art. 10 of the Navigation Code.

48. *Corte di Cassazione (plenary session), 15 July 1999 No. 395* 757
- Italian courts have jurisdiction over actions brought by employees of foreign embassies entrusted with duties relating to the embassies' auxiliary functions if the remedy that is being sought only concerns patrimonial aspects of the employment relationship, and does not interfere with the performance of such functions.
- Italian courts have jurisdiction over a dispute concerning the collective labour agreement on labour in embassies, consulates and the like.
49. *Ancona Court of Appeal, 21 July 1999* 169
- The Convention between Italy and the USSR of 25 January 1979 on Judicial Assistance in Civil Matters applies in the relationships with the Russian Federation as it does not appear to having been denounced by the States that came into existence after the dissolution of USSR, nor, notably, by the State (the Russian Federation) that is widely regarded as the successor of USSR as a subject of public international law, taking its place in all international conventions that have not expressly been denounced or revoked.
- The proceedings for the enforcement of foreign judgments provided for by Art. 67 of Law 31 May 1995 No. 218 is subject to the rules of procedure applicable to ordinary proceedings, must be promoted through a writ of summons and be adjudicated upon through a judgment, and is not governed by the rules of procedure of *in camera* proceedings.
50. *Corte di Cassazione (plenary session), 27 July 1999 No. 515* 759
- An agreement excluding Italian jurisdiction, made by a director of a company that was subsequently declared bankrupt, may not be invoked against the bankruptcy liquidator of the company, who must be regarded as a third party.
- Art. 1, second paragraph of the Lugano Convention of 16 September 1988, which excludes bankruptcy from the scope of application of the convention, must be construed so as to exclude also actions arising from the declaration of bankruptcy, such as the action for the recovery of credits or the *actio pauliana*.
- Under Art. 4 n. 2 of the Code of Civil Procedure, Italian courts have jurisdiction over an action for the exercise of a pledge, and of the related pre-emption right, over shares deposited with an Italian bank because the goods are located in Italy and because of the nature of the rights conferred by the pledge.
- In order to establish whether Italian courts have jurisdiction over an *actio pauliana* brought by the bankruptcy liquidator against a foreigner, the fact that the foreign defendant is a legal rather than a natural person is irrelevant for the purposes of Art. 4 n. 2 of the Code of Civil Procedure.
51. *Milan Court of Appeal, 27 July 1999* 763
- By virtue of the repeal, by Art. 73 of Law 31 May 1995 No. 218, of the *executatur* proceeding laid down in Art. 796 *et seq.* of the Code of Civil Procedure, and on the basis of the wording of Arts. 64 and 67 of such Law, an action for the enforcement of a foreign judgment must be regarded properly as an action for declaration, that, as such, may never become time-barred.
- A Swiss divorce decision may be enforced in Italy in the part in which it adjudicates on maintenance obligations if all conditions set forth by Art. 64 as recalled by Art. 67 of Law 218 of 1995 are satisfied.
52. *Corte di Cassazione (plenary session), 10 August 1999 No. 579* 898
- In accordance with Art. 3, second paragraph of Law 31 May 1995 No. 218, the jurisdiction of Italian courts over an action promoted against two foreign

companies, that neither have a place of business nor a legal representative in Italy empowered to appear in court on their behalf under Art. 77 of the Code of Civil Procedure, must be determined on the basis of the criteria of jurisdiction laid down in Section 2 of Title II of the Brussels Convention of 27 September 1968.

The criterion of jurisdiction set forth in Art. 6 No. 2 of the Brussels Convention, on related actions, only applies to actions on warranty or guarantee *stricto sensu*.

Italian courts have no jurisdiction over an action on guarantee if the main action and the action on guarantee are based upon autonomous causes of action that are not tied to one another.

53. *Avellino Tribunal, order 18 August 1999* 792

Under Art. 5 No. 1 of the Brussels Convention of 27 September 1968, referred to by Art. 3, second paragraph of Law 31 May 1995 No. 218, Italian courts do not have jurisdiction over an action for the payment of legal fees; conversely, under Art. 10 of Law No. 218 of 1995, Italian courts have jurisdiction over an action for interim relief seeking the seizure of real estate located in Italy.

54. *Corte di Cassazione, 10 September 1999 No. 9641* 993

The rules of procedure applicable to the proceedings for the recognition of foreign arbitral awards before the court of appeal are those set forth in Art. 350 *et seq.* of the Code of Civil Procedure on appeal proceedings, and not that set forth for first instance proceedings.

In order to obtain the recognition of a foreign arbitral award, as per Art. 839 of the Code of Civil Procedure the applicant must produce only the original and a true copy of the award, and the arbitration agreement (or an equivalent document).

55. *Corte di Cassazione, 14 September 1999, No. 9813* 997

When an issue concerning the interpretation of law arises in civil proceedings before a court that is not of last resort and that does not deem to solve the question directly, the court must stay the proceedings and refer the question to the European Court of Justice as provided for in Art. 234 (formerly 177) of the EC Treaty and in Art. 20 of the Protocol on the rules of procedure of the European Court of Justice. Therefore, an order to stay the proceedings under Art. 295 of the Code of Civil Procedure while waiting for a preliminary ruling by the European Court of Justice on an identical or analogous question of interpretation raised by another domestic court, is legitimate.

56. *Pordenone Pretore, 20 September 1999* 1006

For the purposes of the application of Art. 5 No. 1 of the Brussels Convention of 27 September 1968 to an action for damages for breach of contract, regard must be had to the place of performance of the contractual obligation which has allegedly been breached.

Italian courts have no jurisdiction over an action for damages for the breach of a contract of sale of goods that had to be transported from another State into Italy if the delivery of the goods to the carrier has occurred in such State.

57. *Padua Tribunal, 24 September 1999* 1008

An action for divorce must be rejected if a divorce decision has been previously rendered in a State party to the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, and this decisions satisfies

the jurisdiction criteria set forth in Art. 2 No. 2 *litt. a* of the Convention and in Art. 64 of Law 31 May 1995 No. 218.

An Australian divorce decision that fails to adjudicate upon the patrimonial aspects of divorce is not contrary to Italian public policy, even though under Australian law the rights concerning such patrimonial aspects lapse after a short period.

58. *Parma Tribunal, 16 October 1999* 768

Under Art. 3, n. 2, *litt. e* of Law 1 December 1970 No. 898 on divorce, the divorce between an Italian husband and a foreign wife, jointly applied for by both spouses, may be declared if in the foreign State of which the wife is a national a divorce has been made through a deed before a notary public which both spouses have consented to.

59. *Constitutional Court, 22 October 1999 No. 388* 433

The issue of constitutional legitimacy of Art. 696 of the Code of Civil Procedure, raised with reference to Arts. 24 and 11 of the Constitution (the latter in relation to Art. 6, first paragraph of the European Convention on Human Rights of 1950) is unfounded both because human rights are already safeguarded by the Constitution and because the proper construction of the regulation of the preliminary investigation excludes an excessive length of the proceedings.

60. *Corte di Cassazione (plenary session), 25 October 1999 No. 748* 1011

Under Art. 17 of the Brussels Convention of 27 September 1968, the cargo owner's signature on the bill of lading does not involve the acceptance of all terms and conditions of the bill.

Under Art. 17 of the 1968 Brussels Convention, the fact that the jurisdiction agreement has been entered into in a non-contracting State is irrelevant, since it is sufficient that one of the parties be domiciled in the territory of a contracting State.

Following the European Court of Justice's preliminary ruling of 16 March 1999 in case C-159/97, the existence of an usage of international trade or commerce (for the purposes of Art. 17 of the 1968 Brussels Convention) must be upheld if it is generally and regularly followed by operators in that branch when concluding contracts of a particular type. The number of States where it is followed, any specific form of publicity, the fact that a course of conduct amounting to a usage is challenged before the courts, or any particular requirements which national provisions might lay down are irrelevant.

As the burden to prove the existence of a valid clause excluding Italian jurisdiction lies upon the party which contests such jurisdiction, Italian courts are competent if no proof is given that the parties to a contract for the carriage of goods have consented to such a clause, nor that a usage of international trade exists.

61. *Corte di Cassazione, 12 November 1999 No. 12566* 1018

In relation to an action brought by an Austrian company (that had entered into an agreement for the transport of wood) against the carrier, whose place of business is in Italy, and against the forwarding Agent, whose place of business is in Austria, if the Italian court has upheld its own jurisdiction on the basis of the Lugano Convention of 16 September 1988, the court's venue is equally governed by the Convention, save as where the latter refers the matter to domestic law.

The court that has been seized of the principal claim is also competent to hear the case concerning a guarantee (whether *stricto sensu* or not) brought

against the forwarding agent since Art. 6 No. 2 of the Lugano Convention does not only refer to actions on a guarantee *stricto sensu* but to any action convening a third party to the case; hence, if the carrier, as defendant in the principal action, has not raised at the outset an objection to the jurisdiction of the court under Art. 18 of the Convention, the jurisdiction of the court is finally established also as regards the position of the forwarding agent since the latter, that is not a party to the principal action, may not raise such objection.

62. *Corte di Cassazione (plenary session), 17 November 1999 No. 785* 1023

With reference to claims brought against several defendants, Art. 6 No. 1 of the 1968 Brussels Convention does not apply if it is not possible to ascertain the *causa petendi* of the action promoted against one of the defendants since it becomes impossible to establish whether between such action and the other ones a connection exists such that it is proper to treat them jointly.

Art. 8, second paragraph of the 1968 Brussels Convention - according to which if the insurer is not domiciled in the territory of a member State but has a branch, agency or other establishment in the territory of a member State, it is deemed to be domiciled in that State in disputes arising out of the conduct of such branch, agency or establishment - applies only to disputes on insurance matters related to policies issued by such branches, agencies or establishments.

Under Art. 3, first paragraph of Law 31 May 1995 No. 218, the existence of a legal representative authorized to appear in court pursuant to Art. 77 of the Code of Civil Procedure, justifies the jurisdiction of Italian courts even if the underlying power of attorney is not limited to the ability to appear in court, but grants to the representative the power to commit the principal also in other fields.

63. *Corte di Cassazione (plenary session), 19 November 1999 No. 794* 1035

The special proceedings for a preliminary ruling on jurisdiction before the Corte di Cassazione may be promoted on matters of jurisdiction over foreigners irrespective of the repeal of Art. 37, second paragraph of the Code of Civil Procedure pursuant to Art. 73 of Law 31 May 1995 No. 218.

Art. 41 of the Code of Civil Procedure supplements the regulation of the means of action through which the lack of jurisdiction of Italian courts may be claimed and refers to the provisions governing this matter, and in particular to Art. 11 of Law 218 of 1995.

Under Art. 72, first paragraph of Law 218 of 1995, the issue of jurisdiction of Italian courts over a proceeding instituted after the date of its entry into force and not concerning a situation terminated before that date is governed by this Law.

If the criteria of jurisdiction set forth in the Brussels Convention of 27 September 1968 are applicable by virtue of the reference made by Art. 3, second paragraph of Law 218 of 1995, the criteria of venue laid down in domestic law may not apply since their application is limited to the matters that are outside the scope of the convention.

Since an action seeking an award of damages for professional negligence has a contractual nature, the applicable criterion of jurisdiction is that set forth in Art. 5 No. 1 of the 1968 Brussels Convention.

Under Art. 5 No. 1 of the 1968 Brussels Convention, if the activity of a professional consultant has been performed in whole in a specific place, the courts of the place of performance have jurisdiction over disputes concerning the performance of the professional services.

Under Art. 5 No. 1 of the 1968 Brussels Convention, if the activity of a professional consultant has been performed in several places, the jurisdiction

over disputes concerning the performance of the whole professional services is conferred to the courts of the place where the consultant had its offices when the mandate was granted.

64. *Brescia Tribunal, 25 November 1999* 1041
- Under Art. 17, third paragraph of the Italian-Swiss Convention of 22 July 1868, all disputes concerning the succession of an Italian citizen, who died in any of the contracting States, arisen among heirs, legatees or other parties fall under the jurisdiction of the courts of the deceased's last domicile in Italy.
- Within the scope of Art. 46 of Law 31 May 1995 No. 218 fall matters concerning the ascertainment of the proper heirs and legatees, of the assets included in the deceased's estate, of the consequences of the acquisition of rights over the deceased's estate, but not matters concerning the modes of acquisition of title in the assets included in the deceased's estate, that are subject to the *lex loci*.
- The management and liquidation of a deceased's estate by a trustee named by a foreign judicial authority is, *latu sensu*, a matter of procedure and therefore must be governed by the law of the place where the procedure is being conducted.
65. *Corte di Cassazione (plenary session), 29 November 1999 No. 827* 1046
- Under Art. 6 No. 3 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over a counterclaim concerning an instance of unfair trade, for the conduct in the United States of company having its place of business in Spain against a company having its place of business in Italy, if such counterclaim has been promoted in a counterfeiting case pending in Italy, since the cause of action of the counterclaim is related to the principal action.
66. *Corte di Cassazione (plenary session), 29 November 1999 No. 828* 1051
- According to Art. 5 No. 1 of the 1968 Brussels Convention, in case of an action for payment of the price brought by a seller against a buyer domiciled in a State that is Party both to that Convention and to the Hague Convention of 1 July 1964 on the Uniform Law on the International Sale of Goods, the place of performance of the obligation in question is, pursuant to Art. 59 of the latter Convention, the domicile of the seller.
67. *Corte di Cassazione, 7 December 1999 No. 13657* 1057
- In accordance with Art. 3, first paragraph, *litt. a* of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, the retention of the child must be regarded as wrongful (irrespective of the length of the delay) when the child is kept with the parent who does not have the custody right over it, who exercises his right of access beyond the bounds established by the relevant judicial decision pursuant to the law of the Country of residence of the child.
- Art. 13, second paragraph of the 1980 Hague Convention on the Civil Aspects of International Minor Abduction, and Art. 12, first paragraph of the New York Convention of 20 November 1989 on the Rights of Children, do not grant the minor an unlimited right to express his view on any matters that concerns him, but rather make the hearing of the minor subject to his age, degree of maturity and discerning ability, according to the evaluation of the court.
68. *Corte di Cassazione, 13 December 1999 No. 13928* 1065
- A foreign judgment, rendered in a case in which the court has dismissed

- both an application for testimonial evidence to be executed through a letter of request for international judicial assistance and an application for expert evidence, may be enforced in Italy pursuant to Art. 797 No. 7 of the Code of Civil Procedure since such dismissals do not amount to a breach of the fundamental right of the defence.
69. *Corte di Cassazione, 13 December 1999 No. 13932* 1071
 An *allocatur* (i.e., an ruling awarding fees to an attorney-at-law) relating to a case decided by the Hong Kong High Court may not be enforced in Italy, neither under the Italian-British Convention of 7 February 1964 on the recognition and enforcement of judgments nor pursuant to the general rules of the Code of Civil Procedure, since such ruling may not be regarded as a decision rendered by a judicial authority, nor does it have its basis on a judicial decision.
70. *Corte di Cassazione (plenary session), 14 December 1999 No. 895* 1078
 Italian courts have jurisdiction over an action for the breach of a sale made between a company whose place of business is in Italy and a company whose place of business is in England, to which an agreement for the distribution of the products in Great Britain was tied, since, pursuant to Art. 5 No. 1 of the Brussels Convention of 27 September 1968, to Art. 57 of Law 31 May 1995 No. 218, to Art. 4 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations and to Art. 57 of the Vienna Convention of 11 April 1980 on the Contract for the International Sale of Goods, the characteristic obligation of such contract (that is, the obligation to purchase the goods and to timely pay the price) is to be performed in Italy.
71. *Milan Court of Appeal, 21 December 1999* 496
 Italian courts have no jurisdiction under Art 5 No. 1 of the Brussels Convention of 27 September 1968 over a claim brought against a Danish company by an Italian company, which bought through another Italian company goods produced by the defendant, since the parties to the action are not bound by any agreement.
 Pursuant to Art 6 n. 1 of the 1968 Brussels Convention, Italian courts have jurisdiction if the claim is brought against two companies, both charged with the after sale assistance on the product and both having a place of business in Italy, since it appears objectively advisable to conduct the discovery procedure jointly and to evaluate jointly the merits of the case.
72. *Milan Court of Appeal, 28 December 1999* 1081
 Under Art. 72, first paragraph of Law 31 May 1995 No. 218, proceedings for the recognition of foreign judgments are always governed by the provisions of this Law if it was in force at the time of the action, since the principle whereby superseded provisions may apply to situations terminated does not extend to the field of procedure.
 The ascertainment of the falsity of documents used by a foreign court to adjudicate upon a case is not within the powers of the court seized of an action for the recognition of the foreign judgment having to rule upon the conformity of the judgment with public policy under Art. 64, *litt. g* of Law 31 May 1995 No. 218, since this provision is only concerned with the effects of the foreign judgment, and not with the development of the proceedings in which it has been rendered.
 For the purposes of Art. 64, *litt. e*, a foreign judgment is incompatible with an Italian judgment if the Italian court, on the basis of superseded legislation, has

previously set aside an application for the recognition of the same foreign judgment on the ground that, before the latter became *res judicata*, a negative ascertainment action on the same obligation was pending in Italy.

73. *Pavia Tribunal, 29 December 1999* 770

Under Art. 1, first paragraph, *litt. b* of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, the Convention applies to a sale between an Italian party and a Greek party made before 1 February 1999, since Italian choice of law rules declare Italian law applicable to the sale and at that time Italy was a party to the Convention.

Since the Vienna Convention of 1980 only provides for a right to receive interest on unpaid sums, without specifying the applicable rate, this matter is governed by Italian law as the law of the seller, which applies as per Art. 3, first paragraph of the Hague Convention of 15 June 1955 on the Law Applicable to the International Sale of Goods.

74. *Corte di Cassazione, 14 January 2000 No. 403* 502

In accordance with Art. 13, second paragraph of the Hague Convention of 25 October 1980 on the civil aspects of international abduction of minors, the judicial authority may refuse to order the return of the minor if it establishes that the minor opposes to it and it has reached an age and a degree of maturity which make it appropriate to take its views into account.

A decision that takes into account the views of the minor on his return to the father in the United States is tainted by lack of adequate reasoning if it fails to evaluate the degree of maturity of the minor for the purpose of establishing whether it is appropriate to take his will into account.

75. *Milan Court of Appeal, 14 January 2000* 172

Under Art. 25 of Law 31 May 1995 No. 218, the issue concerning the existence of the legal personality of a foreign entity is governed by the law of the State in which such entity has been incorporated. A joint venture regulated by Russian law has *locus standi* in an Italian judicial proceeding since it must be regarded as an autonomous legal entity incorporated under Soviet law, whose incorporation has been subsequently confirmed by the laws of the Russian Federation as currently in force.

Under Art. 839, third paragraph of the Code of Civil Procedure and Art. IV, second paragraph of the New York Convention of 10 June 1958 on Recognition and Enforcement of Foreign Arbitral Awards, the fact that the translation of the award and of the arbitration agreement have not been produced together with the application for the recognition of the award does not render the application inadmissible, since such documents may also be produced in the course of the proceedings.

76. *Constitutional Court, 7 February 2000 No. 31* 437

The request for a people's *referendum* for the repeal of Legislative Decree 25 July 1998 No. 286 on immigration and on the condition of foreigners is not admissible because the repeal of such set of provisions would place Italy in breach of the obligations arising under the convention concerning the application of the Schengen Agreement and, consequently, of the Amsterdam Treaty.

77. *Constitutional Court, 7 February 2000 No. 41* 440

The request for a people's *referendum* on the repeal of certain articles of Law 18 April 1962 No. 230, and subsequent amendments, on the regulation of

fixed term labour contracts, is not admissible as such Law provided for the anticipated implementation in Italy of Council Directive 1999/70/EC of 28 June 1999. Therefore, the guarantees set forth by it may not be removed without breaching the obligations stemming from the directive.

78. *Corte di Cassazione (plenary session), 10 March 2000 No. 58* 773

Under Art. 41 of the Code of Civil Procedure, the special proceedings before the Corte di Cassazione for a preliminary ruling on jurisdiction may be promoted until any decision on the merits of the case has been rendered.

Notwithstanding the repeal (by virtue of Art. 73 of Law 31 May 1995 No. 218) of Art. 37, second paragraph of the Code of Civil Procedure, the question of the jurisdiction of Italian courts over foreigners may still be raised through the special proceedings for a preliminary ruling on jurisdiction.

In case an arbitration clause confers jurisdiction to foreign arbitrators and excludes the jurisdiction of Italian courts, the special proceedings for a preliminary ruling on jurisdiction may be promoted if an Italian court is seized of an action relating to a relationship which falls within the scope of the arbitration clause.

Under Art. 4, second paragraph of Law 31 May 1995 No. 218, and under both the New York Convention of 10 June 1958 and the Geneva Convention of 21 April 1961 on arbitration, a clause excluding the jurisdiction of Italian courts must be made in writing and must be worded in clear and unambiguous terms.

Under Art. 5 No. 1 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction if the place of performance of the obligation in question is located in Italy (in this instance, the sale and construction of a piece of machinery); such place must be identified on the basis of the closest connection criterion as set forth in Art. 4, first paragraph of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations.

79. *Corte di Cassazione (plenary session), 17 March 2000 No. 61* 781

By virtue of Art. 32 of Law 31 May 1995 No. 218, Italian courts have jurisdiction over an action for divorce brought by an Italian woman against her foreign spouse, not resident in Italy; for this purpose, the fact that the life of the spouses was chiefly conducted abroad (which is relevant under Art. 31 for choice of law purposes) and the fact that an analogous action is pending abroad (which was not raised under Art. 7) are irrelevant.

80. *Corte di Cassazione, 28 March 2000 No. 3701* 1087

Though both the Luxembourg Convention of 20 May 1980 on the Recognition and Enforcement of Decisions on Custody of Minors and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction are intended to punish the unlawful removal of minors, they have different contents and purpose.

The Luxembourg Convention operates upon the premise that an enforceable decision on the custody of the minor has been adopted in a Contracting State before the removal of the child, or that, after such removal, an enforceable decision on the custody rights over the minor declaring the unlawful nature of the removal has been adopted in a Contracting State.

Conversely, the existence of a decision or any other act on the custody of the child is wholly irrelevant for the purposes of the 1980 Hague Convention, that is exclusively intended to safeguard custody as a mere factual situation, which must be protected through the immediate return of the child to the State of its habitual residence.

The decision whereby an Italian court declares that the presence in Italy of a

child is resident in Italy is unlawful simply because a United States court amended the terms governing the child's custody is in breach of Art. 3 of the 1980 Hague Convention since, under that provision, the sole judicial decisions that may have relevance for the purpose of establishing whether the removal or the retention of a child is wrongful are those rendered by the courts of the State of habitual residence of the minor, that is, in this instance, Italy.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 4, 6, 12.

Brussels Convention of 1968: 1, 8, 9, 11, 16, 17, 20.

Community proceedings: 5, 14.

Consumer protection: 18.

Freedom of movement of persons: 2, 7.

Freedom to provide services: 10.

Freedom of movement of workers: 13.

Freedom of movement of capitals: 19.

Liability of member States: 4, 5.

Prohibition of discrimination: 3, 15.

Social policy: 15.

Treaties and general international rules: 5.

1. *Court of Justice, 16 March 1999, case C-159/97* 184

The third case mentioned in the second sentence of the first paragraph of Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention, is to be interpreted as follows:

1. The contracting parties' consent to the jurisdiction clause is presumed to exist where their conduct is consistent with a usage which governs the area of international trade or commerce in which they operate and of which they are, or ought to have been, aware.

2. The existence of a usage, which must be determined in relation to the branch of trade or commerce in which the parties to the contract operate, is established where a particular course of conduct is generally and regularly followed by operators in that branch when concluding contracts of a particular type. It is not necessary for such a course of conduct to be established in specific countries or, in particular, in all the Contracting States. A specific form of publicity cannot be required in all cases. The fact that a course of conduct amounting to a usage is challenged before the courts is not sufficient to cause the conduct no longer to constitute a usage.

3. The specific requirements covered by the expression 'form which accords' must be assessed solely in the light of the commercial usages of the branch of international trade or commerce concerned, without taking into account any particular requirements which national provisions might lay down.

4. Awareness of the usage must be assessed with respect to the original parties to the agreement conferring jurisdiction, their nationality being irrelevant in this regard. Awareness of the usage will be established when, regardless of any specific form of publicity, in the branch of trade or commerce in which the parties operate a particular course of conduct is generally and regularly followed in the conclusion of a particular type of contract, so that it may be regarded as an established usage.

5. The choice of court in a jurisdiction clause may be assessed only in the light of considerations connected with the requirements laid down in Article 17 of the Brussels Convention. Considerations about the links between the court designated and the relationship at issue, about the validity of the clause, or about the substantive rules of liability applicable before the chosen court are unconnected with those requirements.

2. *Court of Justice, 4 May 1999, case C-262/96* 223

On a proper construction of Article 3(1) of the Decision of the Association Council of 19 September 1980 No 3/80 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families, a Member State may not require of a Turkish national covered by that decision whom it has authorised to reside in its territory, but who holds in that host State only a conditional residence authorisation issued for a specified purpose and for a limited duration, that, in order to receive family allowances for his child who resides with him in that Member State, he must be in possession of a residence entitlement or a residence permit, whereas for that purpose nationals of that State are required only to be resident there.

The direct effect of Article 3(1) of Decision No 3/80 may not be relied on in support of claims relating to benefits in respect of periods prior to the date of this judgment except as regards those persons who, before that date, initiated proceedings or made an equivalent claim.

3. *Court of Justice, 10 June 1999, case C-430/97* 236

Article 6 of the Treaty does not preclude the laws of a Member State regulating the consequences of divorce between an official of the Communities and his former spouse, regard being had to the spouses' nationality as a connecting factor, from causing the official concerned to bear a heavier burden than would be borne by an official of a different nationality in the same situation.

4. *Court of Justice, 15 June 1999, case C-140/97* 195

Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours applies to trips which are offered by a daily newspaper as a gift exclusively to its subscribers as part of an advertising campaign that contravenes national competition law and for which the principal contractor, if he travels alone, pays airport taxes and a single-room supplement or, if he is accompanied by one or more persons paying the full rate, airport taxes only.

A Member State which acceded to the European Union on 1st January 1995 has not properly transposed Article 7 of Directive 90/314 if it has adopted legislation which protects travellers who have booked package travel after 1st January 1995 but limits that protection to trips with a departure date of 1st May 1995 or later.

Transposition of Article 7 of Directive 90/314 in a way that limits the protection prescribed by that provision to trips with a departure date four months or more after the expiry of the period prescribed for transposing the

directive constitutes a sufficiently serious breach of Community law, even where the Member State has implemented all the other provisions of the directive.

Article 7 of Directive 90/314 has not been properly transposed where national legislation does no more than require, for the coverage of the risk, a contract of insurance or a bank guarantee under which the amount of cover provided must be no less than 5% of the organiser's turnover during the corresponding quarter of the previous calendar year, and which requires an organiser just starting up in business to base the amount of cover on his estimated turnover from his intended business as a travel organiser and does not take account of any increase in the organiser's turnover in the current year.

Once a direct causal link has been established, a Member State's liability for breach of Article 7 of Directive 90/314 cannot be precluded by imprudent conduct on the part of the travel organiser or by the occurrence of exceptional or unforeseeable events.

5. *Court of Justice, 15 June 1999, case C-321/97* 209

The Court has no jurisdiction to rule on the interpretation of the EEA Agreement applicable in the States of European Free Trade Area.

Community law does not enable individuals to rely before the courts or tribunals of a European Free Trade Area State which has acceded to the European Union on rights derived directly from 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, or for that State to be held liable for damage caused to them by failure to transpose the directive correctly, where the events which give rise to the operation of the guarantee provided for in the directive occurred prior to the date of accession.

6. *Court of First Instance, 15 June 1999, case T-288/97* 795

Persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty only if the decision affects them by reason of certain attributes peculiar to them or of factual circumstances in which they are differentiated from all other persons and thus distinguishes them individually in the same way as the person addressed.

A regional authority is individually concerned by a Commission decision, addressed to the Member State, finding that an aid programme set up by that authority is incompatible with the common market. This is because such a decision not only affects measures adopted by the authority in question, but also prevents the authority from exercising its own powers as it sees fit. It prevents the authority from continuing to apply the associated legislation, nullifies the effects of that legislation and requires the authority to initiate the administrative procedure for recovery of the aid.

A regional authority has a separate interest in challenging the decision, distinct from that of the Member State addressed, where it possesses rights and interests of its own and the aid in question constitutes a set of measures taken in the exercise of legislative and financial autonomy vested in the authority directly under the constitution of the Member State concerned.

7. *Court of Justice, 21 September 1999, case C-397/96* 511

On a proper construction of Article 93(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation

(EEC) No 2001/83 of 2 June 1983, where an injury has been sustained in the territory of a Member State and has given rise to the payment of social security benefits to the victim or those entitled under him by a social security institution (within the meaning of that regulation) of another Member State, the rights of the victim, or those entitled under him, against the person who caused the injury and to which that institution may be subrogated, and the requirements which must be satisfied to enable an action in damages to be brought before the courts of the Member State where the injury was sustained, are to be determined in accordance with the law of that State, including any applicable rules of private international law.

On a proper construction of Article 93(1)(a) of Regulation No 1408/71, as amended and updated by Regulation No 2001/83, the subrogation of a social security institution (within the meaning of that regulation) governed by the law of a Member State to the rights of the victim, or those entitled under him, against a person who, in the territory of another Member State, caused an injury which gave rise to the payment by that institution of social security benefits, and the extent of the rights to which that institution is subrogated, are to be determined in accordance with the law of the Member State to which the institution belongs, provided always that the exercise of the right to subrogation provided for by that law cannot exceed the rights, under the law of the Member State where the injury was sustained, of the victim, or those entitled under him, against the person responsible for causing the injury.

8. *Court of Justice, 28 September 1999, case C-440/97* 217

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, 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, the place of performance of the obligation, within the meaning of that provision, is to be determined in accordance with the law governing the obligation in question according to the conflict rules of the court seised.

9. *Court of Justice, 5 October 1999, case C-420/97* 517

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, the same court does not have jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract when, according to the conflict rules of the State where that court is situated, one of those obligations is to be performed in that State and the other in another Contracting State.

10. *Court of Justice, 23 November 1999, joined cases C-369/96, C-376/96* 816

The term "public-order legislation" must be understood as applying to national provisions compliance with which has been deemed to be so crucial for the protection of the political, social or economic order in the Member State concerned as to require compliance therewith by all persons present on the national territory of that Member State and all legal relationships within that State. The fact that national rules are categorised as public-order legislation does not mean that they are exempt from compliance with the provisions of the

Treaty; if it did, the primacy and uniform application of Community law would be undermined. The considerations underlying such national legislation can be taken into account by Community law only in terms of the exceptions to Community freedoms expressly provided for by the Treaty and, where appropriate, on the ground that they constitute overriding reasons relating to the public interest.

The freedom to provide services, as one of the fundamental principles of the EC Treaty, may be restricted only by rules justified by overriding requirements relating to the public interest and applicable to all persons and undertakings operating in the territory of the State where the service is provided, in so far as that interest is not safeguarded by the rules to which the provider of such a service is subject in the Member State where he is established.

11. *Court of Justice, 27 January 2000, case C-8/98* 525

The rule laid down in Article 16(1)(a) 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, conferring exclusive jurisdiction in proceedings having as their object tenancies of immovable property is applicable to an action for damages for taking poor care of premises and causing damage to accommodation which a private individual had rented for a few weeks' holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property.

The ancillary clauses relating to insurance in the event of cancellation and to guarantee of repayment of the price paid by the client, which are contained in the general terms and conditions of the contract concluded between that organiser and the tenant, and which do not form the subject of the dispute in the main proceedings, do not affect the nature of the tenancy as a tenancy of immovable property within the meaning of that provision of the Convention.

12. *Court of Justice, 8 February 2000, case C-17/98* 531

Interim measures vis-à-vis a non-Community authority can be ordered by a national court in the event of an infringement of Community law being imminent only if that court entertains serious doubts as to the validity of the Community measure implemented by that authority and, should the question of the validity of the contested measure not already have been brought before the Court of Justice, itself refers that question to the Court of Justice; if there is urgency and a threat of serious and irreparable damage to the applicant; and if the national court takes due account of the Community's interests.

The fact that such interim measures would be ordered vis-à-vis an authority of an overseas country or territory (OCT) by a court of a Member State, in accordance with its domestic law, is not such as to affect the conditions under which the temporary protection of individuals must be ensured in proceedings before the national courts when the dispute concerns a matter of Community law.

13. *Court of Justice, 10 February 2000, case C-202/97* 1112

Article 14 n. 1 lett. a of Regulation (EEC) n. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to

self-employed persons and to members of their families moving within the Community, in the version codified by Council Regulation (EEC) n. 2001/83 of 2 June 1983, and as updated at the time of the events in question, is to be interpreted as meaning that, in order to benefit from the advantage afforded by that provision, an undertaking engaged in providing temporary personnel which, from one Member State, makes workers available on a temporary basis to undertakings based in another Member State must normally carry on its activities in the first State; an undertaking engaged in providing temporary personnel normally carries on its activities in the Member State in which it is established if it habitually carries on significant activities in that State.

Article 11 n. 1 lett. *a* of Regulation (EEC) n. 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation n. 1408/71, in the version codified by Regulation n. 2001/83 and as updated at the time of the events in question, is to be interpreted as meaning that a certificate issued by the institution designated by the competent authority of a Member State is binding on the social security institutions of other Member States in so far as it certifies that workers posted by an undertaking providing temporary personnel are covered by the social security system of the Member State in which that undertaking is established. However, where the institutions of other Member States raise doubts as to the correctness of the facts on which the certificate is based or as to the legal assessment of those facts and, consequently, as to the conformity of the information contained in the certificate with Regulation n. 1408/71 and in particular with Article 14 n. 1 lett. *a* thereof, the issuing institution must re-examine the grounds on which the certificate was issued and, where appropriate, withdraw it.

14. *Court of First Instance, 10 February 2000, joined cases T-32/98, T-41/98* 823

Under the first paragraph of Article 37 of the EC Statute of the Court of Justice, which applies to the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute, Member States are entitled to intervene in any proceedings before the Court of First Instance. The fact that the Kingdom of the Netherlands ratified the Treaty of Accession of the Kingdom of Spain only in respect of its European territory is not capable of affecting the latter's exercise of that right in a case brought from a non-EC territorial unit of that Member State.

The concept of a Member State only applies to the government authorities of the Member States of the European Communities and cannot be extended to regional governments or self-governing communities, regardless of the extent of their powers.

A territorial unit of a Member State, endowed with legal personality under national law, may, in principle, bring an action for annulment under the fourth paragraph of Article 230 (former Article 173) of the Treaty, pursuant to which any natural or legal person may institute proceedings against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

15. *Court of Justice, 14 March 2000, joined cases C-102/98 and C-211/98* 1119

Article 3(1) of Decision No. 3/80 of the Association Council of 19 September 1998 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families must be interpreted as not precluding a Member State from applying to Turkish workers legislation which, for the purposes of awarding a retirement pension and determining the social security number allocated for that purpose, takes as the conclusive date of birth the one given

in the first declaration made by the person concerned to a social security authority in that Member State and allows another date of birth to be taken into account only if a document is produced the original of which was issued before that declaration was made.

16. *Court of Justice, 28 March 2000, case C-7/98* 803
- Article 27, 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 interpreted as follows:
- (1) The court of the State in which enforcement is sought cannot, with respect to a defendant domiciled in that State, take account, for the purposes of the public-policy clause in Article 27, point 1, of that Convention, of the fact, without more, that the court of the State of origin based its jurisdiction on the nationality of the victim of an offence.
- (2) The court of the State in which enforcement is sought can, with respect to a defendant domiciled in that State and prosecuted for an intentional offence, take account, in relation to the public-policy clause in Article 27, point 1, of that Convention, of the fact that the court of the State of origin refused to allow that person to have his defence presented unless he appeared in person.
17. *Court of Justice, 11 May 2000, case C-38/98* 810
- Article 27, 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 interpreted as meaning that a judgment of a court or tribunal of a Contracting State recognising the existence of an intellectual property right in body parts for cars, and conferring on the holder of that right protection by enabling him to prevent third parties trading in another Contracting State from manufacturing, selling, transporting, importing or exporting in that Contracting State such body parts, cannot be considered to be contrary to public policy.
18. *Court of Justice, 27 June 2000, joined cases from C-240/98 to C-244/98* 1095
- The protection provided for consumers by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts entails the national court to determine of its own motion whether a term of a contract before it is unfair when making its preliminary assessment as to whether a claim should be allowed to proceed before the national courts.
- The national court is obliged, when it applies national law provisions predating or postdating the said Directive, to interpret those provisions, so far as possible, in the light of the wording and purpose of the Directive. The requirement for an interpretation in conformity with the Directive requires the national court, in particular, to favour the interpretation that would allow it to decline of its own motion the jurisdiction conferred on it by virtue of an unfair term.
19. *Court of Justice, 13 July 2000, case C-423/98* 1100
- Article 73 B of the EC Treaty (now Article 56 EC) precludes national legislation of a Member State which, on grounds relating to the requirements of defence of the national territory, exempts the nationals of that Member State,

and only them, from the obligation to apply for an administrative authorisation for any purchase of real estate situated within an area of the national territory designated as being of military importance. The position would be different only if it could be demonstrated to the competent national court that, in a particular area, non-discriminatory treatment of the nationals of all the Member States would expose the military interests of the Member State concerned to real, specific and serious risks which could not be countered by less restrictive procedures.

20. *Court of Justice, 9 November 2000, case C-387/98* 1104

The first paragraph of Article 17 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, must be interpreted as not requiring that a jurisdiction clause be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them. Those factors, which must be sufficiently precise to enable the court seized to ascertain whether it has jurisdiction, may, where appropriate, be determined by the particular circumstances of the case.

It applies only if, first, at least one of the parties to the original contract is domiciled in a contracting State and, secondly, the parties agree to submit any disputes before a court or the courts of a contracting State.

A jurisdiction clause agreed between a carrier and a shipper which appears in a bill of lading is enforceable against a third party bearer of the bill of lading if he succeeded to the rights and obligations of the shipper under the applicable national law when he acquired the bill of lading. If he did not, it must be ascertained whether he accepted that clause having regard to the requirements laid down in the first paragraph of Article 17 of the Convention, as amended.

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