

# INDEX

## ARTICLES

S. BARIATTI, Jurisdiction and Applicable Law in E-commerce Litigation (in French)	19
M.V. BENEDETTELLI, Jurisdictional Criteria on Corporate Matters and Community Law .....	879
M. BRIGNOLI, F. MOSCONI, War Crimes, No Request of Extradition and Reasonable Length of Proceedings .....	595
R. CAFARI PANICO, Foreign Divorces: Recognition or Transcription? .....	5
L. DANIELE, Applicable Law and Uniform Law in the EC Regulation on Insolvency Proceedings .....	33
L. FUMAGALLI, The New EC Regulation on the Taking of Evidence Abroad in Civil Matters .....	327
A. MALATESTA, First Remarks on the EC Regulation No. 2157/2001 on the European Company .....	613
F. POCAR, The Statute for a European Company: An Important Step towards the Evolution of Community Law (in French) .....	585
V. STARACE, Legislative Evolution of Access to Foreign and Arbitral Jurisdiction for the Resolution of International Commercial Disputes .....	305
G.L. TOSATO, Some Remarks on the Limits to Mutual Recognition of Judicial Decisions in Civil and Criminal Matters within the European Union (in English) ..	000

## REVIEWS

C. AMALFITANO, From an International to an European Ne Bis In Idem Principle in Criminal Proceedings .....	923
P. BERTOLI, On Rules on Jurisdiction According to EC Regulation No. 44/2001 ..	625
B. NASCIMBENE, C. SANNA, EC and Domestic Rules on the Exercise of Legal Activity in Italy .....	349
L. PASQUALI, Substantive Rules and Uniform Conflict of Laws Rules Concerning Individual Liability in the Protocol to the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes .....	51

## SHORTER ARTICLES, S AND COMMENTS

Z. CRESPI REGHIZZI, On the Applicable Law to Rights on Securities Held through Registrations According to Legislative Decree No. 210 of 2001 .....	377
Z. CRESPI REGHIZZI, Foreign Judgement Based on Punitive Damages and Public Policy .....	977
A. DI BLASE, Connected Proceedings Against Multiple Defendants Concerning the Same Cause of Action .....	89
P. FRANZINA, Obligations not to Do and Obligations to be Performed in Several Places under the 1968 Brussels Convention and EC Regulation No. 44/2001 .	391
A. LA MATTINA, Notes on Arbitral Clauses in International Commercial Arbitration	991
M. MONTANARI, Jurisdiction and Recognition of Decisions on the Protection of Minor with Dual Nationality between the 1961 Hague Convention and Italian Law .....	99
B. NASCIMBENE, Recognition of Foreign Judgments and «European Public Order»	659
I. PITTALUGA, The Proof of Foreign Law: Case Law Development in France and in Italy .....	675
F. VILLATA, Layers' Fees, Italian Jurisdiction and 1988 Lugano Convention .....	665
F. VISMARA, Some Remarks on the Main Location of Matrimonial Life as a Connecting Factor .....	961

## CASES IN ITALIAN COURTS

*Adoption:* 73, 79; 89; 90.

*Bankruptcy:* 5.

*Civil proceedings:* 3; 6; 9; 36; 52; 74; 87.

*Contracts:* 5; 12; 17; 21; 29; 30; 33; 49; 57.

*Companies:* 11; 21; 72.

*Criminal proceedings:* 27; 85.

*Divorce:* 64.

*European Community Law:* 46.

*Foreigner:* 2; 4; 8; 15; 22; 26; 28; 38; 40; 42; 45; 46; 54; 55; 58; 59; 62; 63; 65; 69.

*Foreign judgments and administrative acts:* 35; 48; 52; 71; 73; 76; 79; 81; 87; 88.

*Foreign law:* 21; 24; 31; 50; 75.

*International abduction of children:* 18; 20; 39; 51; 55; 61; 74.

*Jurisdiction:* 1; 7; 10; 16; 19; 32; 33; 36; 37; 43; 44; 47; 51; 53; 60; 66; 67; 68; 70; 71; 76; 77; 78; 80; 81; 82; 83; 86.

*Marriage*: 23; 84.

*Nationality*: 13; 14; 25; 41.

*Non contractual obligations*: 50; 72.

*Protection of minors*: 14.

*Public policy*: 52.

*Renvoi*: 78.

*Status and legal capacity of natural persons*: 78.

*Treaties and general international rules*: 2; 4; 8; 14; 15; 17; 18; 20; 25; 29; 30; 32; 33; 34; 35; 36; 39; 43; 45; 47; 48; 51; 53; 55; 57; 60; 61; 67; 68; 70; 71; 74; 76; 77; 79; 80; 82; 83; 85; 86; 88.

1. *Corte di Cassazione, 18 February 2000, No. 1808* ..... 179

As it may be inferred also from Art. 823, first paragraph, No. 5 of the Code of Civil Procedure, the criterion for distinguishing a domestic arbitration (whether national or international) from a foreign arbitration is represented by the seat of arbitration, which is chosen by the parties or determined by the arbitrators during their first meeting.

2. *Constitutional Court, 22 June 2000, No. 227* ..... 180

The question of the constitutional legitimacy of Art. 11, eight paragraph of the Law of 6 March 1998 No. 40 (that has been transposed into Art. 13, eight paragraph of the Legislative Decree of 25 July 1998 No. 286), raised with reference to Art. 24 of the Constitution, insofar as it does not restore the term for the interested party to appeal against an expulsion order or provide for an extension of such term (which is five days from the notification of the decree ordering the expulsion) in the event that such decree has not been translated into the native language of the interested party and has not been properly understood by him, is unfounded. In fact, the law is based on the guarantee that the contents of the expulsion order are fully understandable by the defendant. Such guarantee is required for the effectiveness of the right of defense, in accordance with Art. 24 of the Constitution as well as various other provisions of international agreements entered into by Italy (Art. 1 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Strasbourg on 22 November 1984 and implemented by the Law of 9 April 1990 No. 98; Art. 13 of the International Covenant on Civil and Political Rights adopted in New York on 19 December 1966 and implemented by the Law of 25 October 1977 No. 881). Therefore, in the event that the deportation order cannot be fully understood, the court, using its authority to interpret the principles of the legal system, shall draw a rule consistent with the need of not thwarting the right of action before courts.

3. *Corte di Cassazione, 25 July 2000 No. 9746* ..... 444

A power of attorney for legal proceedings written in the margin of the first page of an appeal brief to the Corte di Cassazione is deemed to have been granted in Italy if the location of the document's production as indicated at the end of such brief is in Italy, or if the signature of the person granting such power of attorney has been authenticated by an attorney practicing in Italy.

4. *Constitutional Court, 27 July 2000, No. 376* ..... 182  
 Art. 17, second paragraph, litt. d of the Law of 6 March 1998 No. 40 -- now transposed in Art. 19, second paragraph, litt. d of the Legislative Decree of 25 July 1998 No. 286 -- is constitutionally illegitimate, because it conflicts with the principles of the protection of family unity, of equal responsibility of parents in educating their children and the promotion of the best interests of the child, laid down in Arts. 29 and 30 of the Constitution as well as in Arts. 8 and 12 of the 1950 European Convention on Human Rights, Art. 10 of the 1996 International Covenant on Economic, Social and Cultural Rights, Art. 23 of the 1966 International Covenant on Civil and Political Rights and Arts. 9 and 10 of the 1989 Convention on the Rights of the Child, insofar as it does not extend the prohibition of expelling a non-EU citizen during her pregnancy or within six months of the birth of her child also to the cohabiting husband.
5. *Milan Court of Appeal, 3 October 2000* ..... 185  
 Art. 291 of the Swiss Federal Law on debt enforcement and bankruptcy, which concerns the action for revocation in bankruptcy cases, is not procedural but rather substantive in nature, since it regulates the effects arising from the restitution of what was received pursuant to a revocable act. Accordingly, the above-mentioned provision falls within the scope of the *lex contractus*.
6. *Corte di Cassazione (plenary session), 20 October 2000, No. 1129* ..... 186  
 An appeal for a preliminary ruling on jurisdiction that does not contain a concise statement of the facts of the case, as required by Art. 366, first paragraph, No. 3 of the Code of Civil Procedure, must be declared inadmissible.
7. *Corte di Cassazione (plenary session), 7 November 2000, No. 1150* ..... 187  
 Italian courts have jurisdiction over an employment relationship between an Italian citizen and the Mediterranean Agronomic Institute of Bari concerning the supervision of the Institute, since the said relationship involves the performance of duties that are merely manual and do not affect, even indirectly, the fulfillment of the institutional functions of the said entity.
8. *Constitutional Court, order, 9 November 2000 No. 485* ..... 189  
 The questions of the constitutional legitimacy of Art. 13, eight and ninth paragraphs of the Legislative Decree of 25 July 1998 No. 286, raised with reference to Arts. 2, 3, 4, 10, 24, 41 and 113 of the Constitution, are manifestly unfounded. In fact, there is no irrational inequality of treatment between non-EU citizens holding a residence permit and those not holding such permit. There is also no conflict with Art. 10 of the Constitution, since the proceedings laid down in the above-mentioned Art. 13 concern the legitimacy of the expulsion order, the ascertainment of which does not require, as a rule, the performance of special investigations. Accordingly, the five-day time limit for appeal is not irrationally short nor does it conflict with Art. 6, third paragraph, litt. b of the European Convention on Human Rights. The reference to Protocol No. 4 to the said Convention, whose Art. 2, first paragraph recognizes the right of residence and movement within the territory of a State only for persons who are "lawfully" within such territory, is inappropriate.
9. *Corte di Cassazione, 9 November 2000, No. 14549* ..... 190  
 An appeal to the Corte di Cassazione by a foreign State of a judgment rendered in favour of its embassy is inadmissible for lack of interest, since an embassy is an external body of the State to which it belongs and any act performed by a diplomatic agent is directly attributable to such State.

10. *Corte di Cassazione (plenary session), 13 November 2000, No. 1169* ..... 191  
 Pursuant to Art. 4, No. 2 of the Code of Civil Procedure, Italian courts have jurisdiction over a case involving a payment by letter of credit if the obligation of the confirming bank vis-à-vis the beneficiary, which is independent of the obligation of the issuing banks, must be performed in Italy.
11. *Corte di Cassazione, 16 November 2000, No. 14870* ..... 193  
 A Liechtenstein Anstalt is automatically recognized as a foreign legal person in the Italian legal system, as its structural and functional conformity with domestic legal persons is not required.
12. *Corte di Cassazione, 15 December 2000 No. 15846* ..... 444  
 Pursuant to the Law Decree of 6 June 1992 No. 305 on urgent measures regarding the embargo against the Republic of Serbia and Montenegro, it is an administrative offense for a business entirely controlled by a Serbian company, even if its seat is located in Italy, to carry out commercial activities with States other than Serbia and Montenegro. In fact, this Law Decree prohibits any transaction that results in a transfer of funds or the creation of economic and financial resources credited to any business or entity, whether public or private, having its registered office, headquarters or place of business in the Republic of Serbia and Montenegro.
13. *Lombardy Regional Administrative Tribunal, 22 December 2000* ..... 194  
 Pursuant to Art. 6, litt. c of the Law of 5 February 1992 No. 91, a decision refusing Italian citizenship to a person in consequence of a marriage must be voided if the grounds pertaining to the safety of the Republic, on which such decision is based, are not proved.
14. *Corte di Cassazione (plenary session), 9 January 2001, No. 1* ..... 128  
 Art. 42 of the Law of 31 May 1995 No. 218 refers to the Hague Convention of 5 October 1961 for the allocation of judicial and administrative powers and the identification of the law applicable to the protection of minors.  
 A decision rendered pursuant to Art. 333 of the Civil Code, although it affects parental authority, falls within the scope of application of Art. 1 of the Hague Convention of 1961 (which confers judicial and administrative powers on the authorities of the State of habitual residence of the minor) since its principal purpose is to protect the minor.  
 In case of a minor holding dual (Italian and foreign) citizenship, Art. 19, second paragraph of Law No. 218 of 1995 does not apply, since the rule that Italian citizenship must prevail – which is laid down in such provision – must be adapted as required by the international conventions currently in force, in accordance with Art. 2 of such Law.  
 Art. 4, first paragraph of the Luxembourg Convention of 20 May 1980 on the Recognition and Enforcement of Decisions concerning Custody of Children provides for the recognition of such decisions without conferring to the authorities of the State of nationality of the minor the power to amend or replace such decisions.  
 Pursuant to Art. 7 of the Hague Convention of 1961, the measures adopted by the competent authorities must be recognized in all Contracting States.  
 Italian courts have jurisdiction to adopt such measures with respect to a minor residing in Germany, since Art. 9 of the Hague Convention of 1961 confers the power to adopt urgent and provisional measures of protection on the authorities of the Contracting State in which the minor is present.

15. *Corte di Cassazione, 7 February 2001 No. 1714* ..... 446  
 A foreigner holding a residence permit issued for family reasons pursuant to Art. 30 is entitled to apply for family reunion within the limits laid down in Art. 29 of the Legislative Decree of 25 July 1998 No. 186. Such a foreigner is held to be in a position equal to that of a foreigner holding a residence card (*carta di soggiorno*) or residence permit (*permesso di soggiorno*) valid for no less than a year and issued for dependent employment, self-employment, asylum, study or religious reasons, to whom Art. 28 of the Legislative Decree of 25 July 1998 No. 286 expressly recognizes the right to family unity. A different interpretation would violate the right to equality of treatment, which may be inferred from Art. 3 of the Constitution and is included among the civil rights of Italian citizens that Art. 2, second paragraph of Legislative Decree No. 286 extends to foreigners legally residing in Italy. This is all the more true if the request for reunion concerns a minor, since pursuant to Art. 28, third paragraph of Legislative Decree No. 286 of 1998, the best interests of the child must be considered a priority in all legislative and judicial proceedings that are aimed at accomplishing family reunion and involve minors. This is in conformity with the provision of Art. 3, first paragraph of the Convention of 20 November 1989 on the Rights of the Child, implemented by the Law of 27 May 1991 No. 176.
16. *Corte di Cassazione (plenary session), 8 February 2001, No. 46* ..... 137  
 The criteria laid down in Art. 3 of the Law of 31 May 1995 No. 218 limit the jurisdiction of Italian courts over a foreigner only in cases where the foreigner is sued before Italian courts.  
 The right of action granted by Art. 24 of the Constitution must be granted to a foreigner or stateless person having his domicile or residence in Italy.  
 Art. 19, first paragraph of Law No. 218 of 1995 is not relevant for the purpose of determining whether Italian courts have jurisdiction.
17. *Corte di Cassazione, 14 February 2001 No. 2155* ..... 449  
 The Visby Protocol of 23 February 1968, rather than the Hamburg Convention of 31 March 1978, applies to an international contract for shipment of goods by sea since, notwithstanding the authorization contained in the Law of 25 January 1983 No. 40, the instrument of ratification of the latter was never deposited.
18. *Corte di Cassazione (plenary session), 23 February 2001, No. 70* ..... 139  
 Pursuant to Art. 13, first paragraph, litt. b of the Hague Convention of 25 October 1980 on International Child Abduction, the courts of a State in which the child is present as a consequence of a wrongful removal or non-return may reject the request for the return of the child if such return would expose the child to physical or psychological harm or cause an intolerable situation for him.  
 The courts of the State in which the child is present as a consequence of the abduction may also adopt provisional measures for the custody of the child; the jurisdictional criterion of the habitual residence of the child – which is laid down in the Hague Convention of 5 October 1961 – is wholly irrelevant, since the Hague Convention of 25 October 1980 (Art. 34) prevails on the said Convention.
19. *Corte di Cassazione (plenary session), 13 March 2001, No. 113* ..... 143  
 Preference must be given to the jurisdiction of ordinary courts in cases where the interpretation of the arbitration clause is uncertain, since the submission of a dispute to international arbitration represents an exception to the jurisdiction of the judicial authority.

20. *Corte di Cassazione, 15 March 2001, No. 3767* ..... 146
- Art. 15 of the Hague Convention of 25 October 1980 on International Child Abduction allows the competent authority of the State to which the return of a child – who is alleged to be wrongfully retained outside his State of origin – has been requested to ask that the competent authorities of the State of origin ascertain the views of the child and carry out the appropriate investigations.
- Pursuant to Art. 111 of the Constitution and the Law of 15 January 1994 No. 64, the appeal of a decree rendered by an Italian court upon conclusion of the administrative/investigation process aimed at ascertaining the situation of the child is not admissible.
21. *Corte di Cassazione, 29 March 2001 No. 6757* ..... 450
- In order to maintain that a joint venture is a legal person different from and independent of the companies participating in it, proof must be given that such joint venture has legal personality under its law of incorporation. In such a case, its legal personality would also be recognized by the Italian legal system, pursuant to a principle of international law acknowledged by it. Petitioner has the burden of proof thereof, since the knowledge of foreign law turns into a question of fact, and Art. 14 of the Law of 31 May 1995 No. 218 is not applicable in the present case.
22. *Constitutional Court, 10 April 2001 No. 105* ..... 453
- The guarantees set forth in Art. 13 of the Constitution do not suffer any limitations with respect to foreigners, and public interests concerning immigration and issues of public security and order related to unrestrained immigration flows may not affect in any manner the universal nature of personal freedom. This right, as all other rights declared inviolable by the Constitution, is granted to an individual, not as a member of a certain political community, but as a human being. Accordingly, the court's control over the detention of a foreigner at temporary stay and assistance centers pursuant to Art. 14 of the Legislative Decree of 25 July 1998 No. 286 also concerns the specific procedure employed to carry out the administrative expulsion – which consists of the accompaniment to the border by police officials as provided for by Art. 13 of said Legislative Decree – and the refusal to validate the detention voids the accompaniment procedure as well. Pursuant to Art. 14, first paragraph of Legislative Decree No. 286, a foreigner must be detained only “for the time strictly necessary”, and therefore, if the appropriate conditions are met, his detention must cease before the expiration of the final term.
23. *Corte di Cassazione, 13 April 2001, No. 5537* ..... 149
- A marriage celebrated abroad between Italian citizens or Italian and foreign citizens is immediately valid in the Italian legal system if it is celebrated in accordance with the formal requirements provided for by the foreign law. In the event that any substantive requirement related to the status or legal capacity of persons (such as unmarried status) is lacking, such marriage does not cease to be valid until it is challenged pursuant to Art. 117 of the Civil Code and a decision is rendered which voids or annuls such marriage.
24. *Pesaro Tribunal, 24 April 2001* ..... 457
- In the English legal system, Arts. 17 and 18 of the Sale of Goods Act regulate the transfer of property in a shipbuilding contract. Pursuant to such provisions, as interpreted by case-law, the existence of three conditions

- (agreement on advance partial payment, inspection of the works, actual payment of the sum representing such partial payment) creates the presumption that the parties intend such transfer to take place at the construction stage to which such partial payment is tied.
25. *Constitutional Court, 15 May 2001, No. 131* ..... 119  
 Art. 22 of the Law of 2 February 1992 No. 91 on citizenship – which provides that liability to for military service ceases for those who lose Italian citizenship – does not eliminate such liability for the period preceding the entry into force of such Law.  
 According to a provision of customary international law, a State may not subject citizens of other States to liability for military service.  
 Art. 1, first paragraph, litt. b of the Presidential Decree of 14 February 1964 No. 237 on call-up and recruitment and Art. 8, last paragraph of the Law of 13 June 1912 No. 555 (former Law on citizenship) are constitutionally illegitimate as conflicting with Art. 10, first paragraph of the Constitution, insofar as they do not exempt from compulsory military service an ex-citizen who has acquired the citizenship of another country pursuant to the above-mentioned Art. 8, first paragraph, No. 1.
26. *Constitutional Court, order 17 May 2001 No. 140* ..... 459  
 The question of the constitutional legitimacy of Art. 28, sixth paragraph of the Law of 6 March 1998 No. 40, raised with reference to Arts. 3, 24 and 113 of the Constitution, insofar as it provides that a foreigner may appeal the refusal to authorize family reunion to ordinary courts, is manifestly unfounded.
27. *Constitutional Court, order 17 May 2001 No. 146* ..... 462  
 The question of the constitutional legitimacy of Art. 47 of the Law of 26 July 1975 No. 354 on penitentiary regulation, raised with reference to Arts. 3, 4, 16 and 27 of the Constitution, insofar as it does not provide that a measure restricting personal liberty but alternative to imprisonment (such as probation) may also be executed in the territory of another EU Member State, is manifestly unfounded.
28. *Constitutional Court, order, 28 May 2001 No. 165* ..... 741  
 The question of the constitutional legitimacy of Art. 13, thirteenth and fourteenth paragraph of the Legislative Decree of 25 July 1998 No. 286, raised with reference to Arts. 24, 113, 2, 3, 102 and 97 of the Constitution, is manifestly unfounded, since the challenged provision allows foreigners to limit the appeal of expulsion orders to issues related exclusively to the five-year period during which they are prohibited from re-entering Italy.
29. *Milan Court of Appeal, 29 May 2001* ..... 742  
 Pursuant to Art. 3, second paragraph of the Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods, a sale is governed by the law of the State in which the purchaser has his habitual residence if the order has been received in such State, whether by the vendor or by his representative or agent. Therefore, Italian law applies to a case in which the orders, although received in another State, represent a predetermined consequence of a general agreement entered into in Italy.
30. *Corte di Cassazione, 30 May 2001, No. 7362* ..... 744  
 Pursuant to Art. IX, fourth paragraph of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces,



signed in London on 19 June 1951, such forces must comply with the law of the State in which they are located in relation to all local civilian labour requirements.

31. *Corte di Cassazione, 30 May 2001, No. 7365* ..... 745  
 Art. 14 of the Law of 31 May 1995 No. 218 is not applicable to a dispute that began in 1987. Therefore the rule previously in force shall apply, pursuant to which, if the court is unable to obtain direct knowledge of the foreign law from the documents of the case or through its own efforts, the party affirming that the foreign law differs from Italian law has the burden of providing the court with all documentation necessary to make it acquainted with such law.
32. *Corte di Cassazione (plenary session), 11 June 2001, No. 7854* ..... 152  
 The special proceeding for a preliminary ruling on jurisdiction on the question of whether Italian courts have jurisdiction over a foreigner is admissible even after Art. 37, second paragraph of the Code of Civil Procedure has been repealed by Art. 73 of the Law of 31 May 1995 No. 218, since the reference by Art. 41 of the Code of Civil Procedure to the said Art. 37 for the purpose of determining the field of application of the special proceeding for a ruling on jurisdiction represents a case of incorporation by reference.  
 Pursuant to Art. 17 of the Lugano Convention of 16 September 1988, derogation of jurisdiction can be effected in a form which accords with practices which the parties have established between themselves.  
 An agreement conferring jurisdiction on foreign courts, even if it is not signed by the charterer, meets the requirements laid down in Art. 17 of the Lugano Convention of 1988 if the bill of lading, which has been signed only by one party, has been issued in the ambit of the current commercial relationship between the charterer and the carrier.
33. *Corte di Cassazione (plenary session), 11 June 2001, No. 7860* ..... 157  
 The Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations applies to an international contract of a type not specifically regulated by law (*contratto atipico*), i.e. to a contract granting an exclusive sales license for the purpose of both exchange and cooperation.  
 Pursuant to Art. 4, second paragraph of the Rome Convention of 1980, Italian law applies to a contract granting an exclusive sales license if the place of business of the party effecting the characteristic performance is located in Italy.  
 Pursuant to Art. 4, No. 2 of the Code of Civil Procedure, Italian courts have jurisdiction in matters relating to contractual obligations entered into in Italy and to be performed there.
34. *Corte di Cassazione, 19 June 2001, No. 8328* ..... 746  
 Art. 25 of the Warsaw Convention of 12 October 1929 on International Carriage by Air (as replaced by the Hague Protocol of 28 September 1955), insofar as it provides that the conduct of the carrier is done "recklessly and with knowledge that damage would probably result," refers to conduct that must meet both requirements and that amounts to a case of "foreseeable negligence" (*colpa con previsione*).
35. *Palermo Court of Appeal, order, 22 June 2001* ..... 165  
 Even if Art. 39 of the Brussels Convention of 27 September 1968 provides that the decision authorizing the enforcement of a foreign judgment automatically involves the authorization to proceed to protective measures, the said provision must be supplemented by domestic civil procedure rules with

respect to any issue not dealt with by it, to the extent that this is compatible with the principles of the Convention. The application of Art. 669-decies of the Code of Civil Procedure, whereby the court is authorized to revoke or amend a protective measure if changes occur in the circumstances of the case, is compatible with such principles.

36. *Corte di Cassazione (plenary session), 26 June 2001 No. 8744* ..... 407

Although a power of attorney granted abroad in relation to legal proceedings in Italy is governed by Italian law, the adoption of a form equivalent to that required by Italian law is sufficient for it to be valid.

Pursuant to Art. II, third paragraph of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, a plea of lack of jurisdiction based on the existence of an arbitration clause does not require the use of specific language or the making of a formal request to refer the parties to arbitration.

The fact that a party initiated the special proceedings for a ruling on jurisdiction before the first hearing (*udienza di prima comparizione*) of the proceedings on the merits demonstrates the unequivocal willingness of that party to appeal to the arbitration clause.

37. *Corte di Cassazione (plenary session), 26 June 2001 No. 8745* ..... 412

The special administration procedure (*amministrazione straordinaria*) for large companies in difficulties, laid down in the Law of 3 April 1979 No. 95, must be considered a collective insolvency proceeding in light of, among other things, the fact that said procedure is assimilated to collective insolvency proceedings by EC Regulation of the Council No. 1346/2000 of 29 May 2000.

Pursuant to Art. 3, second paragraph of the Law of 31 May 1995 No. 218, with respect to matters excluded from the field of application of the Brussels Convention of 27 September 1968, the jurisdiction of Italian courts can also be asserted based on the criteria for venue.

Pursuant to Art. 20 of the Code of Civil Procedure, Italian courts have jurisdiction over bankruptcy proceedings brought against a German company with its place of business in Germany if the creditor (or the administrator appointed pursuant to Law No. 95 of 1975) is domiciled in Italy.

38. *Corte di Cassazione, 2 July 2001 No. 11624* ..... 418

The intervention of the Juvenile Court in regulating the treatment of a foreigner is exceptional in nature within the regulatory framework laid down in the Legislative Decree of 25 July 1988 No. 286. In fact, any such intervention is limited to cases where the minor is expelled (Art. 31, fourth paragraph) or a relative is authorized to enter or remain in Italy for a predetermined period of time, by virtue of serious reasons pertaining to the psychological and physical development of the minor (Art. 31, third paragraph). The fact that the relative's stay depends on the existence of exceptional circumstances does not conflict with the need that the minor be educated within the family, nor does it otherwise prejudice the unity of the family, since the minor is not prevented from following his parent and the latter has the right to take the minor with him (Art. 19, second paragraph, *litt. a*).

39. *Constitutional Court, 6 July 2001, No. 231* ..... 124

Art. 12 of the Hague Convention of 25 October 1980 on International Child Abduction characterizes the order for the return of a child as an urgent decision, which should be adopted within a very short time.

Pursuant to Art. 7, fourth paragraph of the Law of 15 January 1994 No. 64,

which implements the 1980 Hague Convention as well as other Conventions, the decree of the Juvenile Court ordering the return of the child is immediately enforceable and may be appealed only to the Corte di Cassazione, and such appeal does not suspend the enforceability of such decree.

The question of the constitutional legitimacy of Arts. 1, 2 and 7 of the Law No. 64 of 1994, raised with reference to Arts. 2, 3, 11 and 31 of the Constitution, insofar as they do not confer to the Juvenile Court the authority to revoke its decision on the return of the child, is unfounded.

40. *Constitutional Court, order, 6 July 2001 No. 232* ..... 748

The question of the constitutional legitimacy of Art. 19 of the Legislative Decree of 25 July 1998 No. 286, raised with reference to Arts. 2, 3, 10, 29 and 30 of the Constitution on the assumption that it does not prohibit the expulsion of a foreigner married and residing with another foreigner holding a regular residence permit is manifestly unfounded.

41. *Council of State (IV Session), 9 July 2001 No. 3829* ..... 749

Pursuant to Art. 9, first paragraph, litt. a of the Law of 5 February 1992 No. 91, in order to become a naturalized Italian citizen, it is sufficient for a foreign national to prove that he has adequate means of support, even if not on a permanent basis. Any interest of the State of origin contrary to the acquisition of Italian citizenship is irrelevant.

42. *Constitutional Court, 17 July 2001, No. 252* ..... 751

The question of the constitutional legitimacy of Art. 19, second paragraph of the Legislative Decree of 25 July 1998 No. 286, raised with reference to Arts. 2 and 32 of the Constitution on the assumption that it does not prohibit the expulsion of a foreigner who, after entering Italy illegally, remains there for the sole purpose of obtaining essential medical treatment, is unfounded since a foreigner who is in Italy, even illegally, has the right to benefit from all treatments that are urgent or cannot be deferred, according to the criteria laid down by Art. 35, third paragraph of the abovementioned Legislative Decree. In fact, this is a fundamental personal right that must be guaranteed in accordance with the general provision contained in Art. 2 of Legislative Decree No. 286 of 1998. This issue must be considered in case of appeal of the expulsion order.

43. *Corte di Cassazione (plenary session), 20 July 2001, No. 9882* ..... 168

Pursuant to Art. 5, No. 1 of the Brussels Convention of 27 September 1968, in matters relating to a contract, a person may be sued in the court of the place of performance of the obligation in question.

An appeal for revocation of a judgment rendered by the plenary session of the Corte di Cassazione – in which the place of performance of the obligation in question has been determined based on Art. 4, first paragraph, of the Rome Convention of 19 June 1980 rather than Art. 25 of the Preliminary Provisions to the Civil Code, in light of the moment in which such obligations were breached – is inadmissible.

44. *Corte di Cassazione (plenary session), 20 July 2001 No. 9884* ..... 420

Art. 29, second paragraph of the Law of 31 May 1995 No. 218 on the law applicable to the personal relationship between spouses does not regulate the jurisdiction of Italian courts.

Since, pursuant to Art. 7 of Law No. 218 of 1995, there is no international *lis pendens* between a separation proceeding previously initiated in Italy and a

- divorce proceeding pending in France, Italian courts have jurisdiction over the former.
45. *Corte di Cassazione, 3 August 2001 No. 12581* ..... 422  
 Art. 13 of the Legislative Decree of 25 July 1998 No. 286 requires the administrative authority to notify a foreigner of every act concerning his expulsion, together with the procedure for appealing it and a translation of the act into a language known by him or, if that is not possible, into French, English or Spanish. This requirement ceases only if the lower court has established, in a logically argued opinion, that the foreigner knows the Italian language.  
 The lack of translation of such acts into a language known by the foreigner violates the right of defense sanctioned by Art. 24 of the Constitution and Art. 13 of the International Covenant on Civil and Political Rights adopted in New York on 19 December 1966.
46. *Corte di Cassazione, 3 August 2001 No. 12585* ..... 425  
 EU Council Regulation No. 574/99 of 12 March 1999 concerns the crossing of the external borders of Member States by nationals of third countries based on a visa issued by a Member State for a stay of no more than three months or for mere transit; it does not concern visas that may be issued by an EU State based on specific agreements and that allow, pursuant to Arts. 4 and 5 of the Law of 6 March 1988 No. 40, the issuance of residence permits.
47. *Corte di Cassazione (plenary session), 7 August 2001, No. 10891* ..... 753  
 If Art. 31 of the Geneva Convention of 19 May 1956 on International Carriage of Goods by Road is not applicable (as the parties did not expressly make reference to it), Italian courts do not have jurisdiction – either pursuant to Art. 4 No. 3 of the Code of Civil Procedure or pursuant to Art. 6 No. 2 of the Brussels Convention of 27 September 1968 – if the warranty action is based on a freight forwarding contract, whereas the main claim for damages is based on a contract of carriage.
48. *Corte di Cassazione (plenary session), 8 August 2001 No. 10965* ..... 427  
 The decision of the Court of Appeal to deny, pursuant to Art. 91 of the Code of Civil Procedure, the enforcement of a judgment of the Court of London that, among other things, requires the Taxing Master to determine the costs of the related proceedings, does not imply that the Italian court recognizes, pursuant to the Brussels Convention of 27 September 1968, the judicial nature of the functions of said Taxing Master or of the decision adopted by him.
49. *Corte di Cassazione, 11 September 2001, No. 11580* ..... 756  
 An action for damages arising from the breach of a contract for sale of film rights entered into in 1980 must be decided based on the law determined pursuant to Art. 25, first paragraph of the Preliminary Provisions to the Civil Code.
50. *Milan Court of Appeal, 21 September 2001* ..... 757  
 Pursuant to Art. 25, second paragraph of the Preliminary Provisions to the Civil Code, Spanish law applies to a claim for damages arising from a car accident that occurred in Spain, brought by an Italian citizen (who was being transported free of charge) against the driver, another Italian citizen. Even before Art. 14 of the Law of 31 May 1995 No. 218 entered into force, Italian courts were required to know the provisions of the applicable foreign law. In any

case, absent adequate proof of the contents of Spanish law, it is not justified to reject a tort claim arising from a traffic accident, as it is possible to assume that the substance of such law is analogous to that of Italian law. This is especially the case since both States belong to the European Union, which has taken numerous actions to harmonize the law of torts in case of traffic accidents within its borders.

51. *Corte di Cassazione, 25 September 2001 No. 11999* ..... 430

Pursuant to the Hague Convention of 5 October 1961 on the Protection of Minors, in the case of a minor wrongfully brought to or retained in Italy, Italian courts have jurisdiction not only over the petition for his repatriation, but also with respect to the adoption of provisional measures, if they are necessary for the immediate protection of the minor.

Pursuant to Art. 13, first paragraph, litt. b of the Hague Convention of 25 October 1980 on International Child Abduction, the judicial authority of the requested State is not required to order the return of the child if there is a grave risk that he would be exposed to physical or psychological harm or otherwise placed in an intolerable situation.

Pursuant to Art. 7, third paragraph of the Law of 15 January 1994 No. 64, which implemented the 1980 Hague Convention, the ascertainment of the circumstances laid down in Art. 13, first paragraph, litt. b of said Convention may be carried out based on summary information.

The right of the minor to maintain relations and contacts with both parents residing in different States, which is laid down in Art. 10 of the UN Convention of 20 November 1989 on the Rights of the Child, may be suspended if exceptional circumstances occur as provided for by said provision.

52. *Venice Court of Appeal, 15 October 2001* ..... 1021

Legalisation is not required for a power of attorney ad litem certified by a public official and provided with an apostille pursuant to Art. 1 of the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation.

Italian courts shall ascertain compliance with the requirements related to the right of defense laid down by Art. 797, Nos. 2 and 3 of the Code of Civil Procedure, but they shall not require the exact conformity of foreign procedural rules to those provided for by Italian law.

The requirement that foreign judgments be reasonable does not represent an inviolable principle of our legal system, and is not included among the requirements established by Art. 797 for the Code of Civil Procedure (currently codified in Art. 67 of the Law of 31 May 1995 No. 218).

A US judgment from which it is not possible to infer whether punitive damages – which are contrary to the public policy clause of Art. 797 No. 7 of the Code of Civil Procedure – have been awarded may not be declared enforceable in Italy because it does not state the reasons on which the decision on this issue is based.

53. *Corte di Cassazione (plenary session), 5 November 2001, No. 13627* ..... 173

Art. 6 No. 1 of the Brussels Convention of 27 September 1968 allows the plaintiff to sue a plurality of defendants at the domicile of one of them; in order for to be applicable, a connection must exist among the different claims, which may be that which would justify a permissive joinder of parties.

Italian courts have jurisdiction over a dispute relating to an insurance policy covering the whole performance of an international carriage contract if there is a basis for a permissive joinder of parties in relation to the actions to which the

- charterers, the carriers and the consignee are parties as well as to those between the latter and the insurer.
54. *Corte di Cassazione, 8 November 2001, No. 13817* ..... 1085  
 The translation of the expulsion order of a non-EU citizen into a language known by him is required for the validity of the aforementioned decree, since the lack of translation would directly violate the right of defense awarded to all persons by Art. 24 of the Constitution.
55. *Corte di Cassazione, 8 November 2001 No. 13823* ..... 433  
 The behavior of a parent, who brings back and retains his child in Italy at the end of a period during which the child lived abroad with the other parent, does not constitute wrongful abduction of the child under the Hague Convention of 25 October 1980 on the International Child Abduction, if the stay with the other parent was not sufficient to establish a new habitual residence for the child.
56. *Corte di Cassazione, 9 November 2001, No. 13869* ..... 1086  
 Arts. 13, eight and ninth paragraphs and 13-bis of the Legislative Decree of 25 July 1998 No. 286 (as amended by the Legislative Decree of 13 April 1999 No. 113) – which regulate the appeal of expulsion orders of non-EU citizens – do not grant any “term to prepare the defence.” Furthermore, this term is not contemplated by Arts. 737 et seq. of the Code of Civil Procedure and can not be considered a requirement imposed by the principle of audi alteram partem, since the interested party – based on the expulsion order of which he has received notice – has the opportunity to fully present his defense in the statement of his claim.
57. *Corte di Cassazione, 10 November 2001, No. 13951* ..... 760  
 Art. 18 of the Warsaw Convention of 12 October 1929 on International Carriage by Air (as amended by the Hague Protocol of 28 September 1955) does not apply to an action for damages brought against a company that manages airport operations, since such company does not act as an agent of the air carrier under Arts. 25 and 25A of said Convention, but pursuant to a handling contract.
58. *Corte di Cassazione, 14 November 2001, No. 14152* ..... 1087  
 The mandatory term within which a non-EU citizen shall appear at the competent local police headquarters (Questura) in order to apply for a residence permit (within 8 days of entering Italy) may be extended in the case of an event of force majeure, in accordance with Art. 13, second paragraph, litt. b of the Legislative Decree of 25 July 1998 No. 286. However, the existence of such force majeure event must be proved and the reasons thereof must be given. This requirement is not met if the person requesting the extension vaguely alleges that he needs to take care of an old and lonely person.
59. *Corte di Cassazione, 14 November 2001 No. 14157* ..... 1030  
 A non-EU citizen who received an expulsion order cannot claim any violation of the right of defense based either on Arts. 2, sixth paragraph and 13, seventh paragraph of the Legislative Decree of 25 July 1998 No. 286 (which provide that the interested party must be notified of any decisions concerning expulsion in a language known to him ) or on Art. 24 of the Constitution, if he was actually able to properly present his defense on appeal in the in camera proceedings before the Tribunal and to effectively challenge the expulsion order on both legal and factual grounds.

60. *Constitutional Court, order, 22 November 2001 No. 372* ..... 761  
 The question of the constitutional legitimacy of Art. 2 of the Law of 30 November 1955 No. 1335 – which implemented the London Agreement of 19 June 1951 on the status of NATO forces, whose Art. VIII, fifth paragraph provides that the sending State cannot be named as a defendant in civil actions for damages – raised with reference to Arts. 3, 24 and 25 of the Constitution, is manifestly inadmissible.
61. *Corte di Cassazione, 29 November 2001, No. 15192* ..... 1088  
 Pursuant to Art. 3 of the Hague Convention of 25 October 1980 on International Child Abduction, the removal or retention of a child is wrongful if it is in breach of rights of custody that were actually exercised.
62. *Constitutional Court, order, 14 December 2001 No. 408* ..... 1089  
 The question of constitutional legitimacy of Art. 6, third paragraph of the Legislative Decree of 25 July 1998 No. 286 – which provides for criminal sanctions against foreigners who, upon the request of public security officers, fail to produce a passport, residence permit or card, or other identification document without justification – raised with reference to Arts. 3, 27 and 97 of the Constitution, is manifestly unfounded. In fact, the alleged challenges fall within the ambit of political choices that the Legislature can make.
63. *Constitutional Court, order, 18 December 2001 No. 414* ..... 1090  
 The question of constitutional legitimacy of Arts. 6, tenth paragraph and 13, eighth paragraph of the Legislative Decree of 25 July 1998 No. 286, raised with reference to Arts. 3 and 24 of the Constitution, insofar as the aforementioned provisions do not assign to a single type of courts, namely to the administrative courts, all disputes related to the stay of foreigners in Italy is manifestly unfounded. In fact, this issue falls within the discretionary power of the Legislature.
64. *Bari Court of Appeal, 18 December 2001* ..... 1092  
 Pursuant to Art. 17 of the Preliminary Provisions to the Civil Code, Italian law as the stricter law applies to a divorce between a Swiss and an Italian-Swiss national, since Italian citizenship always prevails when a person holds both Italian and foreign citizenship.
65. *Milan Court of Appeal, 18 December 2001* ..... 1094  
 Pursuant to Art. 2, second paragraph of the Legislative Decree of 25 July 1998 No. 286, a foreigner who is legally in Italy enjoys the same civil rights granted to Italian nationals, regardless of the reciprocity requirement established by Art. 16 of the Preliminary Provisions to the Civil Code as well as of the fact that the event giving rise to the dispute in question occurred before the foreigner could enjoy those rights.
66. *Milan Court of Appeal, order, 27 December 2001* ..... 695  
 Under Art. 3, first paragraph of the Law of 31 May 1995 No. 218, Italian courts have jurisdiction – as one of the “other cases provided for by law” – over a claim brought by a lawyer against a client domiciled abroad under the Law of 13 June 1942 No. 749 for payment of fees. The latter law implicitly confers jurisdiction over the claim on the court before which the dispute forming the object of the power of attorney has been brought.

67. *Corte di Cassazione (plenary session), order, 17 January 2002 No. 503* ..... 436  
 By virtue of the reference made by Art. 3, second paragraph of the Law of 31 May 1995 No. 218, Art. 6 of the Brussels Convention of 27 September 1968 is applicable in a dispute relating to a contract in which the defendant is domiciled in a non-Contracting State.  
 Pursuant to Art. 6 No. 3 of the 1968 Brussels Convention, in the opposition proceedings to an order granted in a summary proceeding for the payment of a sum of money (*decreto ingiuntivo*) proposed by one party, Italian courts also have jurisdiction over an independent claim for price reduction and damages filed by the same party in relation to the same supply of goods.
68. *Corte di Cassazione (plenary session), order, 22 January 2002 No. 718* ..... 697  
 A forum selection clause contained in the general terms and conditions attached to an order confirmation signed solely by the proponent does not constitute a written agreement within the meaning of Art. 17 of the Brussels Convention of 27 September 1968. The subsequent fulfilment of another provision listed in the same general terms and conditions concerning the place of performance of the obligation in question does not amount to an implied acceptance of the prorogation of jurisdiction.
69. *Corte di Cassazione, 24 January 2002, No. 787* ..... 699  
 The 10-day time limit for issuing a decision on the appeal of an order of expulsion of a non-EU citizen, laid down by Art. 13, ninth paragraph of the Legislative Decree of 25 July 1998 No. 286, is not mandatory. Under Art. 152 of the Code of Civil Procedure, the mandatory nature of time limits in civil proceedings must be expressly provided for or unambiguously inferable from the legal system. In any case, the mandatory nature of such time limit would not nullify a belated decision.  
 The Legislative Decree of 19 February 1998 No. 51 bars the hearing of any cases for which the Pretore was originally competent by a multi-judge court once those cases have been assigned to the Tribunale. Therefore, in those proceedings the Tribunale shall consist of a single judge.  
 Pursuant to Art. 16 of the Regional Statute of Trentino-Alto Adige (Constitutional Law of 26 February 1948 No. 5), the local head of police administration (*Questore*) is competent to issue an expulsion order.
70. *Corte di Cassazione (plenary session), 29 January 2002, No. 1150* ..... 701  
 Under Art. 17 of the Brussels Convention of 27 September 1968, a provision conferring jurisdiction written on the back of an order for the purchase of goods cannot be considered an agreement entered into in a form corresponding to international trade usage of which the parties are or ought to have been aware.
71. *Corte di Cassazione (plenary session), order, 8 February 2002 No. 5127* ..... 708  
 In defining the object of recognition and enforcement, Art. 25 of the Brussels Convention of 27 September 1968 adopts an extremely broad definition of "judgment," which includes any decision given by a court or tribunal of a Contracting State, whatever its name or nature. The definition includes the judgment of a Greek court affirming its jurisdiction in a case of international *lis pendens*.  
 For the purposes of Art. 21 of the Brussels Convention of 27 September 1968, the lower court shall acknowledge the judgment rendered by a court of another Contracting State affirming that the latter is the court first seised.



Italian courts do not have jurisdiction over a dispute if the courts of another Contracting State have already affirmed that they have jurisdiction over it.

72. *Corte di Cassazione, 14 February 2002, No. 2111* ..... 713
- Art. 2505 of the Civil Code (which has been repealed by the Law of 31 May 1995 No. 218) provided that companies that were incorporated abroad and did not have their headquarters or principal place of business in Italy were not subject to Italian law. Thus, liability for the obligations of such companies was not governed by Italian law.
- The fact that a company incorporated and headquartered in Liberia has been formed with Italian capital (whether by Italian citizens or Italian companies, i.e. companies incorporated and headquartered in Italy) is irrelevant for the purposes of determining the governing law.
- Under Art. 2362 of the Civil Code, Italian law governs the liability of a foreigner for the obligations of an insolvent company, incorporated and headquartered in Italy, of which he is the sole shareholder.
- Art. 2362 of the Civil Code does not govern the liability of an Italian national for the obligations of an insolvent company incorporated and headquartered abroad.
73. *Corte di Cassazione, 16 February 2002, No. 2303* ..... 1033
- An appeal to the Corte di Cassazione of a decree of adoption of a foreign minor issued pursuant to Art. 44 litt. c of the Law of 4 May 1983 No. 184 brought by two Italian spouses seeking recognition of a foreign adoption decree is admissible.
- Under Arts. 6, 30 and 32 of the Law No. 184 of 1983, the age difference between the adopting parents and the minor shall not be construed strictly for the purposes of recognizing a foreign adoption decree in Italy.
- In special cases and provided that certain conditions exist, courts may derogate from the rule stating the maximum age difference between the adopting parents and the minor, taking into consideration the particular circumstances of the case in light of the best interests of the minor.
74. *Corte di Cassazione, 25 February 2002, No. 2748* ..... 720
- Since the Law of 15 January 1994 No. 64 – which implemented the Hague Convention of 25 October 1980 on International Child Abduction – provides, in compliance with Art. 11 of said Convention, that any application for the return of a child shall be examined in simplified in camera proceedings, the appointment of a public defender to represent the person who filed the return request is inconsistent with such proceedings.
- Pursuant to Arts. 3 and 5 of the 1980 Hague Convention, the removal of a child to Italy by his mother cannot be considered wrongful if she has custody of the child as a “primary resident parent” under US law. The fact that a US court has subsequently granted custody of the child to his father is wholly irrelevant for this purpose.
75. *Corte di Cassazione, 26 February 2002, No. 2791* ..... 726
- Pursuant to Art. 14 of the Law of 31 May 1995 No. 218, Italian courts are in the same position with regard to any foreign law as they are with regard to Italian law. Accordingly, they have the duty to ascertain the substance of foreign law sua sponte and to ensure the enforcement thereof.
- Pursuant to Art. 15 of the Law of 31 May 1995 No. 218, Italian courts – which are required to interpret foreign law as would the courts of the State to which such law belongs – shall adhere to the general principles applicable in the

foreign legal system. Courts should particularly comply with the accepted principles of interpretation and rules on the hierarchy of the sources of law, as well as the retroactivity of laws, which obtain in the foreign State.

76. *Milan Tribunal, 27 February 2002* ..... 1040

Under Arts. 72, second paragraph and 8 of the Law of 31 May 1995 No. 218, Italian courts have jurisdiction over an action brought before the aforementioned Law entered into force if the factual circumstances or legal provisions determining the jurisdiction of Italian courts occur during the proceedings.

Under the combined provision of Art. 3, second paragraph of the Law No. 218 of 1995 and Art. 18, second paragraph of the Code of Civil Procedure, in a divorce proceedings, Italian courts have jurisdiction over a defendant residing abroad provided that the plaintiff resides in Italy.

Under Art. 65 of the Law No. 218 of 1995, a French divorce decree – issued before the entry into force of the aforementioned Law – is automatically enforceable in Italy only insofar as the personal status of the former spouses is concerned. Art. 3, No. 2, litt. e of the Law of 1 December 1970 No. 898 is not applicable.

The provisions of a foreign divorce decree concerning the relationship between children and parents and the maintenance obligations towards children are automatically recognized in Italy only if all the requirements of Art. 64 of the Law No. 218 of 1995 are met.

Under the Hague Convention of 5 October 1961 on the Protection of Minors and the Hague Convention of 2 October 1973 on the Recognition of Decisions relating to Maintenance Obligations, Italian courts have jurisdiction over any petitions concerning child custody and maintenance obligations towards children which have been filed in the course of divorce proceedings, provided that the minors habitually reside in Italy.

77. *Corte di Cassazione (plenary session), order, 1 March 2002 No. 3029* ..... 1047

A plea of lack of jurisdiction based on an international arbitration clause pursuant to the New York Convention of 10 June 1958 on the Recognition of Foreign Arbitral Awards does not require the filing of an express request to refer the parties to arbitration.

Objections to an arbitration clause contained in a bill of lading are irrelevant if the latter makes reference *per relationem perfectam* to a valid arbitration clause contained in the charter party, which was entered into and signed by the carrier and the charterer.

In a case of carriage by sea, a forum selection clause derogating from the jurisdiction of Italian courts, which is validly included in the contract and written on the negotiable original of the bill of lading, is enforceable even against the subsequent holders of the aforementioned bill of lading under the rules governing its transfer.

78. *Pordenone Tribunal, 7 March 2002* ..... 1052

Based on both Art. 9 and Art. 3 of the Law of 31 May 1995 No. 218, Italian courts have jurisdiction if they must decide whether to declare the legal incapacity (*interdizione*) of a foreigner residing in Italy, regardless of the contentious or non-contentious nature of the proceedings.

Pursuant to Arts. 23 and 43 of the Law No. 218 of 1995, the declaration of the legal incapacity of a foreigner is governed by his national law.

By virtue of the *renvoi* back to Italian law operated, under Art. 13, first paragraph, litt. b of the Law No. 218 of 1995, by Art. 7 of the Argentinean Civil

Code (and absent any conflict with the principles of the Argentinean legal system), the provisions of substantive Italian law govern the determination of the legal incapacity of an Argentinean national residing in Italy.

79. *Trento Juvenile Court, decree, 11 March 2002* ..... 1056

Since the Kafalah cannot be considered an adoption or foster placement, a Moroccan decision granting it in favour of two spouses is not enforceable in Italy.

The spouses to whom the custody of a child has been awarded based on the Kafalah are not prevented from requesting his adoption before Italian courts pursuant to Arts. 44 et seq. of the Law of 4 May 1983 No. 184. Art. 3 of the New York Convention of 20 November 1989 on the Rights of the Child allows the State of residence to choose, in accordance with its national law, among the forms of child care available to the family.

80. *Corte di Cassazione (plenary session), 15 March 2002 No. 3876* ..... 440

Pursuant to Art. 5 No. 1 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction to hear a claim for payment of the sale price brought by a seller having his place of business in Italy against a German buyer, since Art. 59 of the Hague Convention of 1 July 1964 relating to a Uniform Law on the International Sale of Goods – which is applicable between Italy and Germany – provides that the place of performance of the obligation to pay such price is the domicile or habitual residence of the seller.

81. *Milan Court of Appeal, judgment-order of 26 March 2002* ..... 1058

Art. 39 of the Code of Civil Procedure is the expression of a general principle. Therefore, it applies to a case of *lis pendens* involving, on one hand, separation proceedings before Italian courts and, on the other hand, proceedings for the recognition of a foreign judgment.

The *lis pendens* between proceedings for the recognition of a foreign separation decree pursuant to Art. 66 of the Law of 31 May 1995 No. 218 and separation proceedings pending before the Corte di Cassazione must be declared by the court *sua sponte*, and the former proceedings must be cancelled if they were initiated after the latter.

82. *Corte di Cassazione, order, 8 May 2002 No. 6591* ..... 764

Under Art. 5 No. 3 of the Lugano Convention of 16 September 1988, jurisdiction over an action for damages arising from a libel that occurred in more than one State is conferred on the courts of the State in which the defendant responsible for the libel is domiciled, as well as to the courts of the State in which the injured party is domiciled. The courts of the State in which the plaintiff affirms to have suffered an injury to his reputation also have jurisdiction if the publication that gave rise to the libel is distributed in that State.

83. *Corte di Cassazione (plenary session), order, 17 May 2002 No. 7299* ..... 1061

An Italian decision claiming that there is international *lis pendens* with analogous proceedings previously initiated abroad and therefore suspending the enforceability of interim measures adopted by the President of the Tribunal in divorce proceedings cannot be appealed through a preliminary ruling on jurisdiction (*regolamento di giurisdizione*).

Under Art. 56 of the Brussels Convention of 27 September 1968, the Convention between Italy and Belgium of 6 April 1962 on the Recognition of Judgments continues to apply to disputes concerning the status and capacity of persons.

Under Art. 14 of the 1962 Convention, if a claim having the same object is brought before the courts of one of the two States, the court subsequently seised shall abstain from deciding on it.

The question of determining whether there is international *lis pendens* is not a question of jurisdiction. Therefore, it cannot be the object of special proceedings for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*). On the contrary, the aforementioned question implies the mandatory suspension of the proceedings, and therefore it can represent the object of special proceedings for ruling on competence (*regolamento di competenza*) contemplated by Art. 42 of the Code of Civil Procedure.

In light of the common purpose of both Conventions, the expression "same object" contained in Art. 14 of the 1962 Convention must be interpreted consistently with the interpretation of Art. 21 of the 1968 Brussels Convention.

Italian courts do not have jurisdiction over divorce proceedings if an action having the same object has previously been brought in Belgium and Belgian courts have jurisdiction based on the criteria established by Art. 2, Nos. 7 and 3, of the 1962 Convention.

84. *Belluno Tribunal, decree, 18 May 2002* ..... 1071  
 UN Security Council Resolution No. 1244 (1999) of 10 June 1999 established the interim administration for Kosovo (UNMIK) to ensure that basic civilian administrative functions are performed.  
 A certificate of unmarried status issued to a Yugoslav citizen originally from Kosovo by a civil administration appointed by UNMIK is the equivalent of a declaration that there are no impediments to marriage under Art. 116 of the Civil Code, even if the Yugoslav Consulate did not issue a similar certificate.
85. *Milan Court of Appeal, decree, 27 May 2002* ..... 732  
 Pursuant to specific provisions of Italian law and the Peace Treaty of 10 February 1947, the judicial activity of Allied military tribunals in Italy during and after World War II was, and still is, capable of producing full legal effects equivalent to those of domestic judicial acts.  
 The preliminary investigation carried out by English prosecutors – which led to the identification of persons responsible for certain war crimes committed by German soldiers against Italian citizens – shall be considered the commencement of the relevant criminal proceedings.  
 Under Art. 2, first paragraph of the Law of 24 March 2001 No. 89, which makes reference to Art. 6, first paragraph of the 1950 European Convention on Human Rights and Fundamental Freedoms, the relatives of the victims of a Nazi massacre perpetrated in 1944 must be indemnified for the unreasonable length of the relevant proceedings (which ended in 1999, whereas the preliminary investigation related to such proceedings was carried out in 1946).
86. *Corte di Cassazione (plenary session), interlocutory order, 6 June 2002 No. 8249* 1073  
 The following question of interpretation of Art. 5 No. 1 of the Brussels Convention of 27 September 1968 must be submitted to the EC Court of Justice: whether the expression "matters relating to a contract" includes an obligation for the enforcement of which the guarantor (who paid customs duty based on a guarantee contract entered into with the forwarding agent) sued the debtor/owner of the imported goods (who is not a party to the guarantee contract) in subrogation of the Customs Department.
87. *Corte di Cassazione, interlocutory order, 14 June 2002 No. 8592* ..... 1077  
 Art. 73 of the Law of 31 May 1995 No. 218 repealed Art. 796 of the Code

of Civil Procedure, which provided that the intervention of the Pubblico Ministero was always required in proceedings for the enforcement of a foreign judgment in Italy.

Since it is now necessary to verify (in light of Arts. 70, Nos. 2 and 3, and 72, fourth paragraph of the Code of Civil Procedure as well as Art. 5 of the Law of 1 December 1970 No. 898) whether the participation of the Pubblico Ministero is still required in proceedings for the recognition of foreign divorce decrees, it is appropriate to forward the acts of the proceedings to the First President, who shall decide whether such proceedings must be assigned to a plenary session.

88. *Perugia Court of Appeal, 20 June 2002* ..... 1080

An English court decree condemning an Italian citizen to pay to an English law firm the consideration for the legal services rendered by it, and including a statement of immediate enforceability, is enforceable in Italy, provided that all the requirements of the Brussels Convention of 27 September 1968 are met.

89. *Constitutional Court, order of 16 July 2002 No. 350* ..... 1011

Pursuant to Arts. 35, 27 and 28 of the Law of 4 May 1983 No. 184, a foreign minor who is adopted automatically receives only the surname of the adopting parents. The court cannot allow the minor to keep his original surname as well. This remains the case even after the amendments made by the Law of 31 December 1998 No. 476 and the Law of 28 March 2001 No. 149.

The question of the constitutional legitimacy of Arts. 35, 27 and 28 of the Law No. 184 of 1983, raised with reference to Arts. 2, 3, 10 and 11 of the Constitution, is manifestly inadmissible as irrelevant.

90. *Constitutional Court, order of 31 July 2002 No. 415* ..... 1014

The Law of 31 December 1998 No. 476 – which implements the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption – mandates the recognition of adoptions made in other Contracting States without need for a further period of pre-adoption foster placement in Italy. In addition, it provides that those adoptions are only effective in Italy subject to certain requirements and controls.

The question of constitutional legitimacy of Arts. 34, second paragraph and 35, third and sixth paragraphs of the Law of 4 May 1983 No. 184 (as amended by the Law No. 476 of 1998), raised with reference to Art. 3 of the Constitution, is manifestly unfounded.

#### EUROPEAN COMMUNITIES CASES

*Acts of Community institutions:* 1, 2, 11, 16.

*Brussels Convention of 1968:* 12, 13, 14, 16, 17, 23.

*Community Law:* 3, 20, 21.

*Community proceedings:* 6, 9, 15, 16, 17.

*Consumer protection:* 11.

*Contracts:* 19.

*Freedom of movement of capitals:* 12.

*Freedom of movement of goods:* 5.

*Freedom of movement of persons:* 1, 2, 4.

*Freedom to provide services:* 10, 12, 24.

*Interpretation of Community Law:* 5.

*Non contractual liability of the Community:* 19.

*Preliminary ruling on interpretation:* 8, 22.

*Right of residence and establishment:* 24.

*Treaties and general international rules:* 7, 15, 18.

1. *Court of Justice, 16 December 1999, case C-198/98* ..... 222

Pursuant to Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, where the employees adversely affected by the insolvency of their employer were employed in a Member State by the branch established in that State of a company incorporated under the laws of another Member State, where that company has its registered office and in which it was placed in liquidation, the competent institution for the payment to those employees of outstanding claims, under Art. 3 of EC Directive, is that of the State within whose territory they were employed.

2. *Court of Justice, 15 March 2001, case C-85/99* ..... 226

A benefit such as the advances on maintenance payments provided for by the Austrian Law on the Grant of Advances on Maintenance for Children constitutes a family benefit within the meaning of Art. 4(1)(h) of EC Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by EC Council Regulation No 118/97 of 2 December 1996. Consequently, persons residing in the territory of a Member State to which the provisions of that regulation apply are entitled, in accordance with Art. 3 of that regulation, to receive such a benefit under the legislation of that Member State on the same conditions as that State's nationals.

3. *Court of Justice, order 19 September 2001, case C-18/00* ..... 1031

An EC Directive cannot have the effect, per se and a part from the national law enacted for its implementation, to cause or to worsen the criminal responsibility of those who act in violation of its rules.

4. *Court of Justice, 11 October 2001, joint cases from C-95/99 to C-98/99, and C-180/99* ..... 765

As the establishment of freedom of movement for workers, which forms part of the foundations of the Community, constitutes the ultimate objective of Article 51 of the EEC Treaty, EC Council Regulation No. 3 of 25 September 1958 concerning social security for migrant workers applies also to workers who are stateless persons or refugees residing in the territory of one of the Member States, for the purpose to take account of the obligations which public international law imposes on Member States as a result of the ratification of

the Geneva Convention of 28 July 1951 and New York Convention of 28 September 1954.

5. *Court of Justice, 20 November 2001, joint cases C-414/99, C-415/99, C-416/99* 465

On a proper construction of Article 7(1) of First EC Council Directive 89/104 of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, the consent of a trade mark proprietor to the marketing within the European Economic Area of products bearing that mark which have previously been placed on the market outside the European Economic Area by that proprietor or with his consent may be implied, where it follows from facts and circumstances prior to, simultaneous with or subsequent to the placing of the goods on the market outside the European Economic Area which, in the view of the national court, unequivocally demonstrate that the proprietor has renounced his right to oppose placing of the goods on the market within the European Economic Area.

Implied consent cannot be inferred from the fact that the proprietor of the trade mark has not communicated to all subsequent purchasers of the goods placed on the market outside the European Economic Area his opposition to marketing within the European Economic Area; nor from the fact that the goods carry no warning of a prohibition of their being placed on the market within the European Economic Area; nor from the fact that the trade mark proprietor has transferred the ownership of the products bearing the trade mark without imposing any contractual reservations and that, according to the law governing the contract, the property right transferred includes, in the absence of such reservations, an unlimited right of resale or, at the very least, a right to market the goods subsequently within the European Economic Area.

With regard to exhaustion of the trade mark proprietor's exclusive right, it is not relevant that the importer of goods bearing the trade mark is not aware that the proprietor objects to their being placed on the market in the European Economic Area or sold there by traders other than authorised retailers, or that the authorised retailers and wholesalers have not imposed on their own purchasers contractual reservations setting out such opposition, even though they have been informed of it by the trade mark proprietor.

6. *Court of Justice, 6 December 2001, case C-472/99* ..... 196

Art. 104(5) of the Rules of Procedure of the Court of Justice, in codified version 1999/C 65/01 of 6 March 1999, is to be interpreted as meaning that payment of the costs incurred by the parties to the main proceedings for the purposes of the procedure under Art. 234 EC for obtaining a preliminary ruling is governed by the domestic law rules applicable to the proceedings before the national court, provided that those rules are not less favourable than those applicable to similar procedural steps which may be taken in such proceedings in accordance with national law.

7. *Court of Justice, opinion 6 December 2001, No. 2/00* ..... 777

The competence to conclude the Cartagena Protocol on Biosafety signed on 29 January 2000 by the Conference of the Parties to the Convention on Biological Diversity drawn up on 5 June 1992 by the European Economic Community and its Member States at the United Nations Conference on Environment and Development (UNCED), is shared between the European Community and its Member States.

8. *Court of Justice, 15 January 2002, case C-182/00* ..... 785  
 The Court of Justice lacks jurisdiction to answer the questions submitted by a Landesgericht, sitting as a Handelsgericht (Commercial Court) in a case concerning the registration of companies in the register which it maintains, as it is then exercising a non-judicial function.
9. *Court of Justice, order 22 January 2002, case C-447/00* ..... 201  
 The Court of Justice lacks jurisdiction to give a preliminary ruling requested by a national court in a case related to a registration in the register of companies maintained by said court if no proceedings are pending between the parties before the court.
10. *Court of Justice, 24 January 2002, case C-164/99* ..... 506  
 In assessing whether the application by the host Member State to service providers established in another Member State of domestic legislation laying down a minimum wage is compatible with Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC), it is for the national authorities or, as the case may be, the national courts to determine whether, considered objectively, that legislation provides for the protection of posted workers. In that regard, although the declared intention of the legislature cannot be conclusive, it may nevertheless constitute an indication as to the objective pursued by the legislation.  
 The fact that, in concluding a collective agreement specific to one undertaking, a domestic employer can pay wages lower than the minimum wage laid down in a collective agreement declared to be generally applicable, whilst an employer established in another Member State cannot do so, constitutes an unjustified restriction on the freedom to provide services.
11. *Court of Justice, 24 January 2002, case C-372/99* ..... 477  
 Under the system of protection laid down by EC Council Directive 93/13 of 5 April 1993 on unfair terms in consumer contracts Article 7(3) must be interpreted as requiring the setting up of procedures which may also be directed against conduct confined to the recommending of the use of unfair contract clauses. Consequently, by enacting Art. 1469-sexies civ. cod. and Art. 3 of Law 30 July 1998 No. 281, Italy failed to adopt the measures necessary to transpose correctly and in full the said EC Directive.
12. *Court of Justice, 7 February 2002, case C-279/00* ..... 482  
 The requirement that undertakings providing temporary labour which wish to supply manpower to customers established in Italy must have their registered office or a branch office on Italian territory under Article 2(2)(a) of Law No 196/97, is directly contrary to the freedom to provide services, in so far as it renders impossible, in that Member State, the supply of services by undertakings established in other Member States and goes beyond what is necessary to achieve the objective of protection of workers relied upon by the Italian Government as applies equally to every undertaking providing temporary labour established in a Member State other than the Italian Republic, without any distinction according to the place of residence of the workers whom such an undertaking employs.  
 Under Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, workers can sue their employers in the courts of the contracting State in which they usually work, even if the employer is domiciled in the territory of another contracting State.  
 The obligation to establish a guarantee with a credit institution having its



registered office or a branch office on Italian territory, as follows from Article 2(2)(c) of Law No 196/97, is a restriction on capital movements within the meaning of Article 56(1) EC, in so far as it impedes an undertaking wishing to carry on the business of providing temporary labour in Italy from putting forward, in order to obtain the licence required for that purpose, a guarantee established with a credit institution established in another Member State. Further, by restricting the establishment of the guarantees required to obtain the said licence to credit institutions having their registered office or a branch office in Italy, also constitutes discrimination against credit institutions established in other Member States, and is prohibited by the first paragraph of Article 49 EC.

13. *Court of Justice, 19 February 2002, case C-256/00* ..... 489

The special jurisdictional rule in matters relating to a contract, laid down in Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention, is not applicable where, as in the present case, the place of performance of the obligation in question cannot be determined because it consists in an undertaking not to do something which is not subject to any geographical limit and is therefore characterised by a multiplicity of places for its performance. In such a case, jurisdiction can be determined only by application of the general criterion laid down in the first paragraph of Article 2 of that Convention.

14. *Court of Justice, 27 February 2002, case C-37/00* ..... 206

Work carried out by an employee on fixed or floating installations positioned on or above the part of the continental shelf adjacent to a Contracting State, in the context of the prospecting and/or exploitation of its natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying Art. 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention, the 1982 Accession Convention the 1989 Accession Convention.

Art. 5(1) of that Convention must be interpreted as meaning that where an employee performs the obligations arising under his contract of employment in several Contracting States the place where he habitually works, within the meaning of that provision, is the place where, or from which, taking account of all the circumstances of the case, he in fact performs the essential part of his duties *vis-à-vis* his employer.

In the case of a contract of employment under which an employee performs for his employer the same activities in more than one Contracting State, it is necessary, in principle, to take account of the whole of the duration of the employment relationship in order to identify the place where the employee habitually works, within the meaning of Art. 5(1). Failing other criteria, that will be the place where the employee has worked the longest.

It will only be otherwise if, in light of the facts of the case, the subject-matter of the dispute is more closely connected with a different place of work, which would, in that case, be the relevant place for the purposes of applying Art. 5(1) of the convention.

In the event that the criteria laid down by the Court of Justice do not enable the national court to identify the habitual place of work, as referred to in Art. 5(1) of the convention, the employee will have the choice of suing his employer either in the courts for the place where the business which engaged him is

situated, or in the courts of the Contracting State in whose territory the employer is domiciled.

National law applicable to the main dispute has no bearing on the interpretation of the concept of the place where an employee habitually works, within the meaning of Art. 5(1) of the convention, to which the second question relates.

15. *Court of Justice, 19 March 2002, case C-13/00* ..... 511  
 An application to intervene before the EC Court of Justice challenging the Court's jurisdiction to hear the dispute but not set out in the forms of order sought by one of the parties is to be declared inadmissible.  
 As the 1971 Berne Convention for the Protection of Literary and Artistic Works creates rights and obligations in areas covered by Community law and being there a Community interest in ensuring that all Contracting Parties to the EEA Agreement adhere to that Convention, given its features of a mixed agreement concluded by the Community and its Member States related to an area covered in large measure by the Treaty, the failing by a Member State to obtain its adherence gives rise to a failure of his EC obligations.
16. *Court of Justice, order 22 March 2002, case C-24/02* ..... 217  
 The Court of Justice lacks jurisdiction to give a preliminary ruling requested by a national court of first instance and concerning the interpretation of the 1968 Brussels Convention or Regulation n. 44/2001 on jurisdiction and the enforcement of judgments in civil and commercial matters.
17. *Court of Justice, order 22 March 2002, case C-69/02* ..... 220  
 The Court of Justice lacks jurisdiction to give a preliminary ruling requested by a national court of first instance and concerning the interpretation of the 1968 Brussels Convention.
18. *Court of Justice, opinion 18 April 2002, No. 1/00* ..... 1096  
 The system of legal supervision proposed by the Agreement on the establishment of the European Common Aviation Area in Articles 17, 23 and 27 and Protocol IV is compatible with the EC Treaty as it does neither affect the essential character of the powers of the Community and its institutions to such an extent that it must be declared to be incompatible with the Treaty, nor shall it affect the distribution of powers between the Community and the Member States, as these will not be a part to it.
19. *Court of First Instance, 24 April 2002, case T-220/96* ..... 1104  
 The establishment of the non-contractual liability of the Community under the second paragraph of Article 215 (now Article 288) of the Treaty is subject to a number of conditions relating to the unlawfulness of the conduct alleged against the Community institutions, the existence of an actual damage and of a causal link between the conduct of the institution and the damage complained of.  
 A financial transaction relating to supplies of ammunitions to the Iraq Government which were wholly carried out more than a year before the date of entry into force of EC Council Regulation No. 2340/90 preventing trade from the Community as regards Iraq and Kuwait does not fall within the scope of said Regulation.
20. *Court of Justice, 25 April 2002, case C-183/00* ..... 1133  
 Article 13 of Council Directive 85/374/EEC of 25 July 1985 on the

approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted as meaning that the rights conferred under the legislation of a Member State on the victims of damage caused by a defective product under a general system of liability having the same basis as that put in place by the Directive may be limited or restricted as a result of the Directive's transposition into the domestic law of that State.

21. *Court of Justice, 7 May 2002, case C-478/99* ..... 788

The full effect of EC Directive No. 93/13 of 5 April 1993 on unfair terms in consumer contracts can be ensured in national law in a sufficiently precise and clear legal framework without the list contained in the annex to the Directive forming an integral part of the provisions implementing the Directive, as such annex constitutes a source of information both for national authorities responsible for applying the implementing measures and for individuals affected by those measures.

22. *Court of Justice, 30 May 2002, case C-516/99* ..... 514

An appeal chamber of the Austrian regional finance authority established by Paragraph 263(1) of the *Bundesabgabenordnung* does not constitute a court or tribunal within the meaning of Article 234 EC.

23. *Court of Justice, 6 June 2002, case C-80/00* ..... 498

On a proper construction of Article 27(3) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978 Accession Convention, by the 1982 Accession Convention and by the 1989 Accession Convention, a foreign decision on interim measures ordering an obligor not to carry out certain acts is irreconcilable with a decision on interim measures refusing to grant such an order in a dispute between the same parties in the State where recognition is sought.

Where a court of the State in which recognition is sought finds that a judgment of a court of another Contracting State is irreconcilable with a judgment given by a court of the former State in a dispute between the same parties, it is required to refuse to recognise the foreign judgment.

24. *Court of Justice, 5 November 2002, case C-208/00* ..... 1114

Where a company formed in accordance with the law of a Member State in which it has its registered office is deemed, under the law of another Member State, to have moved its actual centre of administration to this latter State, Articles 43 EC and 48 EC preclude this State from denying the company legal capacity and, consequently, the capacity to bring legal proceedings before its national courts for the purpose of enforcing rights under a contract with a company here established.

Where a company formed in accordance with the law of a Member State in which it has its registered office exercises its freedom of establishment in another Member State, Articles 43 EC and 48 EC require this State to recognise the legal capacity and, consequently, the capacity to be a party to legal proceedings which the company enjoys under the law of its State of incorporation.

## CASES IN FOREIGN COURTS

*Court of Appeal (Civil Division), 29 May 2002* ..... 793

The reactivation of proceedings, after a long period of stay, without it being served on the defendant in sufficient time to defend himself nor to exercise his right of appeal constitutes a grave breach of the right to a fair trial under Article 6 of the European Convention on Human Rights.

The fundamental objective of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters to facilitate the free movement of judgments would be frustrated if courts of an enforcing State could be required to carry out a detailed review of whether the procedures that resulted in the judgment had complied with Article 6 of the European Convention on Human Rights.

In exceptional cases where the procedure of the court first seised has resulted in a manifest breach of the defendant's right to defend himself, Article 27(1) of the 1968 Brussels Convention can justify a refusal to enforce the resultant judgment on grounds of public policy.

*Court of Appeal, (Civil Division), 21 December 2001* ..... 1138

Notwithstanding that under art. 3 par. 1 of the 1980 Rome Convention on the Law Applicable to Contractual Obligations an implied choice of law can be inferred "with reasonable certainty" not only from the contractual terms but also from the circumstances of the case, the fact that one party deleted a choice of law clause proffered by the other party is a positive indication that the parties made no choice as to the governing law.

Article 4 par. 2 of the Rome Convention, that provides that it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has his habitual residence, may be disregarded when it appears from the circumstances, ex Article 4 par. 5, that the "center of gravity" of the contract is connected with another country.

## CASES IN INTERNATIONAL COURTS

*European Court of Human Rights, 20 July 2001, on application No. 30882/96* ..... 232

In order to authorise the recognition of a decision rendered in a State not party to the European Convention on Human Rights, Italian courts must duly satisfy themselves that the relevant proceedings fulfilled the right to adversarial proceedings, which is one of the elements of a fair hearing within the meaning of Article 6 par. 1 of the European Convention.

A decision of the Vatican courts annulling the applicant's marriage and declared enforceable by Italian courts infringes Article 6 par. 1 of the European Convention when its proceedings infringed the adversarial principle on several points.

## DOCUMENTS

## EC Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings ..... 241

Regulation on review and simplification of the order on legal status, pursuant to Art. 2, Paragraph 2, of Law 15 May 1997 No. 127 (Presidential Decree 3 November 2000 No. 396) .....	262
Ruling of the Ministry of Home Affairs on the Regulation on review and simplification of the order on legal status (26 March 2001) .....	283
EC Council Regulation No. 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters .....	520
Corrigendum to EC Council Regulation No. 44/2001 of 22 December 2000 .....	539
Convention on mutual assistance in criminal matters between the Member States of the European Union (Brussels, 29 May 2000) .....	540
Amendments to the Criminal Code and to the Criminal Procedure Code (Law 5 October 2001 No. 367) .....	556
Urgent provisions to repress and oppose financing of international terrorism (Law 14 December 2001 No. 431) .....	559
Urgent provisions to combat international terrorism (Law 15 December 2001 No. 438) .....	561
Implementation of EC Directive 1999/44/CE on certain aspects of the sale of consumer goods and associated guarantees (Legislative Decree 2 February 2002 No. 24) .....	566
EC Council Regulation No. 2157/2001 of 8 October 2001 on the Statute for a European company .....	803
EC Council Directive No. 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees .....	827
EC Commission Regulation No. 1185/2002 of 1 <sup>st</sup> July 2002 amending the list of competent courts in Annex I to EC Council Regulation No.1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility for children of both spouses .....	839
EC Council Regulation No. 6/2002 of 12 December 2001 on Community designs .	840
Amendment to Art. 48 of the Italian Constitution (Constitutional Law 17 January 2000 No. 1) .....	847
Provisions concerning the right to vote of Italian citizens resident abroad (Law 27 December 2001 No. 459) .....	847
Convention on the accession of Austria, Finland and Sweden to the 1980 Rome Convention (Brussels, 29 November 1996) .....	1152
EC Commission Regulation No. 1496/2002 of 21 August 2002 amending Annex I (the rules of jurisdiction referred to in Article 3(2) and Article 4(2)) and Annex II (the list of competent courts and authorities) to EC Council Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters .....	1155

Urgent provisions to oppose illegal immigration and to grant rights to persons affected by measures of expulsion (Law 7 June 2002 No. 106) .....	1156
Urgent provisions concerning legal aid and civil proceedings before the Juvenile Court (Law 2 August 2002 No. 175) .....	1157
Provisions on cooperation with the International Criminal Tribunal for Rwanda (Law 2 August 2002 No. 181) .....	1158
EC Council Regulation No. 1346/2002 of 25 July 2002 amending EC Regulation No. 2465/96 concerning the interruption of economic and financial relations between the European Community and Iraq .....	1166
Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States .....	1169

#### CURRENT EVENTS AND RECENT DEVELOPMENTS

<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from January to March 2002) – Member States of the Hague conventions in force – Proposal for a Council Regulation establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters – Further information by Member States on EC Regulation on the service of judicial and extra judicial documents in civil or commercial matters in the Member States – EC Regulation on public access to European institutions documents – New provisions on export and restitution of cultural goods – Prorogation of the term established by art. 6 of Law 24 March 2001 No. 89 – On tax privileges for diplomats .....	290
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from April to June 2002) – On the scope of application of the 1988 Lugano Convention – The law implementing EC rules in Italy for 2001 – EC Directives on electronic communications networks and services – New Italian provisions on the protection of personal data – Implementation of EC Directive on a Community framework for electronic signatures – EC Commission Decision on the transfer of personal data in third countries – EC Commission Communication on entities qualified to promote a cross-border action for an injunction – Proposal for a Council Directive to improve access to justice in cross-border disputes .....	570
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from July to August 2002) – EC Commission Decision on EC Regulation on the service of judicial and extra judicial documents in civil or commercial matters in the Member States – Proposal for an EC Council Regulation concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility – EC Council Regulation establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters – EC Regulation on cross-border payments – EC Directive on financial collateral arrangements – EC Regulation on the «.eu» Internet top level domain – Proposal of a new law amending the law on implementation of EC rules in Italy – Implementation of EC Directive on European Works Council – New EC initiatives on consumer protection – Harmonisation of substantive and	

procedural criminal law in the EU – A uniform format for residence permits accorded to third-country nationals – Contrasting illegal immigration in the EU – Amended proposal for a Council Directive on the right to family reunification	856
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from September to December 2002) – Towards a new Convention replacing the 1988 Lugano Convention – Agreements between EC and Switzerland – Participation of third States to the preliminary ruling procedure before the Court of Justice – Forms for the application of EC Regulation on insolvency proceedings – On the Communication of the EC Commission on EC Contract Law – Green Book on ADR in civil and commercial matters – Initiative for a Statute for SMEs – EC Council's authorisation to ratify the «Bunker Oil» Convention – Question on the conditions for the granting of EU nationality – Question on the naturalisation in Greece and grant of EU nationality – Question on the recognition of contracts of marriage .....	1187
<i>Notices.</i> XXXIV round-table on EC law – XIV meeting on private international law in Losanna – A seminar in Milan on EC company law and the European company – SIDI award for young Italian scholars – III workshop of the Gaetano Morelli Foundation .....	297
<i>Notices.</i> Eleventh meeting of the European Group for Private International Law – Round-table on EC law in Genoa .....	578
<i>Notices.</i> The 2003 courses of the Hague Academy of International Law – 2002 SIDI award for young Italian scholars – Award “Riccardo Monaco” – VII award “Giuseppe Barile e Pietro Verri” on international humanitarian law, human rights and refugee law .....	1197

#### BOOK REVIEWS

(See Italian Index)

---

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

*Direttore responsabile:* prof. FAUSTO POCAR

Grafiche Fiorini - 37131 Verona, Via Altichiero, 11

---



Rivista associata all'Unione della Stampa Periodica Italiana

---

Proprietà letteraria - Stampato in Italia - Printed in Italy

---