INDEX

ARTICLES

N. Boschiero, «Optional» Conflict Rules? 541

G. Broggini, Recognition and Enforcement of Foreign Civil Judgments in Italian *ius commune* 833

S.M. Carbone, The Rôle of Terminal Operator and Uniform Law 265

L. Fumagalli, The Rome Convention and the Law Applicable to Gifts 589

A. Giardina, Pricing in International Contracts 283

E. Jayme, Family Law: Multicultural Society and New Trends of Private International Law 295

P. Lagarde, Objective Limits of the Field of Application of the Rome Convention (Conflict of Laws, Supremacy of Community Law, Relationships with Other Conventions) (in French) 33

F. Mosconi, When Holidays end up in Court: Jurisdiction and Conflict of Laws on Tenancies of Immovable Property Abroad 5

B. Nascimbene, EC Law in Perspective 857

A. Saravalle, Punitive Damages before European Courts and Arbitral Tribunals 867

S.C. Symeonides, Louisiana's New Law on Choice of Laws for Torts 43

U. Villani, Some Reflections on the Characteristic Performance 513

SHORTER ARTICLES, NOTES AND COMMENTS

C. Azzolini, Some Remarks on the Rules Concerning Juridical Bodies in the Private International Law Reform 893

M.B. Deli, The 1968 Brussels Convention and Jurisdiction in Sequel of Subsequent Resales 305

P. De Pasquale, Sourveillance and Repression of Activities against Competition by National Authorities and EEC Institutions 315

L. Migliorino, Security Council Resolutions and Domestic Law Provisions blocking Assets of Foreign States 617

F. Parente, Agency and the Rome Convention on the Law Applicable to Contractual Obligations 341

R. PILLITTERI, New Trends in a Case Law concerning Injunction 923

P. PIRODDI, Preliminary Ruling on Jurisdiction and Reciprocity in Judicial Declaration of Natural Parenthood 635

I. QUEIROLO, Article 17 of the Brussels Convention and Jurisdiction Clauses set forth in Company By-Laws 69

L.G. RADICATI DI BROZOLO, Community Law and Internal Rules of Procedure: Inapplicability of Art. 633 of the Italian Civil Procedure Code 607

U.I.A. STRAMIGNONI, Some Considerations on the Proposal for a Council Regulation on the Statute for a European Association 933

CASES IN ITALIAN COURTS

Adoption: 29, 83.

Bankruptcy: 41.

Characterisation: 74.

Civil procedure: 3, 56, 94, 97.

Competition: 52.

Contracts: 17, 23, 27, 31, 37, 54, 58, 93, 94.

Divorce: 43.

Duties and taxes: 15, 35, 82.

European Economic Community: 11, 13, 14, 15, 25, 30, 34, 39, 66, 84, 88.

Exchange controls: 58.

Extradition: 5, 6, 7, 10, 22.

Foreigner: 4, 44, 98.

Foreign judgments and administrative acts: 19, 20, 26, 28, 29, 32, 33, 36, 42, 49, 50, 51, 53, 55, 60, 63, 72, 73, 83, 85, 87, 89, 90, 99.

Foreign law: 26, 64.

Form of deeds: 71.

Jurisdiction: 2, 8, 9, 12, 18, 21, 24, 35, 38, 40, 41, 45, 46, 47, 48, 56, 61, 64, 65, 67, 68, 69, 70, 71, 74, 75, 76, 78, 79, 80, 86, 91, 92, 94, 95.

Matrimonial property: 59.

Nationality: 1, 57, 77, 81.

Penal procedure: 16, 96.

Public policy: 28, 32, 33, 42, 43, 50, 51, 53.

Social security: 62.

Treaties and general international rules: 2, 4, 5, 7, 9, 17, 19, 22, 23, 24, 26, 28, 31, 32, 33, 36, 37, 40, 47, 49, 52, 54, 55, 56, 60, 61, 69, 70, 72, 73, 74, 75, 76, 78, 79, 80, 82, 86, 87, 89, 90, 91, 92, 94, 95, 96, 97, 99.

1. *Trieste Tribunal, 9 November 1988* 950

Claims concerning the acquisition of nationality by marriage fall within the competence of ordinary courts, as they concern personal status.

The foreign spouse of an Italian citizen does not acquire automatically Italian nationality after one year from the application for such nationality as per Law 21 April 1983 No. 123.

The foreign spouse of an Italian woman has the right to acquire Italian nationality even if the period of six months of residence in Italy after the celebration of the marriage has matured after the application irrespective of a judgment for legal separation given after two years.

2. *Corte di Cassazione (S.U.), 9 August 1989 No. 3668* 430

According to Art. 5(3) of the Brussels Convention of 27 September 1968 Italian judges are competent with reference to an action for a tort occurred in Italy as for delicts or quasi-delicts the defendant domiciled in a Contracting State can be sued before the judges of another Contracting State if the damage or the harmful event occurred in the territory of the latter.

3. *Gorizia Pretore, decree 8 January 1990* 156

When the conditions of fumus boni iuris and imminence and irreparability of the damage occur because of the extreme difficulty in bringing an action for claiming back abroad, it is admissible to lodge an application based on Art. 700 of the Civil Procedure Code so as to order to an Italian bank not to enforce a suretyship in favour of a foreign seller given as a warranty for the payment of the supply by the Italian buyer.

4. *Corte di Cassazione (S.U.), 23 January 1990 No. 362* 368

According to Art. 9 of the Decree Law of the Provisional Head of State of 13 September 1946 No. 233 on the establishment of Associations of Medical Professions, Italian nationality and the full enjoyment of civil rights are requested in order to practise as a doctor in Italy, unless the foreigners are nationals of a State with which Italy has stipulated a special agreement.

An Iranian cannot be registered in the professional roll of doctors in Italy as Art. 2 of the Friendship Treaty between Italy and Iran of 26 January 1955 subordinates the treatment of the more favourite nation to the condition of reciprocity, which in the case at stake was not proved by the plaintiff and was declared inexistant by the Ministry of foreign affairs.

5. *Corte di Cassazione (pen.), 18 April 1990* 157

Art. 719 of the new Criminal Procedure Code, which ascribes to the procuratore generale of the Court of Appeal, to the person concerned and to

his or her defending counsel the power to file an appeal in cassation because of infringement of the law against the decision of the President of the Court of Appeal, or of the Court of Appeal itself, concerning the enforcement, the repeal or the substitution of protective measures and the confirmation of arrest by the criminal investigation department of a person whose extradition is sought by a foreign country, complies with Art. 111, second paragraph of the Constitution, as well as with Art. 5 first paragraph litt. *f* and fourth paragraph of the European Convention on the protection of human rights.

6. *Corte di Cassazione (pen.), 11 July 1990* 159

The notion of «political crime» as a limit to the power of extradition of foreigners is to be found in Art. 8, third paragraph of the Criminal Code as there is no constitutional concept of «political crime» differring from that adopted in Criminal Law.

7. *Corte di Cassazione (pen.), 6 September 1990* 160

Unlike Art. 705 of the Criminal Procedure Code, the European Convention on Extradition of 13 December 1957 does not require, in order to give a judgment according the extradition, that there are «serious evidence of guilt» nor that the warrant of arrest or any other act having the same effect (Art. 12, second paragraph litt. *a*) is justified.

Since the principle of reciprocity is not a general rule of international law, a Contracting State which has made a reservation to the Convention excluding extradition for its nationals can nonetheless ask the extradition of a national of another Contracting State.

8. *Corte di Cassazione (S.U.), 3 December 1990 No. 11549* 167

According to Art. 4(2) of the Civil Procedure Code, Italian judges are competent when the obligation in question (which is a criterion of jurisdiction to be ascertained at the moment of submission of the application) must be fulfilled in Italy.

9. *Corte di Cassazione (S.U.), 19 December 1990 No. 12031* 677

The Swiss-Italian Convention of 3 January 1933 on the Recognition and Enforcement of Judgments does not rule the jurisdiction of the Italian judge on the application submitted by the liquidator of an Italian bankrupt company towards a Swiss creditor in order to obtain a declaration that a suit for enforcement brought by such creditor before Swiss judges will have no effect in Italy because bankruptcy does not fall within the application of the said Convention.

The principle of territoriality which applies in Italy implies that the execution of the winding-up proceedings can extend only to the goods of the company which are within sovereignty of the State of which judges have declared the winding-up. Thus, if the company owns some goods abroad, the Italian judge is not competent to condemn the creditor who has obtained those goods against his credit; it is up to the liquidator to act in order that the winding up declared in Italy is recognized abroad so that to acquire these goods to the estate.

Art. 24 of the Law on Bankruptcy, in establishing the *vis attractiva* of

the bankruptcy court, rules only the internal competence without affecting jurisdiction which depends only on Art. 4 of the Civil Procedure Code.

The application to obtain the proof against the estate of a wound-up company submitted by a foreign creditor does not imply the acceptance of Italian jurisdiction, according to Art. 4(1) of the Civil Procedure Code, as regards the suit brought by the liquidator in order to obtain a declaration that the enforcement action brought abroad by the foreign creditor will have no effect in Italy.

10. Corte di Cassazione (pen.), 5th Session, 21 December 1990 168

The case in which the Minister of Justice is late in communicating to the applying State the decision to grant extradition, according to fourth paragraph of Art. 708 of the Criminal Procedure Code, is not among the hypothesès which lead to the release from prison of the person for whom the extradition has been asked, as per the above-mentioned Article.

11. Sicily Regional Council of Administrative Justice, 2 March 1991 No. 72 169

In order to partecipate to a tender competition for a contract with the public administration, a company belonging to a State member of EEC is not bound to submit the general certificate of the court records for its legal representative even if he or she is Italian.

12. Massa Pretore, order 4 April 1991 171

The request in order to stop urgently the remaining amounts of letters of credit opened by an Italian firm, concerning supplies not carried out in favour of Iraq because of the embargo against such State, submitted by the supplier even beyond contractual expiry, is admissible.

13. Council of State, (5th Session), 6 April 1991 No. 452 174

Issuing internal acts of enforcement the State renounces to exert its right of choice of the forms and of the means of accomplishment of a detailed EEC Directive provided for by Art. 189 of the Rome Treaty.

The EEC Directive No. 71/305 concerning tenders for contracts of public works, enforced through Law No. 584 of 8 August 1977, has a provision so detailed that it has a regulation nature; thus it can produce direct effects on the relationships between Member States, which are its addressees, and private subjects.

Art. 29, fifth paragraph of the EEC Directive No. 71/305, where it forbids the exclusion *ex officio* from the tender of public works of some offers through a pure mathematical criterion, binding the Administration to apply the contentious procedure of verification with the firm concerned, prevails on all contrasting internal rules as per Arts. 4 of the Decrees No. 206 of 25 June 1987, No. 302 of 27 July 1987, No. 393 of 25 September 1987 and Art. 1, first paragraph of Law No. 478 of 25 November 1987. This does not lead to the extinction of the contrary national provision, but it only obliges the judge and any other interpreter not to apply the national rules which are contrary to EEC rules.

All subjects which are competent to apply the law - whether

jurisdictional or administrative organs – must refrain from applying national provisions contrary to EEC law.

14. Sicily Regional Administrative Tribunal, 15 April 1991 No. 229 175

It's up to the administrative control authority too, and not only to the judge, not to apply the national rules in contrast with EEC Law.

15. Constitutional Court, 18 April 1991 No. 168 742

National judges are bound not to apply a national provision of law which is in contrast with an EEC Directive not yet enforced, if it contains complete and clear provisions as regards the substance.

Therefore the issue of constitutional legitimacy – for violation of Art. 76 of the Constitution – of Art. 4 litt. *e* of the rate, first part contained in addendum A to the Presidential Decree 26 October 1972 No. 634 which, subjecting company deliberations on the issue of obligations to the registration fee, has failed to enforce Art. 11 of EEC Directive 17 July 1969 No. 335, concerning indirect taxes on the gathering of capitals and thus it has contravened Art. 7 of Law 9 October 1971 No. 825 which had ordered the enforcement of the said Directive, is not admissible.

16. Corte di Cassazione (pen.), 22 May 1991 188

The proceedings of objection as per Art. 666 of the Criminal Procedure Code is the only admissible control on the enforcement of a foreign letter of request, as this cannot be either reviewed nor contested.

17. Corte di Cassazione, 24 May 1991 No. 5869 189

The applicability of the Geneva Convention of 19 May 1956 on the carriage of goods by road depends on the will of the parties which can result, lacking the bill of freight, from the contract.

18. Corte di Cassazione (S.U.), 30 May 1991 No. 6143 190

All disputes concerning a labour relationship of an employee of the Papal Gregorian University, assigned to the printing office of the said University, are subject to Italian jurisdiction, since such activity is carried out not only for internal educational needs, but also in favour of a third party and in order to get a profit and thus does not fall within the institutional aims of the Holy See or of the University.

19. Corte di Cassazione, 18 June 1991 No. 6857 190

As regards the enforcement of a foreign arbitral award Art. II, on one side, and Art. III in relation to Art. V of the New York Convention of 10 June 1958, on the other, act on different grounds: the former concerns formal and substantial conditions of the existence of the arbitral clause, whose lack can be ascertained ex officio by the enforcing judge, the latter concerns the possible reasons for the invalidity of the foregoing clause, which can be inferred only by the party against which the enforcement is sought.

20. *Corte di Cassazione, 4 July 1991 No. 7362* 192

In case of adoption of foreign minors, Art. 76 of Law 4 May 1983 No. 184 provides that adoption procedures which are still in course at the time of the entry into force of the Law are subject to previous provisions. Therefore the Court of Appeal is competent to enforce a foreign decision of adoption of a minor, who was assigned in custody before that date.

21. *Corte di Cassazione (S.U.), 9 July 1991 No. 7548* 87

Italian judges are not competent with reference to a dispute regarding a labour relationship with a foreign State in case it involves the accomplishment of fiduciary tasks within the organization of the State, as the dispute, though it may concern only patrimonial aspects, affects its sovereignty.

22. *Corte di Cassazione (pen.), 11 July 1991* 161

Since international conventions are the only sources of law regarding extradition proceedings, the principle of speciality must be interpreted according to Art. XVI of the Treaty on Extradition between Italy and the United States of 13 October 1983.

In international practice the consent of the person extradited is not considered sufficient to exempt the applying State from the limits deriving from the principle of speciality; the observance thereof is a mandatory international obligation.

23. *Corte di Cassazione, 18 July 1991 No. 7977* 193

The recklessness of the carrier and the awareness concerning the possibility of a damage which may result from his acts which exclude the limitations of liability for the damages caused to the carried goods provided for by Art. 22 according to Art. 25 of the Warsaw Convention of 12 October 1929 on carriage by air, as modified by the 1955 Hague Protocol, result in a forknowledged liability, as the agent foresees the damage, though he does not change his behaviour.

24. *Genoa Tribunal, decree 22 July 1991* 171

According to the New York Convention of 10 June 1958, even if there is a valid arbitral clause included in contracts for the supply of goods to Iraq, guaranteed by a suretyship at first demand by Italian banks to an Iraqi bank, Italian judges are competent with reference to the application for an interim measure as per Art. 700 of the Civil Procedure Code in order to prevent the enforcement of the suretyship connected to the cancellation of the contract asked after the economic measures taken by the United Nations, by the EEC and by Italy.

25. *Council of State (5th Session), 31 July 1991 No. 1074* 175

EEC Law (regulations, directives and interpretative judgments of the Court of Justice) can be enforced immediately within the Member States when it consists of so precise provisions which do not need to pass through a national procedure of enforcement.

Art. 17 sixteenth and seventeenth paragraph of Law No. 64 of 1 March 1986, in so far as it provides for a reservation of public supplies in favour of Italian undertakings working in the Southern part of Italy, is in contrast with the EEC principle of free movement of goods in regular competition, as per Art. 30 of the EEC Treaty, which enjoys direct applicability.

26. *Corte di Cassazione, 6 August 1991 No. 8574* 943

According to Art. 4 of the Convention between Italy and Austria of 14 November 1971 on the recognition of judgments in matters of successions, the courts of the State of which the deceased person was national or where he had his last domicile are competent, except for the exclusive competence regarding immovables, established by national rules of the Contracting States.

An Austrian decision concerning a claim of the goods settled in the will left by an Italian de cuius resident in Italy cannot be enforced in Italy.

In case the applicant does not prove the content of the foreign law the judge seized of the enforcement can take into consideration any element of the proceedings (for instance the judgment itself to be enforced).

27. *Corte di Cassazione, 21 September 1991 No. 9884* 745

Art. 3 of Law 16 April 1974 No. 1149, which provides that the social pension is due only to Italians who are resident in Italy, cannot apply to Italians who transfer their residence within the territory of another EEC Member State, in accordance with Arts. 4 and 10 of the EEC Ruling of 14 June 1971 No. 1408, which establish the repeal of the clause of residence for old age pensions, as social pensions are assimilated to the latter.

28. *Bologna Court of Appeal, 21 September 1991* 89

As for the enforcement in Italy of a foreign decision concerning insolvency, the review as to substance under Art. 798 of the Civil Procedure Code of a declaration of beginning of summary judgment, taken by a judge of San Marino at the end of an interim procedure which does not require the appearance in the proceedings or the declaration of default, is not allowed.

The Italian decree granting the enforcement of a San Marino decision cannot be contested by third parties, as Art. 6 of the Convention on Friendship between Italy and San Marino of 31 March 1939 aims to simplify the recognition and the enforcement of judgments.

The admissibility of judicial arrangements against any insolvent debtor is not contrary to Italian public policy.

29. *Corte di Cassazione, 23 September 1991 No. 9912* 434

The decision of the foreign judge regarding adoption, for which enforcement is sought in Italy under Art. 32 of Law 4 May 1983 No. 184, must refer to a minor child of whom the desertion has been considered by the said judge. Such desertion can be inferred from the consent to adoption of his or her natural parents and through objective evidence, in order to guarantee the minor a suitable family.

30. Council of State (plenary session), 23 September 1991 No. 7 431

The purchase of goods of artistic, historical and archaeological interest, for which an export permit towards EEC Member States is required, is subject to Art. 39, second and third paragraph of Law 1 June 1939 No. 1089.

31. Venice Tribunal, 26 September 1991 437

According to Art. VIII, fifth and seventh paragraphs of the London Convention of 19 June 1951, the substitutive liability of the State of the stay for damages to third persons occurs for omissions of soldiers or civilians of the NATO Armed Forces, committed on duty and for which they are legally liable. It does not refer to the allied military administrations but to the single soldiers and to the civilian employees, provided that they are members of a force or civilian components.

There is no substitutive liability of Italy in case of damages caused by an employee of the American Military Headquarters of NATO driving a car belonging to the said Headquarters, if such employee is Italian and resides in Italy, being irrelevant that the accident occurred while the employee was on duty. The criterion of liability as per Art. 2054 of the Civil Code, which does not concern the regulations provided for by the Atlantic Convention, does not apply.

32. Corte di Cassazione, 18 October 1991 No. 11044 94

According to the Hague Convention of 1 June 1970 in order to enforce a Swiss divorce judgment between two Italian spouses, an Italian judge cannot merely ascertain that such judgment is not manifestly incompatible with public policy as per Art. 10 of the said Convention.

Pursuant Art. 19(1) of the Hague Convention of 1 June 1970, Italy reserved the right to refuse to recognize divorce judgments between two Italian spouses in case a law other than that indicated by Italian rules of private international law was applied, unless the result reached is the same as that which would have been reached by applying the law indicated by those rules.

When the divorce between Italian spouses was pronounced according to a foreign law, the judge before whom the enforcement is sought must ascertain if the divorce would hawe been possible also under Law 1 December 1970 No. 898, modified by Law 6 March 1987 No. 74.

33. Corte di Cassazione, 18 October 1991 No. 11045 441

In order to recognize foreign divorce judgments, the concept of Italian public policy set forth by Art. 797(7) of the Civil Procedure Code must be interpreted according to the principle of «manifest incompatibility» as per Art. 10 of the Hague Convention of 1 June 1970.

A foreign divorce judgment by mutual consent can be enforced in Italy as a procedural rule conferring exclusive role to the couple's will is not contrary to Italian public policy.

34. Council of State (4th Session), 29 October 1991 No. 864 176

Public Administration is bound not to apply internal rules, even if issued later, which are contrary with the provision of an EEC Directive which is so clear and precise as to enjoy direct applicability.

35. Corte di Cassazione, 5 November 1991 No. 11788 442

The Sovereign Military Order of Malta (which has its own independent legal system recognized by Italy and by other States) enjoys a particular personality for the fulfilment of its institutional aims, including tax immunity for all the relationships and means of the Order which follow its original aims.

36. Trieste Court of Appeal, 9 November 1991 443

According to the Hague Convention of 15 April 1958 on the Recognition of Judgments concerning Maintenance, an Austrian judgment may be recognized in Italy only in the part regarding maintenance obligations, with no effect on the status of the natural child.

37. Constitutional Court, 22 November 1991 No. 420 444

Although a comparison in the light of Art. 3 of the Constitution between the systems of liability, established by the Geneva Convention on the Carriage of Goods dated 19 May 1956 (Art. 29) and by Law 22 August 1985 No. 450 on the civil liability of the road carrier, Art. 1 first paragraph of such Law is constitutionally illegitimate in so far as it does not exclude from the limitation of liability of the carrier for damages following the loss or damage of the transported goods the case of wilful misconduct or gross negligence.

38. Corte di Cassazione (S.U.), 28 November 1991 No. 12771 97

Italian judges are not competent with reference to a labour dispute between an Italian citizen and a foreign State concerning the legitimacy of dismissal – as the relative inquiry regards directly the sovereignty of the foreign State as for the organization of embassy and offices services – and the following reinstatement in the former post, compensation for damages and the payment of the remuneration until the reinstatement as well.

Italian judges are competent as regards further claims, as warning payment and dismissal wage claims, which do not concern the sovereignty of the foreign State.

39. Corte di Cassazione, 29 November 1991 No. 12818 747

The aim of EC Council Directive of 16 June 1975 No. 362 and of Law 22 May 1978 No. 217, which has enforced such directive in Italy, is to equilize nominally be the doctors' and specialists' diplomas issued by EEC Member States in order to allow the exercise of the right to settle and make the recognition of these qualifications in each Member State automatic.

Any equivalence or affinity between different qualifications of Italian specialization lies outside the Directive No. 362/1975 and the Law No. 217/1978.

40. Corte di Cassazione (S.U.), 10 December 1991 No. 13300 446

As per Arts. 2 and 5(1) of the Brussels Convention of 27 September 1968, Italian judges are not competent with reference to the claim for damages submitted by the client against the defending counsel domiciled abroad, if the services were or had to be fulfilled abroad.

41. Turin Tribunal, 16 December 1991 102

Lacking international agreements on the enforcement in Italy of Canadian judgments, the foreign company, acting as liquidator of the winding up of a Canadian company, in order to proceed in Italy must obtain the enforcement of the judgment of the Canadian judge who declared such winding up according to Art. 796 et seq. of the Civil Procedure Code.

As per Art. 2221 of the Civil Code, interpreted according to Art. 2509 of the Civil Code, the limited company founded in Italy but having its seat abroad, which runs a firm declared insolvent, is subject to Italian Law. Therefore, as per Art. 27 of the Preliminary Provisions to the Civil Code and Art. 9, second paragraph of the Law on Bankruptcy, it is subject to Italian jurisdiction.

42. Milan Court of Appeal, 17 December 1991 No. 2067 447

According to Art. 797(7) of the Civil Procedure Code, a foreign divorce judgment must be enforced in Italy if the foreign judge ascertained the dissolution of the marriage and that a new cohabitation is no longer possible.

43. Milan Court of Appeal, 17 December 1991 No. 2069 109

In case of Iranian spouses, their national Law applies to the application for divorce submitted by the husband against his wife.

Art. 1133 of the Iranian Civil Code is contrary to public policy as it allows the husband to divorce according to his will and gives no possibilities to the wife to affect such will, thus providing for a real unilateral repudiation.

In considering foreign divorce provision to be applied through Arts. 17 and 18 of the Preliminary Provisions to the Civil Code in relation to public policy – construed as the most general principles common to the legal sistems of the area to which Italy belongs – the judge must limit the exam to the provisions which apply to the case at stake.

44. Constitutional Court, 27 December 1991 No. 492 449

The question of constitutional legitimacy of Art. 7, fourth paragraph of Law 28 February 1990 No. 39, with reference to Art. 24, second paragraph of the Constitution is not admissible, as the judge who must examine the application for the authorization, submitted by the prefect for the expulsion of a foreigner, lacks the capacity to raise such question.

45. Corte di Cassazione (S.U.), 30 December 1991 No. 14023 692

The decision concerning jurisdiction, contained in the judgment of admissibility of the action for the judicial declaration of fatherhood or motherhood as per Art. 274 of the Civil Code, does not exclude the proposition of the same question in the proceedings on the substance according to Art. 269 of the Civil Code; it is also possible to refer them to any change occurred in the situation of fact at the time of the two claims as per Art. 5 of the Civil Procedure Code.

According to Art. 4(4) of the Civil Procedure Code, Italian judges are competent to hear a case concerning the ascertainment of paternity submitted against a Brazilian citizen as Art. 88 of the Brazilian Civil Procedure Code

must be interpreted as conferring to the judges of that State jurisdiction for any claim arising out of a fact occurred in Brazil.

The issue of constitutional legitimacy of Art. 4(4) of the Civil Procedure Code with reference to Art. 25 of the Constitution based on the submission that reciprocity may extend Italian jurisdiction also to disputes for which they cannot be considered natural judges, is unfounded.

46. *Campania Regional Administrative Tribunal (Salerno Session), order 8 January 1992* 748

It must be suspended the enforcement of a ministerial decree denying the authorization to the enforcement on the assets of the Sovereign Military Order of Malta, if it relates to credits deriving from wages for dependent work, thus being a value of life which enjoys constitutional protection (Arts. 35, second paragraph and 36, first paragraph of the Constitution) as well as the relationships of convenience between Italy and international organizations.

47. *Corte di Cassazione (S.U.), 10 January 1992 No. 186* 374

In order to determine the competent judge in contractual matters, Art. 5(1) of the Brussels Convention of 27 September 1968 uses the criterion of the place of execution of the obligations in question, irrespective of their fulfilment.

As per Art. 25 of the Preliminary Provisions to the Civil Code, if it is not expressly mentioned in the contract, the place of fulfilment of the disputed contractual obligations arisen between foreigners must be determined according to the law of the place where the contract was stipulated.

The Italian judge is not competent as for the declaration of cancellation of an agency stipulated in Italy between parties of different nationality when it is clear that the agent was to fulfil abroad the fundamental obligation – characterizing the foregoing contract – stipulating business transactions. In this case it is irrelevant that such place is not the same of the carrying out of the dealings or of the fulfilment of the duty of obligation of information towards the principal.

48. *Corte di Cassazione (S.U.), 10 January 1992 No. 187* 990

In case of contrast between a national rule and EEC law, the issue concerning the power not to apply the former concerns the substance of the case and not the external limits of the power of the judge, and thus it does not regard jurisdiction.

49. *Corte di Cassazione, 15 January 1992 No. 405* 378

The reference provided by Art. III of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards to the rules of procedure of the State where the enforcement is sought refers in a strict sense to the rules and not to the conditions for enforcement, which are set by the Convention.

As Art. II(3) of the New York Convention governs the effects of arbitration clauses and agreements on internal procedures stating the

supremacy of the arbitral proceedings, Art. 797(6) of the Civil Procedure Code cannot apply whenever the Convention applies; thus the enforcing judge cannot take into consideration a national proceedings introduced before the foreign award became *res judicata* or it ceased to be subject to appeal.

As the formal validity of the arbitration clause is regulated only by the 1958 New York Convention, Art. 1341 of the Civil Code cannot apply.

As per Art. V(1) litt. *a* of the Convention, the defendant has to prove the lack of representation of the natural person who subscribed the arbitration clause.

50. Milan Court of Appeal, 21 January 1992 447

According to Art. 797(7) of the Civil Procedure Code, a foreign divorce judgment must be enforced in Italy if the foreign judge ascertained the dissolution of the marriage and that a new cohabitation is no longer possible.

51. Milan Court of Appeal, 28 January 1992 447

According to Art. 797(7) of the Civil Procedure Code, a foreign divorce judgment must be enforced in Italy if the foreign judge ascertained the dissolution of the marriage and that a new cohabitation is no longer possible.

52. Milan Court of Appeal, order 5 February 1992 749

According to Art. 33, second paragraph of Law 10 October 1990 No. 297 («Norms on the protection of competition and the market»), the judge can authorize provisional measures in order to guarantee temporarily the effects of the judgment on the substance (Art. 700 of the Civil Procedure Code); such rule does not infringe Art. 14, fifth paragraph of the International Covenant on Civil and Political Rights of 1966, nor Art. 6 of the European Convention on Human Rights.

53. Milan Court of Appeal, 7 February 1992 114

The phase of ascertainment of the jurisdiction of the foreign judge, while applying Art. 797(1) of the Civil Procedure Code – which does not differ on this point from Art. 4(2) of the Civil Procedure Code – consists in the evaluation of the fact on which the claim was based.

The complete lack or insufficiency of statement of reasons in a foreign judgment is not in contrast with public policy as per Art. 797(7) of the Civil Procedure Code, because a mere list of the reasons on which the judge's convincement is founded does not deny the existence of the statement and the *ratio* of the decision.

Since the right to the review as to substance as per Art. 798 of the Civil Procedure Code is connected to default as it is provided for by Italian law, it cannot be accorded when the defendant in a United States proceedings was declared «in default» after his appearance, because of non-fulfilments of procedural requirements set by the foreign judge.

54. Milan Court of Appeal, 21 February 1992 119

According to Art. 13 first paragraph of the Geneva Convention of 19 May 1956 (CMR), in case of loss of goods the consignee is entitled to enforce

in his own name against the carrier any right arising from the contract of carriage.

As per Art. 4 of the Geneva Convention of 19 May 1956, the absence, the irregularity or the loss of the consignment note do not affect the existence nor the validity of the contract of carriage, which remains subject to the provision of the said Convention.

55. Corte di Cassazione, 22 February 1992 No. 2183 387

According to Art. 796 of the Civil Procedure Code, the enforcement of a foreign arbitral award ordering a company to pay a certain amount, can either be sought before the Court of Appeal of the place where the company has its legal seat or of the place where there is its real seat, that is to say the place where the company carries out its managerial and administrative functions.

As per Art. V of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, the party against whom the enforcement is sought has to prove the invalidity of the nomination of the arbitrators and to demonstrate that the means of communication used in order to serve the deeds of the proceedings did not allow to know it in time; the relative investigations are questions of fact and cannot be appealed in cassation as for illegitimacy when properly motivated.

56. Trieste Court of Appeal, 26 February 1992 No. 87/92 751

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 in relation to the request for payment of the price of the goods proposed by an Italian seller against a German buyer.

According to Art. 7 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters, as well as to Art. 11, second paragraph of the Hague Convention of 1 March 1954, the fact that the parties were present at the proceedings for the taking of evidence is not an absolute and mandatory requirement in order to use such evidence.

57. Trieste Court of Appeal, 26 February 1992 No. 91/92 950

The acquisition of Italian nationality is a perfect right for which action can be brought before ordinary judges when it derives directly and automatically from legal situations.

The administrative courts are competent to hear a dispute brought by a foreigner, spouse of an Italian citizen concerning the denyal of Italian nationality by the Ministry of the Interior because of legal separation, as per Art. 1 of Law 21 April 1983 No. 123.

58. Corte di Cassazione, 10 March 1992 No. 2875 752

As regards an agreement concerning an assignment of the right to utilize rights for telecast purposes (to which Art. 25 of the Preliminary Provisions to the Civil Code applies) the authorization of the Italian Exchange Office (Ufficio Italiano Cambi), which is mandatory under Ministerial Decree of 12

March 1981 for the payment abroad to non-residents, affects the fulfilment of the obligation, that is to say the transfer of the currency abroad, and acts as condicio iuris of the legal effect of the contracts.

59. Milan Tribunal, 16 March 1992 700

The rights in property arising out of a matrimonial relationship between two foreign spouses of different nationality cannot be ruled by Italian law.

According to Art. 184 of the Civil Code it cannot be declared the annulment of a mortgage, granted by the foreign spouse to a third party on assets in Italy, without the consent of the other foreign spouse.

60. Monza Tribunal, 16 March 1992 125

The recognition and the enforcement of the foreign judgment according to Arts. 31 et seq. of the Brussels Convention of 27 September 1968, are merely declaratory, unlike the enforcement as per Art. 797 of the Civil Procedure Code, which has the caracter of a constitutive ascertainment.

The fact that the declaration of enforcement given according to the 1968 Brussels Convention does not mention the part of the foreign judgment condemning to the payment of the sums and of the interests does not imply a partial enforcement when the reference to a part only of the foreign judgment was made in order to identify the decision to be enforced.

The condemnation to pay the legal interests set in the foreign judgment enforceable in Italy must be considered as referring to the rate applicable in the foreign State.

The condemnation to the payment of a sum in foreign currency or of the equivalent in Italian liras at the average official rate of exchange of the day in which the payment is made is legitimate, as the defaulting debtor, in the case of an unexpected devaluation of the Italian lira with respect to foreign currency, must pay the difference of change between the date of maturity and the date of effective payment.

61. Corte di Cassazione (S.U.), 19 March 1992 No. 3468 392

Italian judges are not competent with reference to a dispute concerning a lease of a immovable property located inside a military base of a foreign State, if the manager of a business located in such building claims the arbitrarity of his eviction and asks for being reinstated in this enjoyment: as regards enforcement proceedings the principle of jurisdictional immunity *par in parem non habet iurisdictionem* involving the exercise of sovereignty by the foreign State hinders such procedures.

62. Corte di Cassazione, 2 April 1992 No. 4043 991

The consolidated law on compulsory insurance for industrial accidents and occupational diseases (as per the Presidential Decree 30 June 1965 No. 1124) applies to a labour relationship between an Italian firm and an Italian employee, working in a non-EEC State.

63. Corte di Cassazione, 6 April 1992 No. 4211 956

In order to enforce a Chilean measure authorizing the expatriation of a minor to be adopted in Italy, as well as pronouncing a pre-adoptive foster

placement, as per Art. 32 of Law 4 May 1983 No. 184 on Adoption, the judge must ascertain that it is in conformity with Chilean law, irrespective of Italian rules on pre-adoptive foster placement.

A foreign measure of pre-adoptive foster placement or of adoption which implies the consent of the minor's parents (even if given towards a specific couple) does not infringe Italian public policy, as per Art. 32 litt. *c* of the Law on Adoption, if the real situation has been thoroughly examined in order to exclude the hypothesis of a concealed «trade» of such minor.

64. Corte di Cassazione (S.U.), 13 April 1992 No. 4479 703

In order to ascertain Italian jurisdiction with reference to an application for the judicial declaration of natural paternity submitted against a French citizen, Art. 4(4) of the Civil Procedure Code cannot apply when the party presents only the text of Art. 14 of the French Civil Code which concerns obligations as the application of the principle *iura novi curia* is excluded.

According to Art. 4(1) of the Civil Procedure Code, Italian judges are competent if the foreign defendant is habitually resident in Italy; such residence may be ascertained by the plenary session of the Corte di Cassazione in their judgment on jurisdiction.

65. Corte di Cassazione (S.U.), 11 May 1992 No. 5591 131

After the company insuring the risks regarding a carriage of goods by sea recognizes to have a definite compensation obligation and the damaged subject, on his part, accepts the sum offered as compensation, the original value debt turns into a currency debt.

According to Art. 4(2) of the Civil Procedure Code, the Italian judge is competent in relation to a case concerning a currency debt, when the creditor of the sum due for compensation has his domicile in Italy at the time when the obligation for payment is due.

66. Council of State (2nd Session), advisory opinion, 13 May 1992 No. 598 991

As the direct effect of the EC Court of Justice' s judgments implies the obligation of immediate enforcement, a legislative intervention is necessary in order to estblish a complete new set of rules on dock-work, as the enforcement of the EEC judgment on such labour relationships through acts of administration is not sufficient.

67. Corte di Cassazione (S.U.), 18 May 1992 No. 5937 397

Foreign States and foreign public bodies are exempt from jurisdiction if they act as subjects of international law or as sovereigns, but not when they find themselves in the same situation as Italian nationals, and apply instruments of private law of the national legal system, as in the case of stipulation of a lease for an immovable property, even if it is to become the seat of the embassy of the foreign State.

68. Corte di Cassazione (S.U.), 18 May 1992 No. 5941 399

Italian judges are competent with reference to a claim put forward by an employee against the Embassy of a foreign State in Italy, when the labour

relationship concern subordinate and accessory tasks. It is irrelevant that the employee too is a foreigner, as the right to bring an action is granted to everybody, not only to Italians, as per Art. 24 first paragraph of the Constitution.

69. *Corte di Cassazione (S.U.), 18 May 1992 No. 5942* 400

According to the Vienna Conventions of 23 May 1969 and of 24 March 1986, for the interpretation of international treaties in different languages the interpreter must try to reconcile the two texts, taking into account, besides the context, any subsequent practice followed by the parties in the application of the treaty.

As per section 16 of Art. VIII of FAO Headquarters Agreement, concluded in Washington on 31 October 1950, Italian judges are not competent as regards labour disputes between the Organization and its employees.

The FAO Headquarters Agreement, completed by section 13 of Art. IX of the Convention on Privileges and Immunities of the Specialized Agencies (established on 21 November 1947 by the General Assembly of the United Nations) guarantees the right of the employee of the Organization to bring an action against it in defence of his or her own rights.

70. *Corte di Cassazione (S.U.), 2 June 1992 No. 6665* 134

The fact that the plantiff applies for the fulfilment of the compensation obligation, which substitutes the original obligation set forth in the contract, does not affect the determination of the judge competent to hear such case. As per Art. 5(1) of the Brussels Convention of 27 September 1968, such case falls within the jurisdiction of the judge of the place where the unfulfilled contractual obligation had to be carried out.

With reference to a dispute arisen for the redelivery of goods carried by sea, the Italian judge is not competent as per Art. 5 (1) of the 1968 Brussels Convention when the harbour of destination is in a foreign State.

71. *Corte di Cassazione (S.U.), 3 June 1992 No. 6787* 136

The agreement on jurisdiction concerning disputes arising from a carriage of goods by sea is not autonomous with respect to the other contract provisions and thus it falls, as for its form, under the law applicable to the form of the latter.

In case of a contractual dispute between foreigners to which the Brussels Convention of 27 September 1968 does not apply, the Italian judge must apply Art. 2 of the Civil Procedure Code in order to ascertain the formal validity of an agreement on jurisdiction contained in the bill of lading issued with reference to a carriage by sea.

In case of concurrence of the connecting factors provided for by Art. 26 of the Preliminary Provisions to the Civil Code, the factor which ensures the formal validity of the act must be preferred.

When the *lex substantiae* to be applied through Art. 26 of the Preliminary Provisions to the Civil Code, unlike Italian Law, to be applied as *lex loci actus*, does not request the specific approval of the agreement on jurisdiction, the requirement of the written form as per Art. 2 of the Civil Procedure Code can be considered fulfilled *per relationem* if the deed (the

application for embarkation) subscribed by the shipper of the goods, mentions the bill of lading which contains the said agreement.

72. *Milan Court of Appeal, 5 June 1992* 707

According to Art. 19 of the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Judgments concerning Maintenance Obligations, a public body (in this case the Ministry of the Interior) may seek recognition or claim enforcement of a decision rendered between a maintenance creditor and a maintenance debtor to the extent of benefits provided for the creditor if it is entitled *ipso iure* under the law to which it is subject to seek recognition or claim enforcement of the decision in place of the creditor.

According to Art. 4 [*rectius*: 5] of the 1973 Hague Convention, an Italian judgment of annulment of a civil marriage between an Italian and a Swedish spouse is not incompatible with a Swedish judgment establishing the maintenance obligation of the father towards his children.

A Swedish judgment in respect of a maintenance obligation may be enforced in Italy if the requirements and the conditions for such enforcement as per Art. 2 of the Hague Convention of 15 April 1958 are fulfilled.

73. *Milan Court of Appeal, 9 June 1992* 711

According to Art. 3 of the Convention between Italy and Germany of 9 March 1936 on the Recognition and Enforcement of Judgments in Civil and Commercial Matters jurisdiction of the judges of the State where a divorce judgment has been rendered is founded if the parties were nationals of the said State or if they were domiciled within its territory; thus a German divorce judgment given between Italian spouses, one of whom was resident in Italy, cannot be enforced in Italy.

74. *Genoa Tribunal, 29 June 1992* 142

The jurisdiction criterion as per Art. 5(1) of the Brussels Convention of 27 September 1968 must be determined with reference to the obligation corresponding to the right on which the action was based and according to the law applicable to the relationship as per the rules of private international law of *lex fori*.

According to the 1968 Brussels Convention, Italian judges are competent with reference to a dispute on the fulfilment of a contract submitted by an Italian plantiff against a defendant domiciled abroad when the obligation in question must be fulfilled in Italy according to the law applicable to it as per Art. 25 of the Preliminary Provisions to the Civil Code.

Pursuant to Art. 5 of the Civil Procedure Code, the jurisdiction of the Italian judge is to be determined according to the content of the judicial application, with the result that what the defendant has stated as basis of his objection can be considered as a supplementary source for determining jurisdiction but it cannot exclude it if it is already ascertained according to the *petitum*.

The place of conclusion of the contract, as a connecting factor provided for by Art. 25 of the Preliminary Provisions to the Civil Code, is to be

determined according to the material law of the same legal system to which the rule of private international law belongs.

75. *Corte di Cassazione (S.U.), 1 July 1992 No. 8081* 406

Art. 4 of the Civil Procedure Code, which establishes the limits of Italian jurisdiction against foreigner defendants, implies that the Italian nationality of the defendant is a general jurisdiction criterion irrespective of the object of the dispute at stake.

Art. 17 of the Swiss-Italian Consular Convention concluded in Bern of 22 July 1868 and Art. 4 of the Protocol of Enforcement of 1 May 1869 prevail on Art. 4(2) of the Civil Procedure Code and they confer to the judge of the last domicile of the deceased in his country of origin the competence to settle all the disputes concerning the succession of an Italian or of a Swiss, deceased in any of the Contracting Parties, and arisen between the heirs, the legatees or other persons concerned in the succession.

76. *Verona Tribunal, 20 July 1992* 144

The jurisdiction in a contractual dispute between a company having its seat in Italy and a company having its seat in France must be determined as per Art. 5(1) of the Brussels Convention of 27 September 1968.

The place for the fulfilment of the obligation in question, according to Art. 5 (1) of the 1968 Brussels Convention, must be determined according to the Hague Convention of 1 July 1964, which applies, by virtue of the reservation contained in its Art. IV, whenever - according to the Hague Convention of 15 June 1955 - the law of a State party to the 1964 Convention applies.

Since, pursuant to Art. 59 of the 1964 Hague Convention, the buyer must pay the price in the place where the business domicile of the seller is located, Italian judges have jurisdiction according to Art. 5(1) of the 1968 Brussels Convention when such place is located in Italy.

77. *Padoa Tribunal, 24 July 1992* 411

As per Art.101 of Presidential Decree 14 February 1964 No. 237 on the Call-up and Compulsory Military Service, foreigners who become Italians are exempted from military service (except for the obligation to answer their possible contingent call-ups), if in order to do such service they must start it after being thirty years old.

Foreigners who become Italians before being thirty years old are exempted from the military service as per Art. 3(3) of Law 13 June 1912 No. 555, but only if they would start such service after the foregoing date.

78. *Corte di Cassazione (S.U.), 4 August 1992 No. 9236* 714

Pursuant to Art. 24 of the Brussels Convention of 27 September 1968 application may be made to the courts of a Contracting State for such provisional and protective measures as may be available under the law of that State (as in this case, the seizure as per the Italian Civil Procedure Code) even if, under the Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

79. Corte di Cassazione (S.U.), 7 August 1992 No. 9380 716

Italian jurisdiction with reference to procedures of preliminary investigation is to be determined only considering the second hypothesis of Art. 4(3) of the Civil Procedure Code and concerns only the applications for measures related to relationships which themselves fall within Italian jurisdiction.

Lacking a different rule in the law or an international convention, the existence of a valid arbitral clause as for the substance of a dispute implies the lack of jurisdiction even with reference to the procedures of preliminary investigation concerning it, as these are judicial proceedings strictly connected with the substance of the case.

80. Corte di Cassazione (S.U.), 7 August 1992 No. 9381 719

Even if there is a broad and valide arbitral clause for foreign arbitration according to the New York Convention of 10 June 1958, pursuant to Art. 4(3) of the Civil Procedure Code, Italian judges are competent with reference to the action for the recovery of possession of the goods in Italy, which was the object of the agreement containing the said arbitral clause: in fact the possessory actions do not imply the ascertainment in order to determine who is entitled to such right, but they aim to the protection of the relationship between the subject and the goods, leaving aside the right to such possession.

81. Venice Tribunal, 7 August 1992 148

The judgment No. 87 of 16 April 1975 of the Constitutional Court declared the constitutional illegitimacy of Art. 10, third paragraph of Law 13 June 1912 No. 555 on Nationality, according to which an Italian woman who acquired the nationality of her husband by marriage lost her Italian nationality.

Judgment 9 February 1983 No. 30 declared the constitutional illegitimacy of Art. 1(1) of the Law on Nationality, in so far as it did not provide for that also the child of an Italian mother was Italian, irrespective of the nationality of the father.

By virtue of the retroactive effect of constitutional judgments, the child born in the period after the Constitution came into force from a woman who lost her Italian nationality through a marriage with a foreigner celebrated after the entry into force of the Constitution must be declared Italian citizen.

The child with double nationality, already of age at the time of the entry into force of Law No. 123 of 21 April 1983, does not have to opt as provided for by Art. 5, second paragraph of the said Law.

82. Corte di Cassazione, 13 August 1992 No. 9556 755

Art. 95 of the Law 15 June 1959 No. 393, which applies the Geneva Convention on road traffic of 19 September 1949, allows the traffic in Italy of vehicles registered in a foreign State for a maximum period of one year also for Italians resident in Italy and not only for Italians resident abroad. This applies also in the case of final import of the vehicle, provided that all customs formalities have been fulfilled.

83. Corte di Cassazione, 5 October 1992 No. 10923 962

Art. 76 of Law 4 May 1983 No. 184 on Adoption, which provides that adoption procedures which are still in course at the time of the entry into force of the law are subject to previous provisions, refers to the whole system established by such provisions.

A foreign judgment pronouncing the adoption by a single is not contrary to Italian public policy and can be enforced in Italy as per Art. 797(7) of the Civil Procedure Code, as such hypothesis was already envisaged by Law 5 June 1967 No. 431 and it appears also in Law 4 May 1983 No. 184.

84. Veneto Regional Administrative Tribunal (first session), 9 October 1992 722

As regards the free movement of workers the principle of equality of treatment, as per Art. 48, second paragraph of the EEC Treaty prohibits not only manifest discriminations, but also any concealed form of discrimination.

A foreign citizen, being a national of a Member State of the EEC, must be admitted to a competition for a place as University researcher, as such job does not imply the exercise of public powers, nor it implies responsibilities for the defence of the general interests of the State, and thus it lies outside the exception provided for by Art. 48, fourth paragraph of the said Treaty.

85. Corte di Cassazione, 22 October 1992 No. 11544 965

Art. 32 of Law 4 May 1983 No. 184 on Adoption transfers the competence to enforce foreign decisions of adoption or of pre-adoptive foster placement or of other measures concerning guardianship or institutions for minors' protection.

According to Art. 32 of Law No. 184 of 1983, it is necessary that the child to be adopted is a foreigner, that the foreign measure is issued towards Italian nationals and that it aims to establishing an adoptive family relationship.

As per Art. 796 of the Civil Procedure Code, it is up to the Court of Appeal to enforce a foreign measure which recognizes to the foreign mother the right to exercise the parental powers on her Italian minor child and condemns the Italian father to give back the minor to his spouse.

86. Corte di Cassazione (S.U.), 29 October 1992 No. 11781 969

The International Training Centre of the ILO of Turin, instituted through the Agreement of 24 October 1964 between Italy and the International Labour Organization (ILO), does not enjoy any immunity from Italian jurisdiction, as nothing has been established on this subject in the said agreement or in the law authorising ratification; nor can the immunity recognized by Italy to the Organization be extended to the Centre following its adhesion - on 30 August 1985 applying Law 24 July 1951 No. 1740 - to the Convention on Privilegies and Immunities of the U.N. adopted by the General Assembly on 21 November 1947, as such recognition regards only the foregoing Organization, while the International Centre, although linked to it, has autonomous legal personality.

87. Corte di Cassazione, 6 November 1992 No. 12019 975

According to Art. 2(2) litt. *b* of the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, a Swiss divorce

judgment can be enforced in Italy if the party who applied for divorce had been habitually resident in Switzerland for at least one year before the application.

The reservation, made by Switzerland as per Art. 24 of the 1970 Convention, does not affect the recognition in Italy of a Swiss judgment given before the coming into force of such Convention in Italy.

88. *Corte di Cassazione, 6 November 1992 No. 12032* 994

Art. 28 of Presidential Decree of 11 July 1980 No. 382 which provides for that a contract for the engagement of lecturers of foreign language at Universities should last only one year is not in contrast with Art. 48, second paragraph of the EEC Treaty concerning free movement of workers.

There is no obligation to ask for the preliminary interpretation of the EC Court of Justice, pursuant to Art. 177, third paragraph of the EEC Treaty, if the Community provision has already been construed by the Court of Justice.

89. *Corte di Cassazione, 10 November 1992 No. 12093* 725

As the New York Convention of 10 June 1958 on the Recognition and Enforcement of the Arbitral Awards rules thoroughly the enforcement proceedings and thus replaces completely Arts. 797 and 798 of the Civil Procedure Code, the judge requested of the enforcement of an arbitral award must not ascertain *ex officio* if the arbitral award is final; rather it is up to the defendant to raise an objection and to prove that it is not final.

90. *Corte di Cassazione, 16 November 1992 No. 12268* 995

Pursuant to Art. II of the New York Convention of 10 June 1958, the arbitral clause for foreign arbitration does not need a specific written approval, as per Art. 1341, second paragraph of the Civil Code, but it is sufficient that it is contained in a deed subscribed by the parties or in an exchange of letters or telegrams.

Art. 798 of the Civil Procedure Code, which provides for the review as to substance of the case in the hypothesis of default of the defendant in the proceedings abroad, cannot apply in case of enforcement of foreign arbitral awards.

91. *Corte di Cassazione (S.U.), 20 November 1992 No. 12385* 995

For the validity of the arbitral clause for foreign arbitration, as per Art. II of the New York Convention of 10 June 1958, it is not necessary that the parties have specified the arbitral body and the applicable procedural rules. It is sufficient that the will to remit the hypothetical disputes to these arbitrators can be inferred from the written clause.

92. *Corte di Cassazione (S.U.), 20 November 1992 No. 12388* 978

Pursuant to Art. 4(2) of the Civil Procedure Code, Italian judges are not competent with reference to a dispute between a Swiss bank and an Italian company concerning the payment abroad of a cheque in favour of a person

other than the payee, as such obligation has not arisen nor is to be fulfilled in Italy.

According to Art. 5(3) of the Brussels Convention of 27 September 1968, Italian judges are competent if the Italian company, payee of the cheque, asserts its claim to the drawee bank, having its seat in the United Kingdom, as the loss occurred in Italy.

Once established that the Italian judges are competent in this case, they can also hear other claims connected with those pending before them, according to Art. 4(3) of the Civil Procedure Code.

As per its Art. 54, the Lugano Convention of 16 September 1988 applies only to legal actions proposed after its coming into force.

93. Milan Court of Appeal, 23 November 1992 731

As per Art. 25 of the Preliminary Provisions to the Civil Code the memorandum of agreement concluded in the United States between the representatives of Italian company and the representatives of a Canadian company, being the parties of different nationality, is subject to the law of the place where the memorandum has been entered into; it cannot be evaluated only according to criteria and concepts of the *lex fori*.

94. Genoa Tribunal, 9 December 1992 413

According to Art. 4(2) of the Civil Procedure Code, Italian judges are competent with reference to a claim against a foreigner defendant if the application regards contracts from which obligations derive which, even if not arisen in Italy, must, even partially, be fulfilled within its territory, irrespective of the fact that the obligation in question is among those which were to be fulfilled in Italy.

The reference made by Art. 4(2) of the Civil Procedure Code to the obligations to be fulfilled in Italy concerns both the case in which the fulfilment of the obligation is sought and the case in which the declaration of non-existence or cancellation of such obligation is requested.

Foreign States are exempt from jurisdiction for sovereign activities, carried out as subjects of international law or of their own legal system, as States cannot produce effects legally relevant within any other legal system.

On the contrary, foreign States are not exempt from jurisdiction for private law activities carried out within the legal system of other States on an equal plane as the subjects of such system, irrespective that these private law activities aim to serve the public interest of the foreign State.

According to Art. II of the New York Convention of 10 June 1958, and owing to Arts. 806 of the Civil Procedure Code and 1966 of the Civil Code an arbitral clause is not valid, as it concerns a dispute that is not capable of settlement by arbitration, when such dispute regards undisposable rights, provided that the contract containing the said clause disposes of such rights and that the arbitral award on future disputes arising from that contract will imply the transfer of the undisposable right.

Pursuant to Art. 4(3) of the Civil Procedure Code the connection, relevant for the jurisdiction of the Italian judge with reference to a foreign defendant, has the same nature and extension as the connection that the Italian legal system envisages in order to modify competence as per Arts. 31-36 of the Civil Procedure Code.

Art. 1(2) of Decree Law 23 August 1990 No. 247, confirmed with Law

of 19 October 1990 No. 298, which enforced the embargo adopted against Iraq by the U.N. Security Council, preventing Italians from transferring funds to Iraqi companies or to Iraqi nationals, as far as suretyships and guarantees in favour of an Iraqi subject are concerned, implies that the request for their enforcement cannot be granted; it also applies to the indirect transfer of funds which would be carried out by depositing such funds on the current account of an Iraqi subject in an Italian bank.

It can be pronounced in Italy, altough subject to a condition, a judgment which – through releasing a party to a contract from his obligations towards the surety – nonetheless condemns the same party to refound eventually what the surety would have to pay to the creditor according to a foreign judgment.

95. Corte di Cassazione (S.U.), 14 December 1992 No. 13196 983

As per Art. 5(1) of the Brussels Convention of 27 September 1968, Italian judge has jurisdiction to hear a dispute arisen from the unfulfilment of an agency contract entered into tacitly, if the exclusive rights granted by such contract – characterizing such contract and being the basis for the proposed action – had to be fulfilled in Italy.

96. Constitutional Court, 19 January 1993 No. 10 359

The rules introduced into the Italian legal system following the enforcement of the Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and of the International Covenant on Civil and Political Rights, signed in New York on 16 December 1966, have not been repealed by the new Criminal Procedure Code, as the said rules derive from the exercise of an atypical competence; thus they cannot be abrogated by ordinary laws.

According to international rules on fundamental human rights, Art. 143 of the Criminal Procedure Code, regarding the right of the defendant who does not know Italian to be assisted by an interpreter, must be considered as a general clause of wide application which extends also to any case in which there is no explicit duty of translation into the language known by the foreign defendant.

The question of constitutional legitimacy of Art. 555 and Art. 456 of the Criminal Procedure Code, in conjunction with Art. 458 of the Criminal Procedure Code, with reference to Arts. 3, 24 and 76 of the Constitution, in so far as they do not provide for that the decree of summons or rather the notice reporting the date within which the application for the summary proceedings has to be filed, must be translated into the language known by the foreign defendant who does not know Italian law, is unfounded, because of the wide interpretation to be given to Art. 143 of the Criminal Procedure Code.

97. Constitutional Court, order 26 February 1993 No. 75 367

Art.10 of the Constitution does not provide for the automatic enforcement of international treaties in the Italian legal system.

The question of constitutional legitimacy with reference to Art. 10, first paragraph of the Constitution, and to Art. 6, third paragraph litt. *d* of the European Convention on Human Rights of 4 November 1950, of Art. 244,

first paragraph of the Civil Procedure Code, which does not envisage the mention of the residence for witnesses, is manifestly unfounded.

98. *Genoa Court of Appeal, 28 April 1993* 734

The condition of reciprocity as per Art. 16 of the Preliminary Provisions to the Civil Code must be verified under two concurrent points of view; that is to say that the State of which the foreigner is a national recognizes in its legal system a right that corresponds, in a general and abstract way, to the right the foreign national wants to assert in Italy, and that such legal system does not discriminate Italian citizens in the assertion of that right in the foreign State.

The burden to prove the condition of reciprocity lies upon the foreign plaintiff, as it is a preliminary matter on substance concerning the ascertainment of circumstances of fact.

In order to prove the condition of reciprocity, foreigners are not bound to prove also that the law of the State of which they are national lacks a rule corresponding to the repealed Art. 55 of the Italian Civil Procedure Code; such obligation would penalize them and moreover, it is diametrically opposed to that kind of international retaliation to which the legislator aims, denying foreigners the defence that the State of which they are national would not grant to Italians.

99. *Milan Court of Appeal, 22 October 1993* 987

The decree of the Court of Appeal which has given enforcement to a foreign condemnation judgment, as per Art. 31 et seq. of the Brussels Convention of 27 September 1968 must be repealed, if such judgment has been cancelled in the State of origin as to the amount of the damage; nor it is admissible, according to Art. 38 of the Convention, the stay of the opposition proceedings in course in Italy, waiting for the definition of the proceedings abroad.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 2, 13, 14.

Brussels Convention of 1968: 5, 6, 8, 10, 12.

Competition: 4, 16.

Freedom to provide services: 19.

Non-contractual liability of the Community: 11.

Preliminary ruling on interpretation: 14, 15, 18.

Prohibition of discrimination: 1, 19.

Public works and supply contracts: 7.

Relationships between Community law and international law: 1.

Right of residence and establishment: 3, 9.

Treaties and general international rules: 17.

1. *Court of Justice, 25 July 1991 case C-221/89* 210

As Community law stands at present, it is for the Member States to determine, in accordance with the general rules of international law, the conditions which must be fulfilled in order for a vessel to be registered in their registers and granted the right to fly their flag, but in exercising that power, the Member States must comply with the rules of Community law.

It is contrary to the provisions of Community law and in particular to Article 52 of the EEC Treaty for a Member State, to stipulate as conditions for the registration of a fishing vessel in its national register: (a) that the legal owners and beneficial owners and the charterers, managers and operators of the vessel must be nationals of that Member State or companies incorporated in that Member State, and that, in the latter case, at least 75% of the shares in the company must be owned by nationals of that Member State or by companies fulfilling the same requirements and 75% of the directors of the company must be nationals of that Member State; and (b) that the said legal owners and beneficial owners, charterers, managers, operators, shareholders and directors, as the case may be, must be resident and domiciled in that Member State.

It is not contrary to Community law for a Member State to stipulate as a condition for the registration of a fishing vessel in its national register that the vessel in question must be managed and its operations directed and controlled from within that Member State.

The fact that the competent minister of a Member State has the power to dispense with the nationality requirement in respect of an individual in view of the length of time such individual has resided in that Member State and has been involved in the fishing industry of that Member State cannot justify, in regard to Community law, the rule under which registration of a fishing vessel is subject to a nationality requirement and a requirement as to residence and domicile.

The existence of the present system of national quotas does not affect the replies given to the second question.

2. *Court of Justice, 25 July 1991 case C-208/90* 213

Community law precludes the competent authorities of a Member State from relying, in proceedings brought against them by an individual before the national courts in order to protect rights directly conferred upon him by Article 4(1) of Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, on national procedural rules relating to time-limits for bringing proceedings so long as that Member State has not properly transported that directive into its domestic legal system.

3. *Court of Justice, 4 October 1991 case C-196/90* 215

Regulation No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and members of their families moving within the Community does not contain rules of

conflict concerning the legislation applicable to the relationship between employer and employee.

Article 14(2) of Regulation No. 1408/71, as in force in February 1980, must be interpreted as having the effect or rendering inoperative vis-a-vis the persons to which it refers or to those claiming under them (a) a clause in the applicable legislation of a Member State under which admission to the social security scheme provided for is made conditional upon the vessel on board which the worker is employed flying the flag of that Member State and (b) any clause in the legislation of that Member State providing that a contract of employment is to be void in so far as it prevents the rule of conflict laid down in that provision from producing its full effects.

4. *Court of Justice, 21 November 1991 case C-354/90* 217

The last sentence of Article 93(3) of the EEC Treaty must be interpreted as imposing an obligation on the authorities of the Member States, disregard of which affects the invalidity of the acts serving to implement the aid, and as meaning that the subsequent adoption by the Commission of a final decision declaring the measures to be compatible with the common market does not have the effect of legalizing the invalid acts retrospectively.

5. *Court of Justice, 10 March 1992 case C-214/89* 196

A clause conferring jurisdiction on the courts of a Contracting State to entertain disputes between a company limited by shares and its shareholders, inserted into the statutes of such company and adopted in accordance with the provisions of the applicable national law and of the statutes constitutes an agreement conferring jurisdiction within the meaning of Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments.

Irrespective of the manner of acquisition of the shares, the formal requirements laid down in Article 17 must be considered to be complied with in regard to any shareholder, where the clause conferring jurisdiction is contained in the statutes of the company and those statutes are lodged in a place to which the shareholder may have access or are entered in a public register.

The requirement that a dispute must arise in connection with a particular legal relationship within the meaning of Article 17 is satisfied if the clause conferring jurisdiction in the statutes of a company may be interpreted as referring to the disputes between the company and its shareholders as such.

It is for the national court to interpret the clause conferring jurisdiction invoked before it, in order to determine which disputes fall within its scope.

6. *Court of Justice, 26 March 1992 case C-261/90* 202

An action provided for by national law, such as an action under French law to set aside a transaction (actio pauliana), whereby a creditor seeks to obtain the revocation in regard to him of a transfer of rights in rem in immovable property by its debtor in a way which he regards as a fraud on his rights does not come with the scope of Articles 5(3), 16(5), and 24 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments.

7. *Court of Justice, 3 June 1992 case C-360/89* 218

By the enactment of Law No. 80/87 of 17 February 1987, which reserves a proportion of public works to sub-contractors whose registered offices are in the region where the works are to be carried out and benefits joint ventures and consortia in which local undertakings are involved, the Italian Republic has failed to fulfil its obligations under art. 59 of the EEC Treaty and Council Directive 71/305/EEC of 26 July 1971 concerning the co-ordination of procedures for the award of public works contracts.

8. *Court of Justice, 17 June 1992 case C-26/91* 451

Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments is to be interpreted as meaning that it does not apply to an action between the subsequent purchaser of a product and the manufacturer, who is not the seller, for defects in the product or its unsuitability for the use for which it is intended.

9. *Court of Justice, 7 July 1992 case C-369/90* 208

The provisions of Community law on the freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State regards him as a national of the non-member country.

10. *Court of Justice, 12 November 1992 case C-123/91* 758

Article 27(2) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments is to be interpreted as precluding a judgment given in default of appearance in one Contracting State by being recognized in another Contracting State, where the document instituting the proceedings has not been duly served on the defendant in default, even though he subsequently became aware of the judgment but did not avail himself of any of the legal remedies available under the procedural code of the State in which the judgment was delivered.

11. *Court of Justice, 2 December 1992 case C-370/89* 767

The word "institutions" used in the second paragraph of Article 215 of the EEC Treaty must not be understood as referring only to the institutions of the Community listed in Article 4(1) of the Treaty but as also covering, in respect of the system of non-contractual liability set up by the Treaty, Community institutions such as the EIB.

12. *Court of Justice, 19 January 1993 case C-89/91* 761

Article 13 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments is to be interpreted as meaning that a plaintiff who acts in the exercise of his profession and is therefore not himself the consumer who is a party to one of the contracts listed in the first paragraph of Article 13 cannot invoke the special rules on jurisdiction laid down in the Convention as regards consumer contracts.

13. *Court of Justice, 19 January 1993 case C-101/91* 768

The finding that a Member State has failed to fulfill its Community obligations implies firstly that the judicial and administrative authorities of that State are automatically prohibited from applying the incompatible national provisions, and secondly that they have an obligation to adopt all the measures necessary in order to implement Community law.

14. *Court of Justice, 21 January 1993 case C-188/91* 769

The Court of Justice has jurisdiction to give a preliminary ruling on the interpretation of the Arrangements adopted by the Joint Committee established by the Convention on a Common Transit Procedure concluded on 20 May 1987 between Austria, Finland, Iceland, Norway, Sweden, Switzerland and the European Economic Community.

Although the recommendations taken by the Joint Committee established by the Convention on a Common Transit Procedure could not confer rights on the parties which they could seek to enforce in the national courts, those courts are nonetheless bound to take account of them for the purpose of resolving disputes brought before them.

15. *Court of Justice, 26 January 1993 cases C-320/90, C-321/90, C-322/90* 765

The need to give practical interpretation of Community law pursuant to Article 177 of the EEC Treaty requires the national court to define the factual and legal framework in which the questions it puts arise or that at least to explain the factual assumption on which those questions are based, especially when the questions concern competition law as this field is characterized by particular factual and legal complexity.

16. *Court of Justice, 16 February 1993, cases C-159/91, C- 160/91* 1008

The concept of "undertaking", within the meaning of Articles 85 and 86 of the Treaty, does not cover the bodies entrusted with the management of social security schemes.

17. *Court of Justice, advisory opinion 19 March 1993 n. 2/91* 998

The conclusion of ILO Convention No. 170 concerning safety in the use of chemicals at work is a matter which falls within the joint competence of the Member States and the Community.

18. *Court of Justice, 30 March 1993 case C-24/92* 1008

The Directeur des Contributions of the Grand Duchy of Luxembourg is not a court or a tribunal within the meaning of Article 177 of the EEC Treaty.

19. *Court of Justice, 1 July 1993 case C-20/92* 1004

Articles 59 and 60 of the EEC Treaty must be interpreted as precluding a Member State from requiring the provision of security for costs by a professional established in another Member State who brings an action

before one of its courts, on the sole ground that the professional is a national of another Member State.

The right to equality of treatment upheld by Community law cannot be dependent on the existence of international agreements concluded by Member States.

The fact that the action on the substance concerns the law of succession does not justify an exception to the right to freedom to provide services upheld by Community law with respect to a professional responsible for the case.

FOREIGN COURTS CASES

Court of Appeal, 19 July 1991 771

Article 17 of the 1968 Brussels Convention, permitting that in international trade or commerce an agreement conferring exclusive jurisdiction can be in a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware, only relaxes the formerly strict requirements as to the form that agreement must take to be effective, but does not dispense with the need for agreement between the parties said to be bound by an exclusive jurisdiction clause.

For the purposes of Article 22 of the 1968 Brussels Convention, as it has been interpreted by the Court of Justice, the proceedings is definitively pending before an English court upon service of the writ on the defendant unless the judge, after issue of the writ but before its service, made an interlocutory order.

House of Lords, 12 December 1991 455

In the case of claims based on different obligations arising under the same contract, other than an employment contract, Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, as it has been interpreted by the Court of Justice, implies that it is the principal obligation which determines jurisdiction.

According to Article 5(1) of the 1968 Brussels Convention, English courts have jurisdiction upon a claim arosen between parties to a contract of charterparty and related to the obligation to nominate a vessel, binding one of the parties and to be performed in England, as the failure to nominate the vessel is the principal obligation among those at issue.

Court of Appeal, 22 January 1992 788

Section 12(6)(h) of the 1950 Arbitration Act must be interpreted as meaning that the power which it confers to the english judges to grant interim relief in aid to arbitrators is not available when the seat of arbitration is abroad, and is independent from the question of whether English law is the curial law.

Court of Appeal, 12 February 1992 797

Article 13 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in the part stating that the judicial

or administrative authority may refuse to order the return of the child to the person having the legal care when this person has acquiesced in the removal of the child, gives consideration to the knowing acceptance of the removal; this requirement can result either from inactivity in circumstances in which the party may reasonably be expected to act or from an active conduct, for acquiescence does not necessary mean a lasting behaviour of consent posterior to the abduction and is independent from following objections.

High Court of Justice, Queen's Bench Division, 27 February 1992 462

According to Section 16(1) of the Civil Jurisdiction and Judgments Act 1992, the provisions set out in Schedule 4 (which contains a modified version of Title II of the 1968 Brussels Convention) shall have effect for determining, for each part of the United Kingdom, whether the Courts of law of that part have jurisdiction in proceedings against subjects domiciled in that part.

According to Article 5(1) of the 1968 Brussels Convention the judge for the place of performance of the obligation in question have to decline jurisdiction where the contract from which the obligation arosen is void from the beginning and there is no dispute as to its nullity.

Art. 5(3) of the 1968 Brussels Convention concerning tort, delict and quasi-delict does not apply to a restitutionary claim not based on tort.

Art. 6(1) of the 1968 Brussels Convention does not apply when different claims are not to be heard and determined together and when there is no risk of irreconcilable judgments resulting from separate proceedings.

Court of Appeals, 9th Circuit, 30 March 1992 221

In case an order compelling discovery is in contrast with a foreign law which prohibits the addressee from complying with such order, the Court must balance the interests of the United States and of the foreign country in order to uphold the order and impose sanctions.

Court of Appeals, 2nd Circuit, 5 May 1992 223

Pursuant to 28 USC §1782, US Courts may permit discovery in Unites States for use in proceedings in a foreign country upon the application of a party irrespective of a letter rogatory issued by a foreign tribunal.

Court of Appeal, 15 May 1992 225

The English Court's power to comply with letters of request from a foreign court is to be found in the Evidence (Proceedings in Other Jurisdictions) Act 1975, which enforces the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters.

Any ambiguity in the Act should be resolved in favour of consistency between the Act and the Convention, the presumption being that the legislature was seeking to give effect to the principles of the Convention and would not be lightly legislate inconsistently with the United Kingdom's treaty obligations thereunder.

According to Section 9(4) of the 1975 Act based on Art. 11 lett. *a* of the Hague Convention the Court is not obliged to comply to a foreign letter of

request seeking the examinations on a former officer or servant in respect of information which has been in his possession by virtue of his position.

Supreme Court of the United States, 15 June 1992 1010

The fact that a Mexican citizen forcibly abducted in Mexico by U.S. governmental agents - a behaviour which is neither explicitly nor impliedly forbidden by the Extradition Treaty of 4 May 1978 between United States and Mexico - does not prohibit his trial in a U.S. court irrespective of Mexican protests.

House of Lords, 21 January 1993 1031

Section 1(1)(h) of the 1975 Arbitration Act, enforcing the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the United Kingdom has a different wording from art. II, par. 3 of the said Convention; therefore, the English judge is not compelled to interpret the national provision in consistency with the international agreement but has to stay the proceedings which was started in violation of the arbitral clause, without referring the matter to arbitration.

In a commercial arbitration the proper law, which regulates the substantive rights and duties of the parties, can exceptionally differ from the law governing the agreement to submit the dispute to arbitration and less exceptionally from the law governing the arbitration's procedure (curial law).

In the absence of an explicit choice of the curial law, the inference that the parties when contracting to arbitrate in a particular place consented to having the arbitral process governed by the law of that place is irresistible.

Section 12(6)(h) of the 1950 Arbitration Act conferring to English judges the power to grant interim injunctions concerning an issue submitted to arbitration, is not available when the place of arbitration is abroad, irrespective of the fact that the English law applies as curial law.

DOCUMENTS

Urgent Measures on Italian Civil Proceedings (Law 26 November 1990 No. 353) ... 231

Louisiana's New Provisions on Conflict of Laws (Act No. 923 of 1991) 236

Member States of the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States 238

Enforcement of EEC Directive 89/666 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (Decree Law 29 December 1992 No. 516) 241

United States' Law on Cuban Embargo and Canadian and British Blocking Statutes 477

Cuban Democracy Act 1992 (Washington, 23 October 1992) 477

Cuban Assets Control Regulations 484

Foreign Extra-Territorial Measures (United States) Order 1992 (Ottawa, 9 October 1992) 485

The Protection of Trading Interests (US Cuban Assets Control Regulations) Order 1992 (London, 14 October 1992) 486

Exchange of Messages on Immunity from Jurisdiction of the International Training Centre of the ILO and on Settlement of Private Law Disputes (Geneva-Rome, 13 April 1992 - 4 February 1993) 488

Extradition Convention between Italy and Argentina (Rome, 9 December 1987) ... 811

Convention between Italy and Brazil on the Judicial Assistance in Criminal Matters (Rome, 17 October 1989) 817

Resolution of the Institut de Droit International at the Milan session (29 August-7 September 1993) 822

Final Act of the XVII Session of the Hague Conference on Private International Law (The Hague, 29 May 1993) 1059

EEC Council Regulation on the Export of Cultural Goods (9 December 1992 No. 3911/92) 1070

EEC Council Directive on the return of cultural objects unlawfully removed from the territory of a Member State (15 March 1993 No. 93/7/CEE) 1074

Proposal of a Convention on Jurisdiction and the Enforcement of Judgments in Family and Succession Matters and Report annexed 1079

CURRENT EVENTS AND RECENT DEVELOPMENTS

The Draft Project of Reform of Italian Private International Law (L. FUMAGALLI) .. 494

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from August to December 1992) - New ratifications of the 1988 Lugano Convention - On the application of the 1970 Hague Convention on the Recognition of Divorces - Slovenia's declaration of succession as regards bilateral treaties between Italy and Yugoslavia - Member States of the MIGA Convention - Determination of 1993 programmed entries in Italy of non-EEC nationals - Provisions on the temporary stay of Somali nationals - On the suspension of the right and temporary permission to fly the italian flag - Revocation of derogations to the embargo against Iraq 244

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from January to April 1993) - Note on the 1965 Hague Convention on the Service of Documents Abroad - Note on the 1970 Hague Convention on the Taking of Evidence Abroad - Exchange of Letters between Italy and FAO on immovables rented by FAO - EC Statement on US measures against Cuba 503

Legislative, judicial and international practice. International treaties coming into

force in Italy (according to the Official Journal from May to August 1993) - On the guarantees granted in favour of Iraq before the embargo - On the establishment of diplomatic relations between Italy and some new States 825

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from September to November 1993) - Entry into force of the urgent measures on Italian civil proceedings - New Italian rules on the expulsion of foreigners - Implementation of EEC Directive 89/667 on single-member companies - Urgent measures on racial, ethnic and religious discrimination - The new name of the Council of the European Communities 1091

Notices. New composition of the Human Rights Committee of the United Nations - A workshop on the institution of an International Criminal Court - The fourth award «Dr. Luigi Craici» to a young graduate 248

Notices. A workshop in Rome on the protection of human rights - Eleventh colloquium of the Italian Association of Comparative Law 507

Notices. The 1994 courses of the Hague Academy of International Law - The works of the European Group of Private International Law - XXVI round-table on EEC law - The seventh seminar on human rights 1095

BOOK REVIEWS

(See Italian Index)

Registrazione presso il Tribunale di Milano al n. 6418 in data 26-11-1963
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