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1. *Corte di Cassazione (S.U.), 30 May 1989 No. 2629* 995
 According to Art. 4 (2) last section of the Civil Procedure Code the Italian judge is competent with reference to a claim for compensation for a tort against a foreigner, if the tort arose and the harmful event occurred in Italy.
 2. *Bologna Juvenile Court, decree 9 February 1990* 997
 Even if the reform of family law has not included Art.84 of the Civil Code (even though completely modified by the said law) among the mandatory provisions mentioned by Art. 116, second paragraph of the Civil Code the foreign law applicable as per Art. 17 of the Preliminary Provisions to the Civil Code which allows a sixteen years old minor to marry is contrary to Italian public policy.
 3. *Corte di Cassazione (criminal), 5 March 1990 No. 153* 295
 A FAO officer cannot be subjected to extradition: according to Art. XIII, sec. 28 litt. a of the agreement of seat with Italy stipulated in Washington on 31 October 1950, the officer enjoys the same privileges, immunities, exemptions and facilities of the members of the diplomatic corps.
 4. *Marsala Tribunal, 6 March 1990* 999
 As per Art. 19 of the Geneva Convention of 25 April 1958 on the territorial sea, Italian judges are competent with reference to the carriage of explosive on board of a foreign ship that called at an Italian harbour, if the modalities of stowage of the explosive and its characteristics are not dangerous for the community settled in the Italian territory.
 5. *Corte di Cassazione, 10 March 1990 No. 1941* 128
 The social pension, which is comparable to a form of social security pension according to Art. 10 of Community Regulation of 14 June 1971 No. 1408, cannot be either reduced, modified, suspended, suppressed or forfeited even if the beneficiary is not resident in the State where the pension was granted, but in the territory of another Member State.
 6. *Corte di Cassazione, 28 April 1990 No. 3598* 297
 According to Art. 27 (2) of the Brussels Convention of 27 September 1968 the foreign judgment is not recognized if the document instituting the proceedings has not been duly served to the defaulting defendant in sufficient time to enable him to arrange for his defence.
 Such provision implies that the judge of the requested State may control the service of the summons only in case of default of appearance in the proceedings before the foreign judge.
 7. *Milan Court of Appeal, 5 June 1990* 1001
 According to Art. 27 (1) of the 1968 Brussels Convention, it cannot be enforced in Italy as it is in contrast with public policy a French judgment

which orders the fulfilment of a suretyship issued without the authorization of public authorities which was mandatory at the moment of its issue pursuant to the Decree Law 6 June 1956 No. 470.

8. *Corte di Cassazione, 7 June 1990 No. 5454* 588
 According to Arts. 16 and 31 of the Preliminary Provisions to the Civil Code the legal personality of a foreign company as well as its capacity to bring an action in any case must be recognized in spite of some of its particular characteristics.
9. *Corte di Cassazione, 22 June 1990 No. 6336* 129
 Art. 2 of the Decree Law of 6 June 1956, in the section where it prohibits Italian residents from contracting obligations with non-residents without ministerial authorization (except for cases of sale of goods for import-export purposes), establishes a mandatory and absolute provision, due to reasons of public policy.
 The ministerial authorization is a requisite of the contract and the act instituting the obligations between residents and non-residents lacking such authorization is null as it is in contrast with the mandatory provision of law of Art. 1418, first paragraph of the Civil Code.
10. *Corte di Cassazione, 27 June 1990 No. 6510* 130
 Once acquired the pension of the general compulsory insurance because of the sum of the contributions paid in Italy and in a foreign State with which a convention regarding social security has been signed, the reabsorption of the supplement of minimum pension due to facts occurred in the other State (as the attribution of a pension), does not produce the loss of the right to pension in Italy. Such right lasts according to the contributory periods accomplished in Italy.
11. *Rome Court of Appeal, 2 July 1990* 131
 According to Art. 797 No. 1 of the Civil Procedure Code, a foreign divorce judgment between two Italian spouses, both resident in Italy at the time of the application, may be enforced in Italy, if one of them has implicitly accepted the foreign jurisdiction.
12. *Genoa Court of Appeal, 14 July 1990* 134
 According to Art. 647 of the Civil Procedure Code – which can apply by analogy to the enforcement of foreign judgments as per Arts. 31 et seq. of the Brussels Convention of 27 September 1968 – the appearance of the appellant after the expiring of the established term must be considered as a non-appearance of the said appellant.
13. *Corte di Cassazione, 20 July 1990 No. 7431* 135
 The transfer of an employee, engaged in Italy by an Italian company, to a foreign partner company must be considered as a simple modification to the modalities of the fulfilment of the fundamental obligation of the employee to work, that is to say that the employee must fulfil the said obligation towards the employer but in favour of another subject, even if in the interest of the former.

14. *Corte di Cassazione, 9 August 1990 No. 8119* 137
 Referring to an international carriage of goods with «carnet TIR», ruled by the Geneva Convention of 15 January 1959, the credit of the financial Administration concerning customs duties, where it refers to facts for which a criminal proceedings has started, cannot be exercised before the end of such proceedings and is subject thereafter to the annual limitation period as per Art. 6, eighth paragraph of the Convention.
 The obligation of the surety association pursuant to Art. 6, first paragraph of the 1959 Geneva Convention includes the fine imposed on the sender who fails to present the goods at the customs of destination.
15. *Corte di Cassazione, 9 August 1990 No. 8120* 137
 As regards the rights of the financial Administration with reference to the association warranter of the international carriage of goods with «carnet TIR», the fraudulent unloading, in relation to which Art. 6, seventh paragraph of the Geneva Convention of 15 January 1959 raises from one year to two years the term of forfeiture within which the foregoing association must be informed of non-arrival of the goods at destination, occurs in case of a material falsification of documents regarding the above said unloading.
16. *Corte di Cassazione (S.U.), 17 August 1990 No. 8359* 141
 According to Art. 5 (1) of the Brussels Convention of 27 September 1968 and to Art. 19 of the Hague Convention of 1 July 1964, the Italian judge has no jurisdiction on the action for breach of contract against the foreign seller in case the goods had to be delivered to the carrier abroad.
17. *Corte di Cassazione (S.U.), 18 August 1990 No. 8433* 143
 The Italo-Latin American Institute has legal personality, expressly provided for by Art. 11 of the instituting Convention of 1 June 1966; it is not subject to Italian jurisdiction if it has been sued for employment disputes, the lack of the ratification of the agreement of seat dated 3 June 1969 between the Italian Government and the foregoing Institute being irrelevant.
18. *Corte di Cassazione, 21 August 1990 No. 8508* 589
 In accordance with Art. 10 (1) first paragraph of EEC Regulation 14 June 1971 No. 1408, Art. 26 of Law 30 April 1969 No. 153, which establishes that the payment of the social pension depends on the residence of an Italian in the territory of the State, does not apply to Italians who transfer their residence within the territory of another Member State of the Community.
19. *Corte di Cassazione (S.U.), 23 August 1990 No. 8568* 67
 Italian judges are competent with reference to protective proceedings or execution with regard to goods of foreign States when such goods are not used in order to fulfil functions related to the sovereignty of the State, nor when they are intended for public purposes.
 The authorization of the Minister of Justice provided by Law 15 July 1926 No. 1263 for the execution on goods of foreign States is not a requirement to assert jurisdiction, but for the proposal of the action.
20. *Corte di Cassazione, 10 September 1990 No. 9315* 299
 According to Law 4 May 1983 No. 184, a Brazilian adoption through notarial deed cannot be enforced in Italy.

Desertion abroad of a foreign child must be ascertained by the foreign authority; therefore a Brazilian adoption called simple cannot be enforced in Italy as it implies that the child is not in a state of declared desertion.

21. *Milan Tribunal, 13 September 1990* 70

The prohibitions established by Art. 85 No. 1 and Art. 86 of the EEC Treaty regarding competition and abuse of dominant position produce direct effects on the relationship between individuals to whom they assign rights which national judges must protect.

In order to evaluate the abuse of dominant position it is necessary to prove either the position or the share of an undertaking in a specific field and in the national market, as well as possible unfair conditions applied by the said undertaking.

22. *Corte di Cassazione, 19 September 1990 No. 9580* 590

According to Art. 19 last paragraph of Presidential Decree 26 October 1972 No. 633, the right to reimbursement instead of deduction in favour of subjects who have not carried out taxable transactions exists only if they have already started the running of an undertaking, an art or a profession in the territory of the State or if they have established an organization at the time of the payment of VAT of which they ask for reimbursement.

23. *Corte di Cassazione, 21 September 1990 No. 9627* 73

Pursuant to Art. 10 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, each contracting State may refuse to recognize a divorce or a legal separation if it is manifestly contrary to its public policy.

Art. 10 of the 1970 Hague Convention implies the acceptance by the Italian State of a criterion of public policy reduced to its own substance; thus the incompatibility must be evident, i.e. related to the real fundamental principles of the Italian system.

The principle contained in Art. 10 of the 1970 Hague Convention has modified the concept of public policy in the Italian legal system with regard to all foreign judgments, even those given in States which are not party to the Convention.

A German divorce judgment between an Italian husband and a German wife based on the joint application of the parties may be recognized in Italy, as mutual consent is a sign of the irreversible dissolution of marriage in the Italian legal system, also according to Law 6 March 1987 No. 74.

24. *Corte di Cassazione, 9 October 1990 No. 9936* 76

Collective agreements, even with an «erga omnes» validity, which are functionally based on uniformity of legal and economic conditions for the employees, apply within the territory of the State and consequently they cannot apply to labour activities outside State borders (unless a different, explicit will can be inferred from the agreement between the parties).

As it is not possible to apply collective agreements to an agency relationship between an Italian firm and a foreigner with regard to a work done abroad, according to Art. 25 of the Preliminary Provisions to the Civil Code it is necessary to ascertain whether the parties meant such collective agreements to be the applicable law to the foregoing relationship.

25. *Corte di Cassazione (S.U.), 12 October 1990 No. 10014* 956
 As for Art. 21 of the Brussels Convention of 27 September 1968, the dates in which the judges of different contracting States have been seized must be determined according to their national laws; thus as regards the Federal Republic of Germany with reference to the day of the deposit of the document instituting the proceedings and not to that of its service.
26. *Florence Court of Appeal, 12 October 1990* 83
 The principle relating to the manifest incompatibility with public policy of foreign divorce judgments, pursuant to Art. 10 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, has limited the concept of public policy with regard to all foreign divorce judgments.
 A French divorce judgment pronounced on the joint application of the parties according to Art. 230 of the French Civil Code can be enforced in Italy.
27. *Genoa Tribunal, 16 October 1990* 1002
 The new text of Art. 17 of the Brussels Convention of 27 September 1968 as modified by the Accession Convention of 9 October 1978 does not apply to facts which have occurred before its coming into force.
 The 1968 Brussels Convention applies when one of the parties is Italian.
 According to Art. 17 of the Brussels Convention an agreement on jurisdiction contained in a bill of lading signed by the loader-taker only on the back for endorsement is not valid.
28. *Corte di Cassazione (S.U.), 18 October 1990 No. 10151* 86
 It is not necessary to repeal the order that prescribes the joinder of a company having its seat in Yugoslavia if the delivery of the deed was carried out duly as per Art. 8, second paragraph of the Convention between Italy and Yugoslavia of 3 December 1960, concerning mutual assistance in civil and administrative matters, notwithstanding the complexity of the service proceedings provided by Art. 4 et seq. of the Convention and the short time granted to the defendant in order to appear.
 Italian judges are competent with regard to a company having its seat in Yugoslavia if the dispute concerns obligations arisen or to be fulfilled in Italy as per Art. 4 No. 2 of the Civil Procedure Code.
 Italian jurisdiction lacks in relation to companies with seat in Yugoslavia if an arbitral clause for foreign arbitration has been drawn up between the plaintiff and such companies; actually in the absence of a reservation expressed by Italy with reference to Art. I, third paragraph of the New York Convention of 10 June 1958 the fact that the foreign arbitral award must be issued within the territory of a State which is not party to the said Convention is not relevant.
 With reference to Art. 4 No. 3 of the Civil Procedure Code Italian jurisdiction lacks if none of the hypotheses of related actions, provided by Arts. 31 et seq. of the Civil Procedure Code - which can modify internal jurisdiction - or by Art. 33 of the same Code occurs.
29. *Corte di Cassazione (S.U.), 24 October 1990 No. 10322* 89
 As regards to a ship of a foreign shipowner, moored in an Italian harbour, the application for arrest in defence of labour credits of the seamen

- employed by the foregoing shipowner and the request for confirmation of the above said arrest fall within the jurisdiction of the Italian judge, according to Arts. 4 No. 3 and 672, third paragraph of the Civil Procedure Code, even when the substance of the case concerning signing on papers stipulated and executed between foreigners abroad is not subject to Italian jurisdiction.
30. *Siena Tribunal, 5 November 1990* 144
- Art. 5 (1) of the Brussels Convention of 27 September 1968 provides as a criterion of jurisdiction in the matter of contracts the place where the obligation has been or must be executed, excluding therefore that of the place in which the obligation has arisen as per Art. 4 (2) of the Civil Procedure Code.
31. *Genoa Court of Appeal, 17 November 1990* 92
- As internationally uniform rules having autonomous application provisions form a complete legal system and prevail as such on the other rules of the State that has implemented them, the direct reference to them by individuals determines the *lex contractus* as it concerns a legal system in force.
- When the reference to uniform rules does not exhaust the content of the contract in relation to which the reference applies, the problem concerning the research of the system applicable to the aspects which are not governed by uniform law shall always persist; such research will follow the relevant provisions on conflict of laws of the *lex fori*.
- The choice by the parties of the law applicable to the contract (even when such law is uniform law) cannot by itself avoid the application of the mandatory provisions of law of the State with which the contract has the closest connection or of those rules which regard the public policy of the *lex fori*, as per Art. 31 of the Preliminary Provisions to the Civil Code.
- The parties' will is a sufficient means for choosing the law applicable to contracts: therefore its function is not simply that of completing an already existing connection with a certain national system of law.
- When the parties do not prove the foreign law to the Italian judge and the judge does not have personal knowledge of it, only Italian law can apply.
- An arbitral clause for an arbitration to be carried out in Italy, State of the common nationality of the parties, is considered as a real though implicit manifestation of the will applying Italian law to the contract.
32. *Corte di Cassazione, 19 November 1990 No. 11168* 1004
- As per Art. 5 of the Vienna Convention of 24 April 1963 on Consular Relations, the functions of the consuls have welfare aims, where they order to give help and assistance to natural and legal persons of the State; thus lease contracts and sub-lease contracts of immovables used for consular activities fall within those governed by Art. 42 of Law 27 July 1978 No. 392 and they last according to the first paragraph of Art. 27 of the said Law.
33. *Corte di Cassazione, 20 November 1990 No. 11202* 302
- In an international carriage by air, the insurer, taking over from the insured against the liable third party as per Art. 1916 of the Civil Code, has the capacity to act against the foreign carrier, who, according to the rules of the Warsaw Convention of 12 October 1929, has been sued for the loss of a package.
- Even if Art. 30 of the 1929 Warsaw Convention refers to the sender, to

the consignee and not to the insurer, it necessarily implies that it can apply to the insurer too, who can succeed to the sender according to the law of the State of the contracting party.

The short terms for the forfeiture of the action of liability against the carrier, provided by Art. 26, second paragraph of the Warsaw Convention, apply only in case of failure and delay, not in case of non-arrival of the goods at destination, for which a two-year term applies according to Art. 29 of the above-said Convention.

34. *Council of State (6th session), 21 November 1990 No. 971* 100

Law 11 January 1957 No. 6 rules the matter of the prospecting and exploitation of hydrocarbons in its general characteristics; consequently such body of rules may also apply to the prospecting in the territorial sea and in the continental shelf, according to what is also provided by Art. 2, second paragraph of Law 21 July 1967 No. 613, unless it is in contrast with the latter law.

The provision of Art. 3 of Law 11 January 1957 No. 6, which, in the context of the possible users of the licence for the prospecting of hydrocarbons, gives importance to the position of majority control over a company as a sign of subjective identity of the applicant, is not an exceptional rule as not only does it agree with the principles of the system, but rather, as it tends to avoid the formation of monopolistic positions through the control over licences for prospecting, such rule aims at a rational distribution of the interventions in this field according to principles of Articles 41 et seq. of Constitution.

Therefore Art. 3 of Law No. 6 of 1957 must also apply to cases related to the licence for the prospecting of hydrocarbons in the territorial sea and in the continental shelf as per Law 21 July 1967 No. 613.

Art. 70 of Law 21 July 1967 No. 613, according to which the licences for the prospecting of hydrocarbons may be granted simultaneously even to several applicants, does not imply that its application may lead to the impossibility of changing the initial applicants who have distinct rights or interests even though they are jointly bound as for the activity and must appoint only one representative for the relationships with the Administration and with third parties as per Art. 18, second paragraph of Law No. 613.

The denial of the licence for the prospecting of hydrocarbons in the territorial sea or in the continental shelf is invalid because of abuse of power pursuant to Art. 20 of Law 21 July 1967 No. 613 which refers to a new licence «for the same area», if the denial describes the application as concerning «almost totally the same area», as it implicitly, but clearly excludes the identity of the area of the requested licence and of the licence already granted.

35. *Corte di Cassazione (S.U.), 26 November 1990 No. 11357* 592

Art. 43 of the Vienna Convention of 24 April 1963 on Consular Relations provides that consuls are exempt from the jurisdiction of the State of residence only with reference to acts carried out in the exercise of consular functions; therefore Italian judges are competent in a dispute on an employment contract concerning domestic service in the family of the consul.

36. *Corte di Cassazione (S.U.), 26 November 1990 No. 11363* 107

Art. 22 of the Brussels Convention of 27 September 1968, in the event of related actions, does not establish an obligation but only a mere power of the court second seized to stay the proceedings or to decline jurisdiction.

37. *Trieste Pretore, order 30 November 1990* 924
 The issue of constitutional legitimacy of Art. 122 of the Civil Procedure Code and Arts. 22 and 23 of Law No. 689 of 1981 in so far as they do not allow an Italian belonging to a recognized linguistic minority to speak in his own language to the judicial authority is not manifestly unfounded with reference to Arts. 3 and 6 of the Constitution and Art. 3 of the regional Statute of Friuli-Venezia-Giulia.
38. *Corte di Cassazione (S.U.), 3 December 1990 No. 11557* 593
 Pursuant to Art. 5 (1) of the Brussels Convention of 27 September 1968 in conjunction with Art. 59 of the Hague Convention of 1 July 1964 on international sales, Italian judges are competent on the request for payment of the price of goods proposed by an Italian seller against a German buyer, according to an agreement stipulated before 1 January 1988 (date in which the Vienna Convention of 11 April 1980 came into force).
39. *Rome Criminal Court of Appeal, 6 December 1990* 306
 If the conditions provided by Art. 10 of the Strasbourg Convention of 21 March 1983 on the transfer of sentenced persons as well as by Law 3 July 1989 No. 257 and by Art. 733 of the Criminal Code should occur, a foreign criminal judgment may be recognized only in order to transfer the sentenced person to Italy; the period of sentence to be served in Italy is to be determined according to the term of deprivation of freedom already served abroad (Art. 3 of the Law).
40. *Corte di Cassazione, 14 December 1990 No. 11917* 594
 Art. 3, second paragraph of the Presidential Decree 29 September 1973 No. 598, envisaging that undertaking profits deriving from activities carried out abroad without a steady organisation outside national territory are considered as produced in Italy, implies that if such organisation exists, as the relative profits are not relevant in Italy, so the loss deriving from the running of these activities cannot be compensated by profits produced in Italy.
41. *Corte di Cassazione (S.U.), 21 December 1990 No. 12129* 597
 In case of a dispute concerning a carriage by sea not subject to the Brussels Convention of 27 September 1968, the jurisdiction clause included in the general conditions printed on the bill of lading is not valid if the specific written approval lacks, as the bill of lading has been issued in Italy and thus is subject, as for its form, to Italian law as per Art. 26 of the Preliminary Provisions to the Civil Code.
42. *Corte di Cassazione, 21 December 1990 No. 12158* 113
 According to Art. 797 (1) of the Civil Procedure Code, in order to ascertain the competence of a foreign judge with regard to a foreign divorce judgment, it is necessary to refer to Art. 4 of the Civil Procedure Code.
 It cannot be enforced in Italy a foreign divorce judgment between a foreign man and an Italian woman, if the competence of the foreign judge is based on the criterion of the residence of the plaintiff in the same foreign State. Therefore, in this case, the acceptance by the defendant of such foreign jurisdiction in course of the proceedings for the legal separation is not valid.

43. *Corte di Cassazione, 22 December 1990 No. 12162* 598
- In a carriage of goods by sea, the action of the loader-sender, or of the insurance company which has indemnified him against the carrier is subject to the annual forfeiture provided by Art. 3 (6) of the Brussels Convention of 25 August 1924 in accordance with the subrogation in the indemnifying credit which is due to the receiver-endorsee of the bill of lading.
- The said action, however, is not subject to the six-months-limitation period as per Art. 438 of the Navigation Code.
44. *Corte di Cassazione, 28 December 1990 No. 12191* 598
- With reference to a carriage of goods by sea, if the 1924 Brussels Convention does not apply to the bill of lading, as the bill has been issued in a State which is not party to the Convention, the rights deriving from the agreement are subject to a six-months-limitation period pursuant to Art. 438 of the Navigation Code. The mentioning of the conventional rules contained in the agreement, given the nullity of the terms which should modify the legal regulations of such limitation, being irrelevant.
45. *Salerno Court of Appeal, 31 December 1990* 115
- In case of a transfer of a contract, the arbitral clause for foreign arbitration contained in the original contract must be specifically mentioned in the deed of transfer in order to be enforced against the transferee.
- Pursuant to Art. II, third paragraph of the New York Convention of 10 June 1958, Italian judges have jurisdiction either when the arbitral clause is not enforceable due to its indefiniteness or when it has not been invoked by the defendant who had such capacity.
46. *Corte di Cassazione, 18 January 1991 No. 490* 309
- According to Art. 797 (7) of the Civil Procedure Code, as interpreted following the introduction to the legislation in force of Art. 10 of the Hague Convention of 1 June 1970, a foreign divorce judgment is contrary to Italian public policy only when it infringes the basic principles of the internal system.
- It is not contrary to public policy and must be enforced in Italy a German divorce judgment lacking the statement of reasons for the dissolution of the marriage. It is then a sort of divorce by mutual consent, bearing in mind that the joint application for divorce has been introduced into our system (Art. 11 of Law 6 March 1987 No. 74).
47. *Corte di Cassazione (S.U.), 23 January 1991 No. 597* 311
- If the case has not been re-filed within six months according to Art. 367, second paragraph of the Civil Procedure Code after a preventive ruling declaring Italian jurisdiction and if a new proceedings is started between the same parties and on the same relationship, the action for ruling on jurisdiction for this new proceedings is admissible because of the conclusion of the previous proceedings and it is not bound to the said declaration of jurisdiction as the *res judicata* on jurisdiction with respect to the foreigner produces barring effects only in the same proceedings.
- As for the ruling on jurisdiction, the written proof of the agreement conferring jurisdiction as per Art. 17 of the Brussels Convention of 27 September 1968 cannot be inferred from the statement of existence of the document contained in a previous judgment of ruling on jurisdiction given by

- the Corte di Cassazione between the same parties and on the same relationship in a suit later extinguished: according to Art. 310 of the Civil Procedure Code it is possible to use deeds of an extinguished proceedings in order to draw argument of proof only as regards documents relating to a preliminary investigation.
- Pursuant to Art. 5 (1) of the 1968 Brussels Convention, the Italian judge is competent with reference to a sale contract if the price of the goods is to be paid at the domicile of the seller in Italy as per Art. 1498 of the Civil Code.
- Italian law applies to a contract in reference to which neither the parties' will, nor their common foreign nationality nor the place of conclusion abroad are proved, as the application of foreign law, which is subject to these conditions, requires that they are proved.
48. *Reggio Calabria Court of Appeal, 24 January 1991* 537
- Art. 797 (5) of the Civil Procedure Code does not apply to the enforcement of foreign measures adopted in chambers, particularly concerning minors' custody.
- The measure of a German judge (given according to the Hague Convention of 5 October 1961, not yet in force in Italy) which has modified the procedure of custody of minors contained in a separation judgment of the Italian judge cannot be enforced in Italy.
49. *Corte di Cassazione (S.U.), 25 January 1991 No. 749* 322
- The Brussels Convention of 27 September 1968 does not apply to a dispute proposed against a company having its seat in Switzerland because this State is not party to the Convention.
- In the rules of New York Convention of 10 June 1958 the written form for the validity of the arbitral clause is always required, even if it can be fulfilled by including the clause in an agreement subscribed by the parties or in an exchange of letters, telegrams or telex, on condition that the written form is respected.
- The Italian judge is competent with reference to a dispute arising from a contract stipulated in Italy according to Art. 4 (2) of the Civil Procedure Code.
50. *Corte di Cassazione, 26 January 1991 No. 768* 600
- Art. 7, first paragraph of the OIL Convention No. 132 of 24 June 1970 which gives to the employee on leave at least the usual or average remuneration for holidays establishes only a minimum pay without imposing, for its determination, a general principle which can be applied in particular for the calculation of payments for continual overtime.
51. *Corte di Cassazione (S.U.), 30 January 1991 No. 902* 601
- Expropriation of property belonging to the Headquarters of the Allied Forces of Southern Europe falls within the jurisdiction of the Italian judge as for the immunities that the general Military Headquarters instituted by the North Atlantic Treaty enjoy imply - as regards enforcement - only the exemption from enforcement of those goods which are necessary for the fulfilment of their institutional duties; therefore such immunities can be relevant, as such goods cannot be attached, only as to the substance of the action of the creditor to be ascertained by the judge of the opposition to

enforcement who must also evaluate the need for a preventive authorization of the Minister of Justice for the expropriation of such goods, according to the provisions of Decree Law 30 August 1925 No. 1621.

52. *Corte di Cassazione (S.U.)*, 2 February 1991 No. 999 327

The agreement conferring jurisdiction to a foreign judge, according to Art. 17 of the Brussels Convention of 27 September 1968, does not prevail on the so called tacit prorogation as per Art. 18, on the appearance in the proceedings of the defendant who contests the jurisdiction of the seized judge only in addition to other defensive submissions of which he applies for an examination and a priority solution. Art. 18 prevails even in case that a party, expecting to be sued before the judge of a contracting State, seizes that judge preventively, applying for a declaratory judgment on the same relationship which the other party will bring in the proceedings.

Italian judges are competent to hear a case brought by both an Italian company and a French company with a view to having the lack of passive capacity of the Italian company ascertained in a possible future dispute started by an employee who works for the latter. Such jurisdiction extends likewise to the whole employment dispute.

53. *Corte di Cassazione (S.U.)*, 8 February 1991 No. 1303 601

Expropriation of property belonging to the Headquarters of the Allied Forces of Southern Europe falls within the jurisdiction of the Italian judge as for the immunities that the General Military Headquarters instituted by the North Atlantic Treaty enjoy imply - as regards enforcement - only the exemption from enforcement of those goods which are necessary for the fulfilment of their institutional duties; therefore such immunities can be relevant, as such goods cannot be attached, only as to the substance of the action of the creditor to be ascertained by the judge of the opposition to enforcement who must also evaluate the need for a preventive authorization of the Minister of Justice for the expropriation of such goods, according to the provisions of Decree Law of Law 30 August 1925 No. 1621.

54. *Corte di Cassazione (S.U.)*, 13 February 1991 No. 1513 603

The application through which an employee of the Mediterranean Institute of Agronomy (MIA), with the qualification of translator-interpreter, contests the dismissal and asks for reinstatement in his job does not fall within the jurisdiction of the Italian judge as such Institute is part of CIHEAM, a Centre that enjoys immunity from the jurisdiction of foreign States (according to Art. 13 of the Agreement of Paris of 21 May 1962 and to Art. 2 of the Additional Protocol) and furthermore because the duty of the employee is neither material nor executive.

55. *Lodi Tribunal*, 13 February 1991 No. 20/91 332

According to Art. 5 (3) of the Brussels Convention of 27 September 1968 Italian judges are competent to hear a case concerning unfair competition acts if they produced effects in Italy or if a part of them was there accomplished.

Italian judges lack jurisdiction in an application for negative preventive assessment of the infringement of patents as Art. 5 (3) of the 1968 Brussels Convention envisages the hypothesis in which such application is based on a harmful event already occurred and not on a fact that may happen in the future.

Art. 22 of the 1968 Brussels Convention does not determine the competence of a judge of a contracting State to decide an action related to another action proposed before the same judge according to the Convention.

In order to apply Art. 5 (1) of the 1968 Brussels Convention it is necessary to define (even in declaratory proceedings) the specific contractual obligation in question, even when such obligation is merely the *causa petendi* of the judicial application.

In order to ascertain the jurisdiction with reference to an action concerning the validity of patents, Art. 16 (4) of the 1968 Brussels Convention must apply; this Article determines the exclusive jurisdiction of judges of the contracting State in the territory of which the patent application has been filed. Each problem concerning territorial competence must be solved as per Art. 75 of the Law on Patents.

56. *Lodi Tribunal, 13 February 1991 No. 21/91* 339

According to Art. V No. 1 litt. *a* of the New York Convention of 10 June 1958, the effect of an arbitral clause for foreign arbitration is to be determined in relation to the law to which the parties have subjected the above-said clause or, lacking specific choice, to the law of the State in which the arbitration takes place.

The competence of the arbitrator may be recognized only if it is not in contrast with the provisions of public policy of the State where the award shall be recognized, as per Art. V (2) litt. *b* of the 1958 New York Convention.

The joinder of actions may not apply in matter of allocation of jurisdiction between the Italian judge and foreign arbitrators.

The criterion provided for by Art. 5 (1) of the Brussels Convention of 27 September 1968 applies only if at least one contractual obligation had to be fulfilled and if the action concerns the interpretation and/or the fulfilment of contracts.

According to Art. 6 (1) of the 1968 Brussels Convention the defendant domiciled within the territory of a contracting State can be sued before a judge of another contracting State when there is more than one defendant and one of them is resident in the territory of the seized judge.

The words «large number of defendants» contained in Art. 6 (1) of the 1968 Brussels Convention refer both to the hypothesis of only one action brought against several subjects on the basis of just one legal relationship, and to the hypothesis of a permissive joinder in which distinct but related actions are proposed against several parties.

57. *Corte di Cassazione (S.U.), 20 February 1991 No. 1789* 604

Italian judges are not competent to hear a dispute carried out by a temporary agent against Euratom with reference to the payment of compensation and damages for a contract declared cancelled, the asserted non-observance of the conditions for the actions before the Court of Justice of the European Communities being irrelevant.

58. *Tolmezzo Tribunal, 25 February 1991* 120

According to Art. 24, first paragraph of the Constitution, the power of bringing an action is recognized to a foreigner without conditions.

Art. 16 of the Preliminary Provisions to the Civil Code denies legal protection to the foreigner through the condition of reciprocity, in case the Italian citizen, in the same hypothesis, would not find protection in the foreign State.

The burden of proof relative to the ascertainment of the foreign law lies with the foreigner pursuant to Art. 16 of the Preliminary Provisions to the Civil Code.

The lack of reciprocity does not allow an Iranian company to ask the Italian judge to order to an Italian company the payment of the commission arising from an agency contract.

59. *Council of State (6th Session), 27 February 1991 No. 100* 606

In order to apply in the Italian legal system, EEC Directives which do not have a binding content must be implemented by means of a law or a regulation, as confirmed by Law 9 March 1989 No. 86.

The Bern Convention on the protection of wild life and of the environment of 19 September 1979 contains provisions which are not directly applicable as they establish obligations for the States which are party to the said Convention who accept to reach particular aims through the choice of further measures of implementation.

The Paris Convention on bird protection of 18 October 1950 includes provisions which prevail directly on internal rules, in so far as they prescribe direct obligations and impose specific prohibitions.

60. *Corte di Cassazione, 8 March 1991 No. 2483* 607

The Court of Justice of the European Communities, when it states the annulment of an EEC regulation, is competent to declare, with a direct effect on the internal legal system of the Member States, which effects of the Regulation must be kept in force and to which subjects they apply. Therefore the national judge seized for the recovery of compensatory monetary amounts paid according to EEC Commission's Regulation 24 March 1976 No. 652 - annulled by the Court of Justice with judgment 15 October 1980 in case No. 145/1979 who excepted payments and takings carried out before the date of the judgment - cannot criticize the power of the Court to set a time limit to the declaration of invalidity, nor consequently can he refuse such limitation allowing the claiming back of such payments according to the internal regulations on undue payments: in fact the situation is defined, in the framework of the limits established by EEC law and by their application carried out by the said judgment, whose content removes any doubt on interpretation, thus exempting the national judge from requesting a new intervention of the Court of Justice.

61. *Milan Tribunal, 12 March 1991* 348

According to Art. 4 (3) of the Civil Procedure Code, Italian jurisdiction with respect to a foreigner in matter of provisional measures may be based on a criterion (the enforcement within Italian territory) irrespective of the existence of any other principal or subsidiary criterion regarding the relationship to be protected.

Italian judges are competent to grant the seizure of a sum deposited in a bank having its seat in Italy.

Arts. 680 and 683 of the Civil Procedure Code - regarding the summons for the confirmation of seizure and also the term of 15 days from the accomplishment of the first deed of execution for the proceedings on the substance - cannot apply if the competence on the substance does not belong to Italian judges but to foreign arbitrators.

62. *Corte di Cassazione, 13 March 1991 No. 2646* 353
 If the enforcement of an English arbitral award in Italy has been refused with *res judicata* effects and the enforcement of the judgment of the English High Court of Justice enforcing such award in England is sought before the Italian judge, such action is admissible if the judgment of the High Court of Justice is new and independent from the arbitral award, that is to say that such judgment does not merely ascertain the existence and the validity of the award.
63. *Corte di Cassazione, 16 March 1991 No. 2817* 611
 The circumstance that one of the separated parents resides or wishes to move abroad does not affect the evaluation of the exclusive interest of the children as for their custody (Art. 55 of the Civil Code).
64. *Corte di Cassazione (S.U.), 25 March 1991 No. 3190* 963
 According to Art. 17 of the Brussels Convention of 27 September 1968, a clause conferring jurisdiction to a German judge, included in a form subscribed by only one of the parties to a contract, is not valid even if the form was prepared by the other party who afterwards confirmed all its clauses through his behaviour.
 The Italian judge is competent with reference to a sale contract if the obligation of payment in question had to be fulfilled in Italy, according to Art. 5 (1) of the Brussels Convention.
65. *Corte di Cassazione, 28 March 1991 No. 3362* 360
 The subscription of the bill of lading as simple receipt by the consignee is not valid as acceptance of an arbitral clause unilaterally included by the sender in the bill as the said acceptance must appear in writing according to Art. II of the New York Convention of 10 June 1958.
66. *Corte di Cassazione, 11 April 1991 No. 3820* 363
 Art. 10, seventh paragraph of Law 28 February 1990 No. 39, which regulates the registration of foreign doctors in Italian professional rolls and which completes the body of rules laid down by the 1946 Decree Law No. 233, provides that non-EEC nationals, having got a degree or a certificate in Italy or having obtained legal recognition of a similar qualification got abroad, may take the State examination for the professional practice and ask for registration in the professional rolls by way of exception to the provisions which envisage that, in order to practise and apart from the specific international treaties and the condition of reciprocity, it is necessary to have Italian nationality.
67. *Corte di Cassazione (S. U.), 12 April 1991 No. 3898* 366
 In order to determine Italian jurisdiction the action for legal separation of spouses falls within Art. 4 (1) of the Civil Procedure Code even if joined to other actions concerning pecuniary matters as those related to the custody and contribution for the maintenance of the children by the spouse who has not been granted custody.
 Italian judges lack jurisdiction, according to Art. 4 (1) of the Civil Procedure Code, in an action of legal separation brought against a foreign spouse who is neither resident, nor domiciled in Italy. Neither can the enforcement of temporary and urgent measures laid down by Art. 708 of the Civil Procedure Code be construed as tacit acceptance of jurisdiction.

68. *Corte di Cassazione, 17 April 1991 No. 4103* 369
- According to Art. 2 of the Hague Convention of 15 April 1958 and to Art. 6 of the Hague Convention of 2 October 1973 - both concerning recognition and enforcement of judgments on maintenance obligations - the review as to substance of the foreign judgment, even if given by default, is excluded.
- The enforcement of judgments concerning maintenance obligations independent from inquiries on filiation as per the 1958 and 1973 Hague Conventions is not a limitation to the rights of defence or of equality and therefore it does not raise any issue of constitutional legitimacy.
- A foreign judgment which establishes that the maintenance obligation in favour of a minor is due starting from a date preceding that of the judicial application is not in contrast with public policy.
69. *Corte di Cassazione, 17 April 1991 No. 4104* 376
- As per Art. 797 (7) of the Civil Procedure Code - as interpreted according to Art. 10 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations - the fact that the breaking-off of the marriage has been deduced by joint declarations of the spouses does not hinder the enforcement of a foreign divorce judgment.
- It must be enforced in Italy a foreign divorce judgment given after the running of a term which is less than six months of separation if the ascertainment of the dissolution of the marriage has been carried out according to the mutual consent of the spouses.
70. *Corte di Cassazione, 19 April 1991 No. 4233* 379
- According to Art. 1 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, the Convention applies to divorces and to separations obtained in a contracting State following judicial or other proceedings officially recognized in the said State and which are legally effective there.
- The divorce judgment given by a Danish Prefecture between an Italian husband and a Danish wife following a separation judgment must be recognized in Italy.
71. *Corte di Cassazione, 19 April 1991 No. 4234* 381
- For the adoption of a person of age, Art. 311 of the Civil Procedure Code gives competence to the Tribunal of the district where the adopter is resident.
- Lacking an express provision, the competence in case of adoption of persons of age by Italians resident abroad must be assigned to the Tribunal of the last domicile of the adopter in Italy, by analogy (Art. 12 of the Preliminary Provisions to the Civil Code) with Art. 29 of Law 4 May 1983 No. 184 on the international adoption of minors.
72. *Corte di Cassazione, 19 April 1991 No. 4235* 382
- The manifest contrast with public policy, set forth by Art. 10 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, implies the acceptance by the Italian State of a criterion of public policy reduced to its substance. This criterion has modified the concept that was inferred from the interpretation of Art. 797 (7) of the Civil Procedure Code.

It must be enforced in Italy a foreign divorce judgment by mutual consent between two Italian spouses, bearing in mind that the joint application for divorce has been introduced into Italian legal system (Art. 4, thirteenth paragraph of Law 1 December 1970 substituted by Art. 8 of Law 6 March 1987 No. 74).

73. *Corte di Cassazione, 19 April 1991 No. 4240* 387

The principle that the Italian judge must not necessarily know foreign law implies that in the proceedings in cassation the party may not appeal against the fact that the judge has not applied it deducing merely that Italian law and foreign law are different; rather, it has to prove the content or at least the essential elements of the foreign law applicable to the case. Only after such fulfilment by the plaintiff the power-and-duty of the *Corte di Cassazione* arises in order to examine the matter of infringement or false application of the said law, having obtained first the official texts.

74. *Corte di Cassazione (S.U.), 24 April 1991 No. 4514* 611

According to Art. 8 of the Paris Agreement of 26 July 1961, the jurisdiction of the Italian judge is excluded for labour relationships of personnel enjoying international status but applies to labour relationships of employees having the local status (even for what concerns protective and interim measures to be taken as per Art. 700 of the Civil Procedure Code). With respect to this local status employees the internal regulations of the Headquarters have to be considered general conditions of contract.

It is a matter of substance and not of jurisdiction the question regarding the internal limits which the Italian judge can meet with in the application of such rules.

75. *Corte di Cassazione, 24 April 1991 No. 4528* 392

According to the principles inspiring Law 4 May 1983 No. 184 on Adoption (Arts. 37 and 33) rather than by virtue of the recognition of sovereignty of foreign States and of reciprocity, the event of desertion of a foreign minor in Italy may not occur and the declaration of being adoptable remains ineffective if the State of which the foreign minor has the nationality asks for its repatriation and assumes protection again.

76. *Corte di Cassazione, 2 May 1991 No. 4780* 541

In case the «Pubblico Ministero» is not heard on the enforcement in Italy as pre-adoptive custody of the judgment on adoption of a minor given by a foreign authority as provided by Art. 32 of Law 4 May 1983 No. 184 the said enforcement is null.

The measure of the Juvenile Court – which is not subject to appeal – given without the hearing of the «Pubblico Ministero» may be contested by the latter not through an appeal in cassation, but with motions to reopen according to Art. 397 (1) of the Civil Procedure Code.

77. *Corte di Cassazione (S.U.), 4 May 1991 No. 4941* 615

Disputes concerning indemnities due to an Italian national for the loss of property abroad because of expropriation measures, nationalization and the likes, fall within the competence of the ordinary judge – according to the provisions of Law 26 January 1980 No. 16 as modified by Law 5 April 1985 No. 135 – as they concern perfect rights even when the Italian State has undertaken by virtue of an international agreement the obligation of compensation which was due by the foreign State.

78. *Rome Criminal Court of Appeal, 6 May 1991* 394
- If the circumstances provided by Art. 10 of the Strasbourg Convention of 21 March 1983 on the transfer of sentenced persons as well as by Law of accomplishment 3 July 1989 No. 257 and by Art. 733 of the Criminal Code should occur, a foreign criminal judgment may be recognized only in order to transfer the sentenced person to Italy; the period of sentence to be served in Italy is to be determined according to the term of deprivation of freedom already served abroad (Art. 3 of the Law).
79. *Corte di Cassazione (S.U.), 10 May 1991 No. 5262* 618
- The immunity of goods of NATO Headquarters from every enforcement, guaranteed by the international agreements and conventions, implies that such goods are subject to enforcement at a limited degree; therefore as for the enforcement with respect to AFSE an absolute immunity does not exist, but it is likely that the goods which must fulfil its institutional aims are not attachable; this issue, which regards substance and not jurisdiction, falls within the competence of the judge of the enforcement.
80. *Corte di Cassazione, 10 May 1991 No. 5249* 617
- In the hypothesis of a damage caused by a foreign vehicle circulating in Italy, the injured party, before starting proceedings, must address to the Italian Central Office the claim for damages respecting the sixty days limit provided by Art. 22 of Law 24 December 1969 No. 990, the lack of the international insurance certificate of the person who caused the damage being irrelevant.
81. *Corte di Cassazione (S.U.), 16 May 1991 No. 5503* 615
- Disputes concerning indemnities due to an Italian national for the loss of property abroad because of expropriation measures, nationalization and the likes, fall within the competence of the ordinary judge - according to the provisions of Law 26 January 1980 No. 16 as modified by Law 5 April 1985 No. 135 - as they concern perfect rights even when the Italian State has undertaken by virtue of an international agreement the obligation of compensation which was due by the foreign State.
82. *Bari Juvenile Court, order 17 May 1991* 934
- It is not manifestly unfounded the issue of constitutional legitimacy of Art. 6, second paragraph of Law 4 May 1983 No. 184, with reference to Arts. 2, 3, 31 of the Constitution in so far as it does not allow to derogate the age limits of the adopter in the case of a foreign adoption of several brothers and sisters.
83. *Corte di Cassazione (S.U.), 22 May 1991 No. 5794* 612
- Art. 8 litt.e of the Paris Agreement of 26 July 1961 provides that the General Allied Headquarters can establish the terms and the conditions of employment of personnel and the duties of the different categories of employees, on condition that they guarantee a treatment which must be as good as that established by Italian laws and as that of collective agreements applied in Italy to activities which are similar to those carried out by the personnel employed by the General Headquarters.

84. *Corte di Cassazione, 30 May 1991 No. 6133* 543
 It may not be enforced in Italy a Swiss judgment on the distribution of property between Italian spouses following a legal separation if none of the requisites provided for by the 1933 Italo-Swiss Convention on the Recognition and Enforcement of Judgments exists; nor can Art. 4 of the Civil Procedure Code apply. Rather, Italian judges would be competent on such a suit according to Art. 2 of the said Code.
 As per Art. 2 (2) litt. b of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, a Swiss legal separation judgment given between two Italians both resident in Switzerland may be recognized in Italy.
85. *Lazio Regional Administrative Tribunal (1st Session), order 5 June 1991* 941
 A general international rule regarding immunity for private activities, with reference to immunity of foreign States from execution or protective measures, does not exist.
 It is not manifestly unfounded the issue of constitutional legitimacy of Law 15 August 1926 No. 1263 with reference to Arts. 3, 23, 24 and 41 of the Constitution.
86. *Corte di Cassazione, 19 June 1991 No. 6929* 612
 The tacit acceptance of the jurisdiction of the Italian judge set forth by Art. 37, second paragraph of the Civil Procedure Code only with respect to the lack of jurisdiction of the judge towards the foreigner exists even with regard to the hypothesis of jurisdictional immunity of international institutions particularly in a dispute concerning a labour relationship between AFSE and a civil employee having local status.
87. *Corte di Cassazione, 4 July 1991 No. 7357* 549
 According to Art. 32 of Law 4 May 1983 No. 184, a foreign adoption measure can be enforced in Italy even if it contains provisions other than the adoption, though still concerning guardianship and protection of the minor.
 It may be enforced in Italy as pre-adoptive custody a foreign measure of temporary custody for adoption, on condition that it hasn't been given with a temporary validity.
88. *Corte di Cassazione, 5 July 1991 No. 7439* 966
 Pursuant to Art. 32 litt. a of Law 4 May 1983 No. 184, a foreign adoption measure cannot be enforced in Italy if one of the adopters is over forty years older than the adopted child.
89. *Corte di Cassazione (S.U.), 6 July 1991 No. 7473* 1005
 According to Art. 17 of the 1968 Brussels Convention in its original text, there is not a valid oral agreement on jurisdiction in case the parties give divergent indications in the proposal and acceptance of the contract so that a clear consent cannot be inferred, though Art. 17 does not require a specific written approval of the said clause.
 According to Art. 5 (1) of the 1968 Brussels Convention and to Art. 59 of the 1964 Hague Convention on international sales, the Italian judge is competent to hear a case arising out of a sale if the seller has its seat in Italy.

90. *Rome Tribunal, 15 July 1991* 552
- According to Art. 6 of the New York Convention of 20 June 1956 on the recovery of maintenance abroad (not modified by Art. 9 of the Hague Convention of 2 October 1973 on the law applicable to maintenance obligations), the law which applies to actions and matters related to the recovery of maintenance is the law of the maintenance debtor.
- As per Art. 6 of the 1973 Hague Convention the law of the authority seized must apply when it is not possible to obtain maintenance according to the law of the habitual residence of the creditor and to the law of the common nationality of the parties pursuant to Arts. 4 and 5 of the said Convention.
- The five years limitation period provided for by Art. 2948 (2) of the Civil Code starts from the date when the credit is due and it is suspended until the Italian Ministry of the Interior obtains from the seized foreign authorities the power to sue the debtor.
91. *Livorno Tribunal, 9 August 1991* 556
- Rules declared illegitimate by the Constitutional Court cease to be effective starting from the day following the delivery of the judgment; this applies even to situations and relationships arisen before, on condition that they are still pending.
- Pursuant to the constitutional judgment No. 30 of 9 February 1983, it must be recognized the Italian *status civitatis* even to children of Italian mother who already came out of age at the date of the judgment (and of Law 21 April 1983 No. 123), on condition that these children were born after 1 January 1948, which is the time limit for the retroactive legal effect of judgments of the Constitutional Court.
- The obligation to opt provided by Art. 5 of Law No. 123 of 1983 does not extend to children of age recognized as Italian citizens after the Constitutional Judgment No. 30 of 1983.
92. *Corte di Cassazione, 7 September 1991 No. 9444* 559
- Art. 32 litt. c of Law 4 May 1983 No. 184 imposes the Juvenile Court, which has been asked for the enforcement of a foreign adoption measure in Italy, to ascertain that the said measure is not contrary to the fundamental principles which govern the rights of family and of minors.
- It does not infringe the fundamental principles as per Art. 32 litt. c of Law No. 184 of 1983 the provision, included in the foreign measure concerning the guardianship of a minor, that imposes the guardian to repatriate the minor on request of the foreign authority or to send reports on the growing up of the minor to the said authority.
- It cannot be enforced in Italy, as it is in contrast with the fundamental principle contained in Art. 6 of Law No. 184 of 1983, a foreign measure on the guardianship of a minor given with respect to only one spouse.
93. *Corte di Cassazione, 23 September 1991 No. 9912* 564
- In case of an international adoption, the foreign adoption measure whose enforcement in Italy is requested as per Art. 32 of Law 4 May 1983 No. 184, must declare the desertion of the foreign minor. This desertion can be inferred from the consent to adoption given by natural parents, according to the procedure properly followed by the judge and to the consent of the judge himself to send away the minor from his native State in order to get him duly into Italian life.

94. *Milan Tribunal, 5 October 1991* 123
- According to Art. 3 No. 2 litt. e of Law 1 December 1970 No. 898 on the dissolution of marriage, a divorce judgment may be given when the other spouse, being a foreign citizen, has obtained abroad the annulment or the dissolution of the marriage.
- «Divorce obtained abroad» means not only the divorce obtained in the State of origin of the foreign spouse, but also the divorce given elsewhere (or in Italy) by a judiciary or administrative authority having jurisdiction on the foreign applicant and deemed valid, legitimate and enforceable in the legal system to which this authority belongs.
- As per Art. 3 No. 2 litt. e of Law 1 December 1970 No. 898, a divorce between an Italian woman and an Italo-Israeli man may be declared when the latter has obtained divorce from the rabbinical Rome Tribunal through a public deed which has legal effect in the Israeli legal system.
95. *Venice Court of Appeal, 14 October 1991* 570
- According to Art. 27 (3) of the Brussels Convention of 27 September 1968, a foreign judgment is not recognized if it is contrary to a judgment given between the same parties in the State in which recognition is sought.
- Art. 27 (3) of the 1968 Brussels Convention does not prohibit the recognition of a foreign judgment when the comparison concerns on one hand a judgment on the substance of the dispute and on the other a judgment on procedural issues like a ruling on jurisdiction of the Corte di Cassazione.
- There is no contrast between judgments as per Art. 27 (3) if the judgment given in the State in which recognition is sought is not enforceable.
96. *Corte di Cassazione, 31 October 1991 No. 11059* 970
- According to Art. 6 of the Geneva Convention of 19 June 1948 on the International Recognition of Rights in Aircraft, property, the other rights and mortgages, hypothèques and similar rights in aircraft as well as their recording in public records are subject to the national law of the ship and of the aircraft.
- As Art. 11 of the 1948 Convention limits its application to aircraft registered in another contracting State, its provisions do not apply if the Italian mortgaged aircraft is registered in the Italian aeronautic register.
- The raising of a mortgage is governed by the national law of the aircraft at the time when the mortgage arises, while the claims regarding respect, length and execution of the mortgage are ruled by the national law of the aircraft at the time of the execution of the mortgage.
97. *Milan Tribunal, 11 November 1991* 574
- The New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards applies to arbitration in its various forms, even to free non-customary arbitration.
- It is not relevant the relation between several actions subject to Italian jurisdiction and an action submitted to foreign arbitration as Art. 4 (3) of the Civil Procedure Code does not prevail on the New York Convention of 10 June 1958.
98. *Trieste Court of Appeal, 19 November 1991* 974
- As per Art. 1 of the Austrian Law on Private International Law of 15 June 1978, factual circumstances of a case connected with foreign systems of

law are to be judged according to the civil law provisions of the legal system with which they have the closest connection.

According to Austrian law the injured party can bring an action directly against the Austrian insurer for civil liability of the person who causes damage in relation to a road accident occurred abroad, even when the *lex delicti* (that is to say the Law of the foreign State in which the accident has occurred, according to the criterion of the «closest connection») does not envisage such possibility.

The condition of reciprocity as per Art. 16 of the Preliminary Provisions to the Civil Code applies with reference to the direct action of an Austrian institution of social insurance against an Italian insurer in order to obtain the refund of services carried out in favour of an Austrian citizen who suffered damage caused by an Italian national in a road accident occurred in Italy.

99. *Corte di Cassazione (S.U.), 22 November 1991 No. 12588* 979

According to Art. 4 of the Civil Procedure Code, Italian judges are competent with reference to a divorce proceedings between an Italian husband and an Italo-German wife who moreover has accepted such jurisdiction.

Because of the relation between the divorce proceedings and the measures for the custody of minor children (established by Art. 11 of Law 898 of 1970 and by Art. 6, second paragraph of the same Law as modified by Law No. 74 of 1987), Italian jurisdiction arisen in the former proceedings extends to such measures too.

As the Brussels Convention of 27 September 1968 does not apply, the pending of a proceedings for the custody of minor children before the German judge after the divorce does not affect Italian jurisdiction.

100. *Milan Court of Appeal, 26 November 1991* 127

It is inadmissible the application for the enforcement of a foreign divorce judgment submitted by the child of a dead spouse as the capacity to make such application is limited to the general or particular successors of the parties in the foreign proceedings only when it relates to patrimonial relationships which allow the transfer of the legal position in question.

101. *Brescia Court of Appeal, order 28 November 1991* 397

The deposit of the Italian reservation regarding the pre-trial discovery of documents as per Art. 23 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad does not imply that different procedures concerning the research of documents are forbidden.

According to Art. 21 of the 1970 Hague Convention evidence may be taken in Italy for foreign proceedings even in a way not provided by the Italian legal system on condition that it is not prohibited by it.

It is not in contrast with the Italian legal system the fact that the parties' attorneys ask questions directly to witnesses and that their deposition is recorded.

As for the taking of evidence by the commissioner according to Chap. II of the 1970 Hague Convention and ruled by the law of the requesting State, it is irrelevant that in the commissioner's application the questions to the witnesses have not been listed.

102. *Military Tribunal of Verona, order 10 December 1991* 531

The issue of constitutional legitimacy of Arts. 1 litt. b of the Presidential Decree 14 February 1964 No. 237 on the call-up and compulsory military

service and 8, last paragraph of Law 13 June 1912 No. 555 on Nationality in connection with Art. 10 of the Constitution is not manifestly unfounded.

103. *Milan Court of Appeal, 17 December 1991 No. 2068/91* 400

An Austrian divorce judgment between an Italian husband and an Austrian wife, both resident in Austria at the time of divorce, must be enforced in Italy, being fulfilled the condition set forth by Art. 797 (1) of the Civil Procedure Code, in accordance with the Italo-Austrian Convention of 16 November 1971 and the Hague Convention of 1 June 1970, and the other conditions laid down by Art. 797 of the said Code (see footnote at page 400).

104. *Corte di Cassazione, 19 December 1991 No. 13665* 983

With reference to the enforcement of a foreign arbitral award according to the New York Convention of 10 June 1958, the presentation in the proceedings of the original or of the certified copy of the agreement containing the arbitration clause is not a condition for instituting such proceedings, but the condition to obtain the enforcement of the foreign judgment which has to be ascertained by the judge on his own motion. If this condition is lacking the claim has to be rejected as to substance as per Art. 797 (1) of the Civil Procedure Code. The following judgment, which can acquire *res judicata* effects, precludes the review of the same claim in another and subsequent proceedings in which the arbitration agreement is presented.

105. *Milan Court of Appeal, decree 23 December 1991* 577

Pursuant to Art. 205 of the Civil Procedure Code the judge who collects the means of proof is competent to solve a question relative to the proof, even if it is a delegate; therefore the foreign consul too is competent on the matter.

According to Art. 802 of the Civil Procedure Code the court of appeal is competent to give enforcement to measures of foreign judges concerning the taking of evidence in Italy and must therefore only ascertain that the preliminary application complies with international conventions and with principles of public policy.

As the incapacity to witness according to Art. 246 of the Civil Procedure Code (concerning people who have an interest in the action which could legitimate their participation in the proceedings) can be objected only by the parties, it is not a prohibition given in defence of principles of public policy and thus it is not in contrast with Art. 12 of the Convention between Italy and United Kingdom (extended to Canada) on judicial assistance, stipulated in London on 17 December 1930.

As the Hague Convention of 18 March 1970 on the taking of evidence abroad has not been ratified by Canada, the Italian reservation on the inadmissibility of pre-trial discovery of documents cannot be invoked in relation to a letter of request coming from the judges of such State.

According to the 1930 Convention between Italy and Great Britain, a letter of request concerning documents, coming from a Canadian Court before which a summary judgment is pending, is admissible.

106. *Milan Court of Appeal, 10 January 1992 No. 13/92* 402

A Swiss divorce judgment between two Italian spouses must be enforced in Italy if the condition set forth by Art. 797 (1) of the Civil Procedure Code is fulfilled, according to the Italo-Swiss Convention of 3 January 1933 and to the Hague Convention of 1 June 1970, as well as the other conditions set forth by Art. 797 of the said Code (see footnote at page 402).

107. *Milan Court of Appeal, 10 January 1992 No. 15/92* 403
 A Swiss divorce judgment between two Italian spouses must be enforced in Italy if the conditions provided by Art. 797 (1) of the Civil Procedure Code and by the Italo-Swiss Convention of 3 January 1933 as well as the other conditions set forth by Art. 797 are fulfilled (see footnote at page 403).
108. *Lazio Regional Administrative Tribunal (1st Session), order 15 January 1992* 953
 With reference to Art. 3, 36 and 41 of the Constitution it is not manifestly unfounded the issue of constitutional legitimacy of Law 15 August 1926 No. 1263 which subordinates to the authorization of the Minister of Justice the execution on property belonging to foreign States which allow reciprocity.
109. *Milan Court of Appeal, 31 January 1992* 582
 It must be enforced in Italy a Swiss divorce judgment between two Italian spouses if the parties were both resident in Switzerland at the time of the application for divorce (Art. 2 of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations) and if such judgment is not in contrast with a previous judgment on the marriage of the spouses given in Italy or recognizable in Italy (Art. 9 of the Convention).
 A Swiss divorce judgment given on the grounds of the ascertained dissolution of the marriage and thus because of a reason (a separation for over one year) which is complying with the system provided by Italian law is not in contrast with Italian public policy (pursuant to the Italo-Swiss Convention of 3 January 1933).
110. *Constitutional Court, 24 February 1992 No. 62* 923
 With reference to the protection of ethnic minorities (recognized by the International Covenant on Civil and Political Rights adopted by the General Assembly on 16 December 1966), the Italian State has undertaken, with the 1975 Treaty of Osimo, the protection of the Yugoslavian minority resident in the Italian territory.
 Arts. 22 and 23 of Law 24 November 1981 No. 689 in conjunction with Art. 122 of the Civil Procedure Code are constitutionally illegitimate in so far as they do not allow Italian nationals belonging to the Slovenian linguistic minority in opposition proceedings to orders of administrative sanctions before the «pretore» to use on their request their mother tongue for their deeds but oblige them to use for these the translation in Italian, as well as they do not allow them to receive the deeds of judicial authorities and the answers of the opponent translated into their own language.
 With reference to Art. 6 of the Constitution and Art. 3 of the special Statute for Friuli Venezia Giulia, the issue of legitimacy of Arts.22 and 23 of Law 24 November 1981 No. 689 in conjunction with Art. 122 of the Civil Procedure Code is inadmissible in so far as they do not allow Italian nationals belonging to the Slovenian linguistic minority to use their own mother tongue as equalized to the official language of the proceedings.
 With reference to Art. 3 of the Constitution the issue of legitimacy of Arts. 22 and 23 of Law 24 November 1981 No. 689 in conjunction with Art. 122 of the Civil Procedure Code is not admissible in so far as they prescribe the use of Italian language as language of the civil proceedings, excluding the possibility for Italian nationals belonging to the Slovenian linguistic minority to use Slovenian when they are parties of civil proceedings brought before a judicial authority either of first instance or of appeal in a territory where the above said minority has settled.

111. *Turin Tribunal, decree 24 February 1992* 985
- According to Arts. 17 and 31 of the Preliminary Provisions to the Civil Code the personal status and family relationships are ruled by the national law of the parties concerned, but foreign laws which are contrary to public policy cannot apply in Italy.
- The refusal to grant the authorization for the marriage of an Algerian woman with an Italian man, motivated only by religious reasons, is contrary to Italian public policy; therefore, Art. 116, first paragraph of the Civil Code which provides for the presentation of such certificate does not apply.
112. *Milan Tribunal, 19 March 1992* 584
- The immunity from jurisdiction of foreign States is limited at present as to its functions and it does not extend to the relationships in which the States and their territorial entities act as private individuals.
- The issue of jurisdiction of the Italian judge is preliminary to that of the immunity from jurisdiction.
- Italian judges are not competent in a dispute between an Italian company and a public body of a Member State of a federal State concerning an obligation which has not arisen and is not to be fulfilled in Italy.
113. *Constitutional Court, 1 April 1992 No. 148* 933
- The constitutional principles as per Arts. 2, 30, first and second paragraph and 31 of the Constitution establish that as for adoption the protection of the fundamental interests of the minor must prevail.
- Art. 6, second paragraph of Law 4 May 1983 No. 184 is constitutionally illegitimate, in so far as it does not allow the adoption of one or more brothers and sisters if for one of them the adopter is over forty years older than the adopted child and the separation causes a great harm to minors.
114. *Milan Court of Appeal, 19 May 1992* 586
- As per Art. 797 (7) of the Civil Procedure Code, a judgment of the Rabbinic Court of Tel Aviv which declares the divorce between two Israeli citizens upon joint application is not contrary to Italian public policy and therefore can be enforced in Italy.
115. *Constitutional Court, 17 June 1992 No. 278* 531
- According to the Italian legal system in conformity with customary international law, as per Art. 10, first paragraph of the Constitution, a law demanding military service from non-nationals would be in contrast with general international law and thus the above said law would infringe the Constitution.
- Art. 1 litt. *b* of the Presidential Decree 14 February 1964 No. 237 on the call-up and compulsory military service as well as Art. 8, last paragraph of Law 13 June 1912 No. 555 on Nationality are constitutionally illegitimate in the section which does not provide the exemption from military service of those who have lost Italian nationality as they have become nationals of another State where they must serve in the military service.
116. *Milan Court of Appeal, decree 13 July 1992* 578
- In executing a Letter of request coming from a foreign State requesting oral deposition, if the witness appears before the foreign consul, but he refuses to answer, he cannot be subject to any measure of compulsion, except for criminal prosecution if his refusal is not legally justified.

117. *Constitutional Court, 15 July 1992 No. 329* 941

Nowadays a customary international rule on the absolute prohibition of execution on foreign States' property cannot be considered in force.

It is constitutionally illegitimate (as it is in contrast with Art. 24 of the Constitution) the Decree Law 30 August 1925 No. 1621 confirmed with Law 15 July 1926 No. 1263 concerning execution on property of foreign States in Italy, in so far as it subordinates to the authorization of the Minister of Justice the enforcement of protective or execution measures on the properties of a foreign State other than those that cannot be subject, according to generally recognized rules of international law, to execution.

118. *Constitutional Court, order 23 July 1992 No. 360* 953

It is manifestly inadmissible the issue of constitutional legitimacy (with reference to Arts. 3, 36 and 41 of the Constitution) of the Decree Law 30 August 1925 No. 1621, concerning execution on the property of foreign States in Italy as it has already been declared constitutionally illegitimate with judgment No. 329 of 1992.

119. *Milan Court of Appeal, 16 October 1992* 988

In case of application of the Brussels Convention of 27 September 1968, Art. 4 (3) of the Civil Procedure Code cannot apply because of the criterion of special competence provided for by Art. 6 (2) of the said Convention, even if this provision is not included in Art. 3 of the Convention.

Pursuant to Art. 17 of the 1968 Brussels Convention it is valid a clause conferring jurisdiction to the French judge contained in a suretyship issued by a French bank in favour of an Italian company who after seeing the deed signed a letter joined with its original without expressing reservations.

The prohibition of service abroad of the decision given in a summary proceedings provided by Art. 633, last paragraph of the Civil Procedure Code does not exclude Italian jurisdiction because an ordinary proceedings can be instituted; the infringement of such prohibition only causes the nullity of the order served outside the national territory.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 2, 16.

Brussels Convention of 1968: 1, 9, 14, 15, 18.

Competition: 17.

Freedom of movements for goods: 12.

Freedom of movements for persons: 3, 7.

Freedom to provide services: 5, 11.

Prohibition of discrimination: 6.

Public works and supply contracts: 8, 13.

Relationships between Community law and international law: 10, 12.

Right of residence and establishment: 4.

1. *Court of Justice, 3 July 1990 case C-305/88* 146

Article 27 (2) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments is to be interpreted as meaning that a judgment given in default of appearance may not be recognized where the document instituting the proceedings was not served on the defendant in due form, even though it was served in sufficient time to enable him to arrange for his defence.

Article 27 (2) of the Convention is to be interpreted as meaning that questions concerning the curing of defective service are governed by the law of the State in which judgment was given, including any relevant international agreements.
2. *Court of Justice, 31 January 1991 case C-18/90* 418

The prohibition of discrimination set forth in Article 41 (1) of the Cooperation Agreement between the EEC and the Kingdom of Morocco of 27 April 1976 is capable of direct application.

The concept of social security in Article 41 (1) of the Agreement is to be interpreted by analogy with the same concept as in Council Regulation No. 1408/71.
3. *Court of Justice, 5 March 1991 case C-376/89* 420

Article 4 (1) of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of member States and their families must be interpreted as meaning that a Member State is required to recognize the right of residence within its territory of the workers referred to in Article 1 of that directive if they are in possession of a valid identity card, even if that card does not allow its holder to leave the territory of the Member State in which it was issued.

The answer to the first question is not altered by the fact that the identity card was issued prior to the accession to the Communities of the Member State which issued the identity card, or the fact that the card does not mention that its validity is limited to the national territory or, finally, the fact that the holder of the card was admitted to the host Member State solely on the basis of his passport.
4. *Court of Justice, 18 April 1991 case C-63/89* 421

Council Directive 87/343/EEC on insurance, which excludes public export credit insurance operations from its scope, is lawful.
5. *Court of Justice, 7 May 1991 case C-340/89* 630

Article 55 of the EEC Treaty must be interpreted as meaning that the national authorities of a Member State, to which a request for authorization to practice as a lawyer is made by a Community national who is already permitted to practice as a lawyer in his country of origin, and practises as a legal adviser in that country, are required to examine to what extent the knowledge and qualification attested by the qualifications acquired by the person concerned in his country of origin correspond to those required by the rules of the host State; where there is only partial equivalence of qualifications, the national authorities in question are entitled to require the person concerned to establish that he has acquired the knowledge and qualifications lacking.

6. *Court of Justice, 16 May 1991 case C-263/85* 632
- By requiring public bodies to purchase motor vehicles of domestic manufacture in order to qualify for grants under Law No. 151 of 10 April 1981, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty.
7. *Court of Justice, 30 May 1991 case C-68/89* 634
- By maintaining in force and by applying legislation by virtue of which nationals of a Member State may be required to answer questions put by border officials regarding the purpose and duration of their journey and the financial means at their disposal for it before they are permitted to enter Netherlands territory, the Kingdom of the Netherlands has failed to fulfil its obligations under Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and of the provision of services.
8. *Court of Justice, 18 June 1991 case C-295/89* 635
- Article 29 (5) of Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts prohibits Member States from introducing provisions which require the automatic exclusion from procedures for the award of public works contracts of certain tenders determined according to a mathematical criterion, instead of obliging the awarding authority to apply the examination procedure laid down in the Directive, giving the tenderer an opportunity to furnish explanations.
- When implementing Council Directive 71/305/EEC Member States may not depart to any material extent from the provisions of Article 29 (5) thereof.
- Article 29 (5) of Council Directive 71/305/EEC allows Member States to require that tenders be examined when those tenders appear to be abnormally low, and not only when they are openly abnormally low.
9. *Court of Justice, 27 June 1991 case C-351/89* 150, 620
- Article 21 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments must be interpreted as applying irrespective of the domicile of the parties to the two sets of proceedings.
- Without prejudice to the case where the court second seised has exclusive jurisdiction under the Convention and in particular under Article 16 thereof, Article 21 of the Convention must be interpreted as meaning that, where the jurisdiction of the court first seised is contested, the court second seised may, if it does not decline jurisdiction, only stay the proceedings and may not itself examine the jurisdiction of the court first seised.
10. *Court of Justice, 9 July 1991 case C-146/89* 1019
- After the adoption of Regulation No. 170/83 coastal Member States cannot, by shifting their baselines, unilaterally alter the scope of protection

which Community law confers on certain fishing activities, the nature of which depends on the location of the waters in which such activities are carried out.

11. *Court of Justice, 10 July 1991 case C-294/89* 1020
- The French Republic has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty and Council Directive 77/249/EEC of 22 March 1987 to facilitate the effective exercise by lawyers of freedom to provide services by: *a)* depriving French nationals who practise law in a Member State other than the French Republic of the benefit of the provisions governing the freedom of lawyers to provide services; *b)* requiring the lawyer providing the services to act in conjunction with a lawyer who is a member of a French Bar when acting before authorities or bodies which have no judicial function and when acting in situations where French law does not require the compulsory assistance of a lawyer, and *c)* requiring a lawyer providing services who appears before a Tribunal de Grande Instance (Regional Court), in civil cases where it is compulsory to be represented by a lawyer, to retain a lawyer who is a member of the Bar of that court or is authorized to plead before it in order to conduct the proceedings or carry out the procedural formalities.
12. *Court of first instance, 10 July 1991 joined cases T-69/89, T-70/89, T-76/89* 1021
- While it is plain that the exercise of the exclusive right to reproduce a protected work is not in itself an abuse, if it is apparent that that right is exercised in such ways and circumstances as in fact to pursue an aim manifestly contrary to the objectives of Article 86, the copyright is no longer exercised in a manner which corresponds to its essential function, within the meaning of Article 36 of the Treaty.
- In intra-Community relations the provisions of the Berna Convention on copyright cannot affect the provisions of the Treaty.
13. *Court of Justice, 11 July 1991 case C-351/88* 636
- Article 30 of the EEC Treaty must be interpreted as precluding national rules which reserve to undertakings established in specific regions of national territory a proportion of public supply contracts.
- The fact that national rules may be regarded as aid within the meaning of Article 92 of the EEC Treaty cannot exempt them from the prohibition set out in Article 30 of the Treaty.
14. *Court of Justice, 25 July 1991 case C-190/89* 152, 625
- Article 1 (4) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments must be interpreted as meaning that the exclusion provided for therein extends to litigation pending before a national court concerning the appointment of an arbitrator, even if the existence or validity of an arbitration agreement is a preliminary issue in that litigation.
15. *Court of Justice, 4 October 1991 case C-183/90* 152, 1008
- The second paragraph of Article 37 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments must be interpreted as meaning that a decision taken under Article 38 of the Convention, by which a court, with which an appeal has been lodged against a decision authorizing

the enforcement of a judgment given in another Contracting State, has refused to stay the proceedings and has ordered the party in whose favour enforcement was authorized to provide security, does not constitute a «judgment given on the appeal» within the meaning of the second paragraph of Article 37 of the Convention and may not, therefore, be contested as an appeal in cassation or similar form of appeal. The answer to that question is the same where the decision taken under Article 38 of the Convention and the «judgment given on the appeal» within the meaning of the second paragraph of Article 37 of the Convention are in fact given in a single judgment.

The first paragraph of Article 38 of the Convention must be interpreted as meaning that a court, with which an appeal is lodged against a decision authorizing the enforcement of a judgment given in another Contracting State, may take into consideration, in a decision concerning an application for the proceedings to be stayed under that paragraph, only such submissions as the party lodging the appeal was unable to make before the court of the State in which the judgment was given.

16. *Court of Justice, 19 November 1991 joined cases C-6/90 and C-9/90* 405

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 the employer which define employees' rights must be interpreted as meaning that interested parties may not assert those rights against the State in proceedings before the national courts in the absence of implementing measures adopted within the prescribed period.

A Member State is obliged to indemnify the damage suffered by individuals as a result of the failure to implement a directive when the result to be achieved thereunder involves the attribution of rights to individuals, the subject matter of those rights can be identified by reference to the provisions of the directive and it exists a causal link between the infringement of the obligation incumbent upon the Member States and the damage suffered by the persons aggrieved.

17. *Court of Justice, 10 December 1991 case C-179/90* 413

Article 90 (1) of the EEC Treaty, in conjunction with Articles 30, 48, and 86 of the Treaty, precludes rules of a Member State which confer on an undertaking established in that State the exclusive right to organize dock work and requires it for that purpose to have recourse to a dock work company whose workforce is composed exclusively of nationals.

Articles 30, 48, and 86 of the Treaty, in conjunction with Article 90, give rise to rights for individuals which the national courts must protect.

Article 90 (2) of the Treaty must be interpreted as meaning that an undertaking and/or a dock work company in the position described in the first question may not be regarded, on the basis only of the factors contained in that description, as being responsible for the management of services of general economic interest within the meaning of that provision.

18. *Court of Justice, 26 February 1992 case C-280/90* 1015

Article 16 (1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments is to be interpreted as not applying to a contract concluded in a Contracting State whereby a professional travel organizer,

which has its registered office in that State, undertakes to procure for a client domiciled in the same State the use for several weeks of holiday accommodation in another Contracting State which it does not own, and to book the journey.

FOREIGN COURT CASES

Cour d'Appel de Paris, 25 April 1989 641

An agreement conferring jurisdiction to Italian judges of the seat of a bank which is applicable both to the main contract and to other different and related contracts and bonds is to be considered concluded for the benefit of only one of the parties – who retains the right to bring proceedings in any other competent court – according to Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, as such clause aims to favour the enforcement of said bonds (in French).

Board of Grievances (Jeddah Branch), 20th Circuit, 30 October 1989 n. 11/D/F/20 156

The Board of Grievances has jurisdiction on the enforcement of a judgment given in the United Kingdom of Great Britain and Northern Ireland by a judicial body as the High Court of Justice.

The enforcement in Saudi Arabia of judgments given in a non-Arab State, therefore in a State not party to the Convention for the Execution of Foreign Judgments among the States of the Arab League, must follow the principles of such Convention on reciprocal basis; reciprocity has to be proved by the party who seeks the enforcement.

Reciprocity in the enforcement of foreign judgments means that each State will execute the judgments of the others according to its laws and within the framework of its general regulations.

In order to obtain the enforcement in Saudi Arabia of a foreign judgment the defendant in the foreign proceedings must have been regularly served with a writ of summons to appear, the original copy of the judgment and a certificate that the judgment was final and that the defendant did not submit any appeal must be presented.

A foreign judgment cannot be enforced in Saudi Arabia if it contradicts any of the general principles of Sharia Law.

An English judgment providing for the payment of interest can be enforced in Saudi Arabia even if interests are in contrast with Sharia Law if the plaintiff renounces the said interests. This reduction infringes neither the sovereignty of Saudi Arabia nor the sovereignty of the United Kingdom because it was the request of the plaintiff to execute the judgment without it.

If the execution of a foreign judgment does not contradict the word of God and the general regulations in the Islamic State, then abstaining from executing it is to be regarded as arbitrary and biased.

Cour de Cassation, 4 December 1990 644

The judge having competence on the merits of the case is competent to evaluate if a clause on jurisdiction is concluded for the benefit of only one party as per Art. 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments (in French).

<i>Cour de Cassation, 22 October 1991</i>	645
The decision of the arbitrator referring to the whole body of international commercial usages, which can be inferred from the practice and which have been recognized by national judges, is to be considered a decision according to law (in French).	
<i>High Court of Justice, Queen's Bench Division, 4 June 1991</i>	646
Art. 5 (1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments applies even when the existence of the obligation in question is contested.	
Art. 22 of the 1968 Brussels Convention does not apply to the action brought in the United Kingdom concerning the breach of a sale under guarantee and to the action brought in Italy according to Art. 700 of the Civil Procedure Code to obtain an order to the bank not to pay under the guarantee because there is no risk whatsoever of irreconcilable judgments.	
Arts. 16 and 17 of the 1968 Brussels Convention override Arts. 21 and 22 of the same Convention in the sense that if one court has exclusive jurisdiction, it does not have to decline jurisdiction in favour of the other judge.	

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Responsabile: prof. FAUSTO POCAR

Grafiche Fiorini - Verona, Via Altichiero, 11



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