

COUNTRY REPORT: ITALY

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1. GENERAL BACKGROUND

Italy is a democratic constitutional Republic operating a civil law system and its law is codified. Family law is governed by the first book of the Civil Code (Articles 74 to 455), as amended by Law 19 May 1975 No. 151 on the Reform of Family Law, and the relevant procedures are set out in the fourth book of the Code of Civil Procedure (Articles 706 to 711 and 732 to 742). The Law 31 May 1995 No. 218 on the Reform of the Italian System of Private International Law provides the relevant conflict of laws rules and jurisdiction, recognition and enforcement rules on family matter.

Jurisdiction, recognition and enforcement of custody issues in Italy, as in other European Union (EU) States,¹ are also governed by the Brussels II Regulation² which came into force on 1 March 2001. Although the Regulation has priority over Italian domestic law, in its original form, it did not affect the application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereafter ‘1980 Hague Convention, see Article 4 of the Regulation). However, the revised Brussels II Regulation,³ which came into force on 1 March 2005, will have an impact insofar as an application is made in one EU State⁴ in respect of a child habitually resident in another Member State. First, courts will be required, when applying Articles 12 and 13 of the 1980 Hague Convention, to ensure “that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity”. Secondly, a court “shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged”. Thirdly, a court will not be permitted to refuse a return upon the basis of Article 13b “if it is established that adequate arrangements have been made to secure the protection of the child after his or her return”. Fourthly, a court will not be permitted to refuse a return unless the left-behind parent has been given the opportunity to be heard.

If a return order is refused, the court must, within one month, transmit both the order and relevant documentation to the court or Central Authority of the State in which the child was habitually resident before the abduction. In turn the last mentioned court or Central Authority must invite the parties to make, within three months of notification, submissions in accordance with national law, so that the court can examine the question of the custody of the child. In other words it is the court of the child’s habitual residence that has jurisdiction to hear the case on its merits. If, after hearing the merits, the court requires the child’s return, then such an order is enforceable without need for any further orders.

1.1 IMPLEMENTATION OF THE CONVENTION

Italy formally became a Contracting State to the 1980 Hague Convention on 1 May 1995. It was the 42nd Contracting State and one of the last of the original 15 EU States to ratify (only Belgium ratified later).⁵ Under Article 87 of the Italian Constitution the President of the Republic is empowered to ratify international treaties, subject to authorisation by the Parliament for treaties concerning the matters dealt with in Article 80 of the Constitution.⁶ In Italy there is no requirement for making a convention internally applicable to incorporate it into a national statute. It is sufficient that a statute is passed formally authorising the President of the Republic to ratify and approving the convention, the text of which is annexed to the statute. It is, however, necessary to legislate specifically to create any necessary competent authorities under a convention; this implementing legislation can be provided in the same act of Parliamentary approval.

The law which authorised the President of the Republic to ratify the 1980 Hague Abduction Convention and implement it was passed on 15 January 1994 (the 1994 Act, No. 64) and was published in the Official Diary of the Republic (*Gazzetta Ufficiale*) on 29 January 1994. The supporting instrument was deposited in The Hague on 22 February 1995.

The 1994 Act makes provision for the setting up and regulating of the Central Authority, determining which courts have jurisdiction and setting out the procedure for dealing with incoming applications.

With the implementation of the 1994 Act, Italy also ratified the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and made provisions also to enact the Hague Convention of 5 October 1961 on Jurisdiction and Applicable Law to the Protection of Children and the Convention of 28 May 1970 on the Repatriation of Minors.

1.2 OTHER CONTRACTING STATES ACCEPTED BY ITALY

Italy as a Member State of the Hague Conference ratified the Convention and as with all other Contracting States it must accept all ratifications. Nevertheless, under Article 38, non-Member States may accede to the Convention and Contracting States are not obliged to accept accessions. Italy has accepted the vast majority of acceding States, as Italian policy is generally favourable to accepting accessions though it tends to do so in phases. Thus Italy accepted with effect from 1 August 2001 the following States: Belarus, Brazil, Costa Rica, El Salvador, Georgia, Paraguay, South Africa, Turkmenistan and Uzbekistan, but did not accept any further accessions until 2004 when it accepted, with effect from 1 August 2004, those of Bulgaria, Estonia, Guatemala, Latvia, Lithuania, Malta, Nicaragua, Peru, Sri Lanka and Trinidad and Tobago. As of 1 January 2005, the Convention was in force between Italy and 72 other Contracting States.

For a full list of States with which the Convention is in force with Italy and the dates that the Convention entered into force for the relevant States, see the Appendix.

1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES

Italy currently has not entered into bilateral agreements with non-Convention States; nevertheless, discussions are currently being conducted with some North-African States.⁷

1.4 CONVENTION NOT APPLICABLE IN INTERNAL ABDUCTIONS

The Convention does not apply to abductions within the Italian Republic. Where abduction occurs the local court will be in charge of the case and will apply civil or criminal law. Custody measures and access in Italy are governed by Article 155 of the Civil Code and by Article 6 of the Law 1 December 1970 No. 898 on Divorce and other Related Proceedings. According to these provisions, custody over a child (*affidamento del minore*) includes the right to claim the child from anyone who keeps it unlawfully. If one parent contests custody of the child with the other parent jurisdiction lies with the family court, which is a section of the local civil court (*Tribunale*). There is no summary procedure in Italian domestic law corresponding to the 1980 Hague Convention's return mechanism. Instead the judge will fully examine any custody application on its merits and will also hear the child.

The criminal law may also be invoked and the accused can be pursued under Articles 573 and 574 of the Criminal Code. According to these provisions anyone who abducts or retains a child of / or under 14 years of age, from the parent who has the parental authority or from the person having the guardianship, or from anyone exercising custody, is punishable by up to three years. Both the crimes are punishable provided that application to prosecute the respondent is made within three months.

Mention should also be made of Article 388, para. 2, of the Criminal Code according to which a breach of a custody order is punishable by one to three years' imprisonment and / or a fine from €103 to €1032, provided that the application to prosecute the respondent is made within 3 months. Although it is an arrestable offence, the defendant cannot be arrested by police on suspicion of a breach of custody order

since that is allowed only for the offences mentioned in Articles 380 and 381 of the Criminal Procedure Code and for the offences under the same Articles and under Article 384 of the Criminal Procedure Code which carry a penalty of a longer imprisonment. Italian case-law has extended the provision under Article 388, para. 2, of the Criminal Code to cover also the breach of access order.⁸

The case is heard by a judge of the Criminal Court of first instance sitting alone (hence *Tribunale monocratico*). The relevant procedures are found in the Criminal Procedure Code at Articles 33 ter and seq.

2. THE ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION

2.1 CENTRAL AUTHORITY

According to Article 3, para. 1, of the 1994 Act, the Central Authority for Italy is the Central Office for Juvenile Justice (*Dipartimento per la Giustizia Minorile*), which is part of the Ministry of Justice located in Rome. The Central Authority handles all abduction cases involving Italy and is also responsible for operating the 1980 European Custody Convention, the 1970 Repatriation Convention and the 1961 Hague Protection Convention. It will also deal with cases under the revised Brussels II Regulation.

It is headed by a Director, who is an High Court judge. The staff of the Central Authority comprises a Senior Executive and other civil servants. No lawyers are employed directly as members of its staff (but legal advice can be sought from the Attorney-General – see post).

The Central Authority has a Translation Service which is a special bureau with two professional translators who translate to and from English, French and Dutch. When it is needed, translation to and from Spanish can be provided by translators temporarily employed. Spanish is becoming an emerging language in the Central Authority activity because of the increasing cases from Latin-American States. When translation into other languages is necessary, the Central Authority provides an external service, at its own expense. This service is used both for incoming and outgoing cases.

Most of the Central Authority workload falls under the 1980 Hague Convention. This is because on the one hand most incoming applications are made under that Convention, while, on the other hand, the Central Authority prefers to use the 1980 Hague Convention when dealing with outgoing applications, since the Convention does not require previous judicial measures to be taken and makes for a faster resolution of the case. In fact the 1980 European Custody Convention has only been applied in some cases with Belgium before it ratified the Hague Convention. Statistics on the cases yearly dealt with by the Central Authority are provided by the Statistics Bureau of the *Dipartimento per la Giustizia Minorile* and are available at <http://www.giustizia.it/statistiche/statistiche-indice.htm>.

Distribution of case load follows a number criterion: every staff member has a certain number of cases regardless of whether the application is made under the Hague or European Convention.

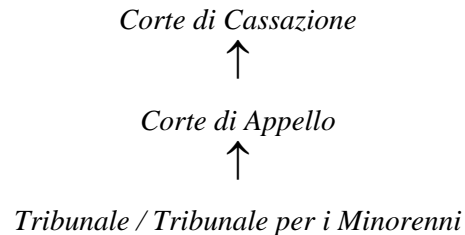
According to Article 3, para. 2, of the 1994 Act, the Central Authority can seek legal advice from the Attorney-General (*Avvocatura dello Stato*), as the legal advisor to the Government of Italy, and avails itself of the Youth Welfare Service of the Ministry of Justice. Additionally, the State Police and the relevant State / local Social Service may be required of assistance by the Central Authority.

The Central Authority has cooperated with the Foreign Affairs Ministry to publish the booklet “Contested Children” (*Bambini Contesi*) which gives information in Italian only to the parent on what to do to in order both to prevent and to resolve child abduction. Information about the 1980 Hague Convention has also been posted on the Central Authority’s web page on the Ministry of Justice’s web site (see post at 6.2). The Central Authority can be contacted at the following address:

*Ministero della Giustizia
Dipartimento per la Giustizia Minorile del Ministero della Giustizia
Via Giulia 131
00186 Roma
Tel: +39-6-681881
Fax: +39-6-68807087
Email: autoritacentrali.dgm@giustizia.it*

For the Ministry of Foreign Affairs' competence in abduction cases, see post at 5.3.

2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES

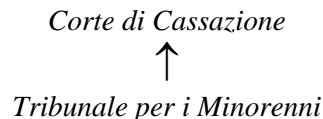


There are three tiers in the Italian civil court system. Courts of first instance include Justice of the Peace (*Giudice di Pace*), local courts of first instance (*Tribunale*), which generally deal with disputes between individuals, and various specialised sections of the court, such as the section hearing legal separation, divorce, guardianship and related family matters, the guardianship judge (*giudice tutelare*), who sits in every local court, and the Juvenile Court (*Tribunale per i Minorenni*). Appeals are to the Court of Appeal (*Corte d'Appello*) of the district where the court of first instance is located.⁹

The highest court in Italy is the Supreme Court (*Corte di Cassazione*), which is situated in Rome. This court only deals with matters of law and not fact and in effect can only examine whether proceedings take place in accordance with the rules and whether the law is properly applied.

Mention should also be made of the Constitutional Court to which judges of all tiers can address themselves where doubt is raised on a statute provision as violating constitutionally guaranteed rights.¹⁰

While all tiers have jurisdiction in family matters, the 1994 Act confers exclusive jurisdiction in Convention cases to the Juvenile Court, with an appeal to the Supreme Court.¹¹



The Juvenile Court (*Tribunale per i Minorenni*) is a specialised court having jurisdiction in juvenile crime and in civil law questions involving children as set out in Article 38 of the Implementing Rules (*Disposizioni attuative*) of the Civil Code (e.g. paternity and maternity ascertainment; parental authority; child property; natural son's guardianship; child adoptability). The Juvenile Court comprises two judges and two experts in the problems of the childhood (psychologists, sociologists, who are called *giudici onorari*). Including specialist experts who are not lawyers on the Bench of the court is a real peculiarity of the Italian system. The intention is to obtain a deeper and more complete knowledge of the children and family world in view of the decisions to be taken.¹²

In Italy there are 29 Juvenile Courts and Convention cases are heard in the Juvenile Court in the district where the child is located.

3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN

3.1 LOCATING THE CHILD

If the applicant is able to give the Central Authority a contact address or information regarding the whereabouts of the child, investigations for locating the child are undertaken by the State Police (*Polizia di Stato*). The Central Authority will inform the Police Headquarters (*Questura*), which has territorial jurisdiction in the district where the child is supposed to be. In every Police Headquarters there is a special office for children matters, called the Children Office (*Ufficio Minori*), which comprises police officers, chiefly women, who are expert in children matters.

If the applicant is unable to provide a contact address or information regarding the whereabouts of the child, the Central Authority can ask State Police and, if necessary, Interpol to discover the location of the child.¹³ If they succeed, the Children Office has to contact the abductor and the child. Further help to locate children can be gained from International Social Service (ISS) with which the Central Authority co-operates. The ISS do not charge the Central Authority for their services. ISS's section in Rome maintains a web site at <http://www.serviziosocialeinternazionale.org> and can be contacted at the following address:

Via V. Veneto 96-00187 – Roma
Telephone: + 39-6-4884640
Fax: + 39-6-4817605
Email: info@serviziosocialeinternazionale.org

3.2 CENTRAL AUTHORITY PROCEDURE

As Italy made no reservation to Article 24 of the 1980 Hague Convention, the Central Authority will accept applications in either of the official languages of the Hague Conference, namely, English and French, as well as in Italian. The Italian Central Authority does not provide its own application form, because it uses the standard Hague Convention application form, which is translated into Italian.

Upon receipt of an application, the Central Authority will check that the Convention criteria have been satisfied and that the appropriate documentation is attached. All applications to Italy must include details of the whereabouts of a child, if known, and the reason for seeking his or her return.

Once this checking procedure is complete and the child has been located, according to Article 7, para. 2, of the 1994 Act, the Central Authority will transmit the application with the relevant documents translated into Italian, where necessary, by the Translation Service, to the Prosecutor (*Procuratore della Repubblica*) sitting in the Juvenile Court of the district where the child is located. The Prosecutor requests the Juvenile Court to make an order for the child's return. The Prosecutor has to check if the child has suffered physical and / or mental harm and what are his or her general condition. In an emergency the Prosecutor can take precautionary measures and then submit them to the control of the Juvenile Court or he can request the court to take them.

The Central Authority can attempt a mediation by persuading the parties to agree upon a voluntary return of the abducted child. In order to prevent dilatory attempts and to speed up the process, the mediation does not hinder instituting court proceedings and the two actions can run in parallel. Indeed it is the practice to contact the abductor and to institute court proceedings at the same time.

The amicable settlement will be explored by bodies such as the Police of the Children Office. They explain to the abductor that court proceedings under the 1980 Hague Convention are or are going to be initiated and to avoid further difficulties to the child they suggest either a voluntary return together with the child to the child's place of habitual residence or surrendering the child to the parent filling the return application.

If a voluntary return of the child is negotiated during the court proceedings, the settlement is submitted to the Juvenile Court, which will incorporate the main points of it in the judgment. Accordingly, the agreement is ratified (*omologato*), so having a special force.

A voluntary return of the child is not suggested to the applicant if there are serious reasons to fear that the abductor might disappear or flee or might otherwise cause the child harm upon learning of the application for return. In order to avoid this risk and not to delay matters, the Central Authority does not follow the practice of sending a letter to the abducting parent as other Central Authorities do.

It is the responsibility of the Prosecutor, under Article 73 of the Royal Decree No. 12 of the 30 January 1941, and of the Juvenile Court, under Article 336, para. 3, of the Civil Code, to avoid every danger and further prejudice to the child.

3.3 LEGAL REPRESENTATION

On receipt of an application, the Prosecutor brings the case to the court. Every Juvenile Court has its office of the Public Prosecutor (*Pubblico Ministero*), which is entitled to petition the court in all the proceedings regarding parents' authority and other issues related to the child's capacity. Consequently it is the State which brings the case and the Prosecutor does not represent the applicant parent.

According to Article 7, para. 3, of the 1994 Act, the applicant is informed by the Central Authority of the date of the hearing (which is a hearing in Chambers) and of the possibility to appoint a lawyer at his own expense.

3.4 COSTS AND LEGAL AID

Italy made no reservation to Article 26 and therefore an applicant seeking return of a child from Italy will not have to pay legal costs if he applies through the Central Authority and allows the Central Authority to conduct legal proceedings. The Central Authority is bound to assume all the costs in Convention proceedings and these costs include judicial expenses. However, according to Article 3, para. 3, of the 1994 Act, judicial acts promoted by the Central Authority are exempt of taxes and free of any other charge. Recourse to the Prosecutor is of benefit to the applicant as the service is free of charge, because the Prosecutor officially represents the State and not the applicant.

The applicant does not need to attend the hearing and is not obliged to give evidence, but if he does, he will have to pay his own lawyer, unless he is eligible for legal aid according to Italian domestic law. ISS can give advice on lawyers who have expertise in handling child abduction cases.

If it is necessary for the child to have separate legal representation, the lawyer will be appointed by the Juvenile Court.

The Juvenile Court needs documentation translated into Italian and the Central Authority provides it at its own expense through the Translation Service.

The Juvenile Court can make the abductor responsible for the proceedings' costs.

In accordance with Article 26 of the 1980 Hague Convention the costs of repatriation following a return order are always at the parties' expense.

3.5 LEGAL PROCEEDINGS

Where mediation fails, according to Article 7, para. 2, of the 1994 Act, the Prosecutor will propose a petition for return to the President of the Juvenile Court and can introduce the petition by an emergency procedure (*ricorso in via d'urgenza*). This petition is similar to an emergency writ of summons and the related procedure is known as Chambers adversarial procedure (*procedura camerale a carattere contenzioso*). The main advantage of using this emergency procedure is that it is faster than proceeding through the normal court system and hearings are not delayed. The President will first make summary inquiries, where necessary, and afterwards fix the hearing and communicate it to the Central Authority.

The applicant will be informed by the Central Authority of the date of the hearing¹⁴ and may attend the hearing and demand to give evidence in his own right at his own expense.

The hearing will be in Chambers (*udienza camerale*) and the Court sits as a panel of four judges, two judges and two experts.¹⁵ According to Article 7, para. 3, of the 1994 Act, the court has to hear the defendant, namely the person with whom the child is now living, and the Prosecutor. It must reach its decision within a period of 30 days.¹⁶

While generally the Central Authority passes the application to the Prosecutor who in turn brings the case to court, according to Article 7, para. 6, of the 1994 Act, the applicant can bypass the Central Authority and directly issue court proceedings, which is in accordance with Article 29 of the 1980 Hague Convention. The applicant's lawyer will use the same emergency procedure (*ricorso d'urgenza*). However, if the applicant opts to use the emergency procedure, he will have to pay for proceedings unless he is eligible for legal aid. The payment of all the costs of the procedure by the applicant is considered by some to be contrary to Article 26, para. 2 and 3, of the Hague Convention.¹⁷

Even where legal aid is available, the court may not appoint a translator and the applicant may have to pay these costs.

Under Article 3, para. 3, of the 1994 Act, the child will be heard, if necessary. The decision whether or not the child should attend the court hearing lies at the court's discretion. This power has been considered by some as being contrary to Article 13, para. 2, of the Hague Convention which recognises the special value of a child's hearing.¹⁸ There are many ways of ascertaining the views of the child: the child may be interviewed in the judge's chambers or examined by a court-appointed psychologist, which vests the role of expert witness. Moreover, the court may appoint an expert sitting in the Juvenile Court to hear the child separately or ask the youth welfare officer to provide a report based on an inquiry (*indagine ambientale*). The Juvenile Court usually hears children of six years old and over, as their statements are presumed to be reliable. However, many applications involve children under six years old¹⁹ in which case, the Juvenile Court appoints an expert who can better understand the child's will.

If the child objects to being returned, it is necessary to provide a report on the child's objections and the extent to which he has attained sufficient age and understanding.²⁰

Hearing a child can be ordered for evidential purposes to clarify matters in general or, for example, to resolve a dispute as to whether the child is of sufficient age and understanding. In this case the expert sitting in the Juvenile Court or a child psychologist appointed by the court – acting as a court consultant – may conduct a separate enquiry in order to observe the child and analyse his unexpressed needs.²¹

The burden of proof for finding exceptions to return lies on the defendant in the case.²²

Orders are usually made available immediately after the final hearing, but judgments, especially in difficult cases, may be reserved.

3.6 APPEALS

According to Article 7, para. 4, of the 1994 Act, decisions of the Juvenile Court on Convention cases can be appealed to the Supreme Court.²³ Under the general rule of Article 360 of the Civil Procedure Code, all the parties to the first instance proceedings are entitled to appeal and have to pay their own lawyer. As to the Prosecutor, under Articles 69 to 72 of the Civil Procedure Code, he has the right to appeal in the proceedings promoted by him or in the proceedings where he has to intervene. Under domestic proceedings rules the appellant must file an appeal within 60 days of the judgment being notified.²⁴ An appeal is not a hearing *de novo* and only brought on an issue of law (Article 360, para. 1-4, of the Civil Procedure Code) or where the lower court failed to give sufficient weight to a particular aspect of the case (Article 360, para. 5, of the Civil Procedure Code).²⁵ Nonetheless, according to Article 372 of the Civil Procedure Code, parties cannot submit to the court acts and documents not given to the “merits court”, except when these concern the invalidity of “merits court” judgment and the requirements for the appeal. If the Supreme Court is of the opinion that the Juvenile Court did not apply the law correctly or misdirected itself, then it will quash the decision (hence *cassazione*) and will refer the case back to the

Juvenile Court which will re-examine the case giving consideration only to either of the said grounds. Conversely, the Supreme Court will reject the appeal (*rigetto del ricorso*). Under Article 7, para. 4, application to appeal before the Supreme Court does not allow a stay of order. The consequence is first that the lack of an expedited procedure in appeals process is not a matter for concern in view of the prompt return of the abducted child as it generally is; secondly, that appeals are not frequent.²⁶

3.7 ENFORCEMENT OF ORDERS

According to Article 7, para. 4 and 5, of the 1994 Act, the Juvenile Court's order of return is immediately enforceable (regardless of whether there is an appeal – see ante at 3.6) and it is the Prosecutor, sitting in the Juvenile Court, who is responsible for overseeing its execution. He can request the assistance of the Children Office of the competent Police Headquarters and has to give notice of the enforcement to the Central Authority.

As for costs for the child's travel, they are at parties' expense (see ante at 3.4). When the delivery or the renewal of the child's passport is necessary to enforce the order of return of the child, consent of the parents is required. If the abducting parent denies his consent, the guardianship judge can authorise the issue of the passport (see post at 5.1).

4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS

4.1 / 4.2 CENTRAL AUTHORITY PROCEDURE AND LEGAL PROCEEDINGS

An application to make arrangements for organising or securing the effective exercise of right of access may be presented in the same way as an application for the return of a child. Under Article 7, para. 1 and 2, of the 1994 Act the Central Authority will receive and check the application and forward it to the Prosecutor sitting in the Juvenile Court of the district where the child is located who will bring the case before the Juvenile Court which, unlike most common law jurisdictions, does regard itself as being bound by Article 21 of the 1980 Hague Convention. The Central Authority, however, offers mediation and conciliation, counselling and assistance to the applicant trying to reach a settlement between the parties.²⁷

The Italian Central Authority very often has to deal with access applications for the same case where the right to access during the holiday seasons is repeatedly in dispute, therefore casting doubt on the good working of Article 21 of the Hague Convention. The Central Authority is not able to secure the enforcement of the access decision.

If an access order is not complied with, the offender can be pursued under Article 388, para. 2, of the Criminal Code. Although the breach of custody order is governed by that rule, the Italian case-law has extended it to cover also the breach of access order.²⁸ This offence is punishable by one to three years' imprisonment and / or a fine from €103 to €1032, provided that application to prosecute the respondent is made within 3 months.

4.3 ENFORCEMENT OF ORDERS

The Prosecutor has the responsibility to ensure the enforcement of access orders in the same manner as he does in respect of return orders (see ante at 3.7), since return and access proceedings are dealt with together under Article 7 of the 1994 Act, and are therefore subject to the same requirements.

5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS FOR RETURN

5.1 PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION

5.1.1 CIVIL LAW

The parent exercising rights of custody on the child²⁹ can, in order to prevent his or her abduction, apply to the guardianship judge, sitting in the local civil court, for an order prohibiting the removal of the child from Italy without his consent.

Other precautionary measures concern the issuing of the child's passport. Normally, a passport application for a child or an application to include a child on a parent's passport can only be processed with the authorisation of the other parent exercising custody of the child or – in case of absence of consent by this parent – with the authorisation of the guardianship judge.³⁰ The parent with the custody can also request the guardianship judge not to give this authorisation.

To counter the threat of a child's removal parents with the custody are advised to inform the school of this danger and to instruct them on the person who can exclusively have contact with the child.

5.1.2 CRIMINAL LAW

The abduction of children of / or under 14 by a parent or anyone exercising custody was first made a criminal offence in 1981 and is governed by Articles 573 and 574 of the Criminal Code (see ante at 1.4).³¹ It is equally a crime to abduct such children within Italy or to take them abroad.

In practice, however, the crime is considered a minor one (because of the child's link to the abductor) and no parent has actually been convicted for it.

The breach of custody order is also a crime under Article 388, para. 2, of the Criminal Code, which covers also the breach of access order (see ante at 1.4 and 4.2).

5.2 CENTRAL AUTHORITY PROCEDURE

When an abduction from Italy to another Convention State occurs, the left-behind parent can apply through the Italian Central Authority, having completed the relevant application form provided by the Central Authority. The Italian Central Authority will examine whether the application is well-founded and then submit it to the Central Authority of the relevant foreign State.

The Italian Central Authority can also cooperate with the foreign Central Authority to locate the child, involving the Interpol.

If the child is an Italian citizen, it is also possible to request the aid of the Migration Policy and Italians Living Abroad Division of the Ministry of Foreign Affairs (*Direzione Generale per gli Italiani all'Estero e le Politiche Migratorie*). The Ministry of Foreign Affairs has a minor role in the so-called "active" abduction cases involving other Hague Convention States and a full role in cases involving non-Convention States. The ministerial office, after examining the case, can activate Interpol to discover the location of the child abroad. It can also involve Italian Embassy officials in the State where the child has been taken, who will attempt to obtain information about the child's location and welfare, with the aid of the local social services. Once the child has been located the Consul can, together with the aid of the local youth welfare service, conduct a "Welfare and Whereabouts" check and may exercise his powers as a "guardian" judge. These powers can only be exercised over children who are Italian citizens, and only have internal effect, that is, within the Italian jurisdiction.³²

6. AWARENESS OF THE CONVENTION

6.1 EDUCATION OF CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS

An Italian delegation always attends the Special Commission Meetings on the 1980 Hague Convention held in The Hague. A representative also attended the judicial conference held in Du Ruwenberg in 2000. On the other hand, Italy did not participate in the judicial conferences held in De Ruwenberg in 1998 and 2001 nor in Noordwijk in 2003. Central Authority staff receive training on the rules of the 1980 Hague Convention as a part of a more general updating that they periodically undergo.

As for the practitioners, the National Professional Organization (*Consiglio Nazionale Forense*) has recently promoted the inclusion of international abductions proceedings in High Level Courses on Family Law.

6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC

The Italian Central Authority maintains a web page on the Ministry of Justice web site.³³ There is information which is solely available in Italian on the scope of the Hague and European Conventions and about the role of the Central Authority. Relevant legislation is also available including the 1994 Act and the Hague Convention translated into Italian.

The information booklet “Contested children” (*Bambini contesi*), edited by the Migration Policy and Italians Living Abroad Division of the Foreign Affairs Ministry in cooperation with the Central Authority, has been updated in 2003. This booklet is freely available on the Internet and, in addition to the first information to the left-behind parent, contains also the Hague Convention text in Italian (see ante at 2.1).

The Migration Policy Division of the Ministry of Foreign Affairs offers assistance to parents in child abduction issues and can be contacted, where the abduction involves a State which is not a Hague Convention State, at the following address:

*Ministero Degli Affari Esteri
Direzione Generale per gli Italiani all'Estero e le Politiche
Migratorie – Uff. IV
Piazzale della Farnesina, 1
00194 - Roma
Tel. + 39-6-36911
<http://www.esteri.it>*

7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999³⁴

The Central Authority in Italy handled a total of 114 new applications in 1999, making Italy the sixth busiest Convention jurisdiction in that year.³⁵

| | |
|-------------------------------------|------------|
| Incoming return applications | 41 |
| Outgoing return applications | 48 |
| Incoming access applications | 4 |
| Outgoing access applications | 21 |
| Total number of applications | 114 |

7.1 INCOMING APPLICATIONS FOR RETURN

7.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

| | Requesting States | |
|----------------------|--------------------------|-------------|
| | Number of Applications | Percent |
| Germany | 12 | 29 |
| Poland | 4 | 10 |
| Spain | 4 | 10 |
| Switzerland | 3 | 7 |
| UK-England and Wales | 3 | 7 |
| Czech Republic | 2 | 5 |
| France | 2 | 5 |
| Hungary | 2 | 5 |
| USA | 2 | 5 |
| Argentina | 1 | 2 |
| Australia | 1 | 2 |
| Belgium | 1 | 2 |
| Canada | 1 | 2 |
| Ecuador | 1 | 2 |
| Finland | 1 | 2 |
| Netherlands | 1 | 2 |
| Total | 41 | ~100 |

Italy received applications for return from 16 Contracting States. Almost one third of all applications for return were made by neighbouring Germany (which no doubt reflects on the number of émigré Italians working in Germany). The next highest number of applications were received from other European States, namely Spain and Poland. Unlike many States, Italy received relatively few applications from England and Wales and the USA. However, the number of applications received from the USA, in particular, has increased in subsequent years.³⁶

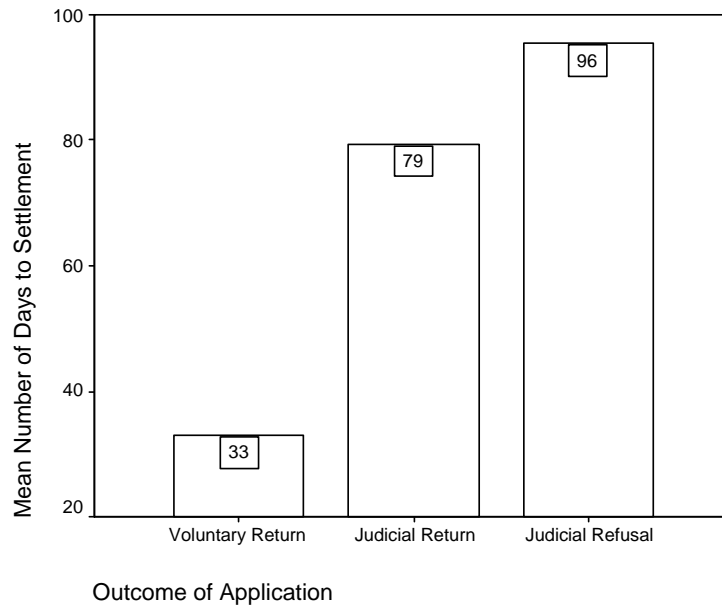
7.1.2 THE OUTCOMES OF THE APPLICATIONS

| | Outcome of Application | |
|------------------|-------------------------------|------------|
| | Number | Percent |
| Rejection | 4 | 10 |
| Voluntary Return | 6 | 15 |
| Judicial Return | 18 | 44 |
| Judicial Refusal | 7 | 17 |
| Withdrawn | 0 | 0 |
| Pending | 1 | 2 |
| Other | 5 | 12 |
| Total | 41 | 100 |

Fifty nine percent of return applications to Italy resulted in either the voluntary or judicial return of the children which was higher than the global norm of 50%.³⁷ Totalling 44%, there was a significantly greater proportion of judicial returns compared with the global norm of 32%. At 15% the proportion of applications which resulted in voluntary returns, was slightly below the global norm of 18%. (However, in fact many voluntary returns are negotiated during the court proceedings – see ante at 3.2). Of those cases which ended in return, 75% were judicially ordered rather than voluntarily agreed which is above the global average of 64%. On the other hand, proportionally more applications were judicially refused,

17% compared with 11% globally. Of all applications which went to court, 72% ended in a judicial return compared with 74% globally. Strikingly, no cases were withdrawn, whereas globally, 14% of cases ended in withdrawal. Proportionally, slightly fewer applications were rejected, 10% as against the global norm of 11%. Five applications were classified as having ‘other’ outcomes³⁸ and one application was still pending at 30 June 2001. Again, strikingly there were no appeals.

7.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION



Information regarding timing was available for all of the voluntary and judicial returns and for 6 of the 7 judicial refusals. The chart above, therefore, relates to these cases only.

For all three outcomes Italy was faster than the global averages. Taking an average of 33 days, voluntary returns were markedly quicker (in fact over twice as fast) than the global average of 84 days. Judicial returns took an average of 79 days, compared with the global norm of 107 days. Unlike many other States, judicial refusals were also quicker, taking only 96 days compared to the global average of 147 days. Italy was one of the fastest jurisdictions considered in the overall 1999 statistical survey.

Number of Days Taken to Reach Final Outcome

| | Outcome of Application | | |
|------------------------|------------------------|-----------------|------------------|
| | Voluntary Return | Judicial Return | Judicial Refusal |
| Mean | 33 | 79 | 96 |
| Median | 29 | 70 | 105 |
| Minimum | 0 | 34 | 36 |
| Maximum | 78 | 218 | 145 |
| Number of Cases | 6 | 18 | 6 |

The above table shows the number of cases for which we had information regarding time, the mean and median average number of days to final outcome and the minimum and maximum number of days. This gives a more informative picture of the system in Italy.

In part the speedy disposition of cases is accounted by the fact that no case was appealed. This is very different to the global norm of 14% of decisions leading to appeal. Nevertheless, according to these

statistics Italy will be among the best placed civil law jurisdiction within the EU to meet the six week deadline to dispose of applications envisaged by Article 11(3) of the revised Brussels II Regulation.³⁹

7.2 INCOMING APPLICATIONS FOR ACCESS

Four out of a total of 45 incoming applications made to Italy in 1999 were for access which at just under 9% was well below the global norm of 17%.

7.2.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

| | Requesting States | |
|----------------|------------------------|------------|
| | Number of Applications | Percent |
| Austria | 1 | 25 |
| Canada | 1 | 25 |
| Czech Republic | 1 | 25 |
| USA | 1 | 25 |
| Total | 4 | 100 |

Italy received one access application from each of four Contracting States, Austria, Canada, the Czech Republic and the USA. It is interesting that although Germany made the most applications for return, it did not make any access applications to Italy.

7.2.2 THE OUTCOMES OF THE APPLICATIONS

Each access application had a different outcome. In one application access was granted pending the court hearing; in another two cases access was judicially granted; the fourth application was judicially refused. None of the applications resulted in a voluntary agreement that the applicant was to have access. Overall, in 2 of the 4 applications, 50%, access was granted. This is above the global norm of 43%.

7.2.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION

Although there were few cases it can nevertheless be seen that Italy was faster than the global norm in the resolution of an access application. Globally, only 29% of judicial decisions were reached in less than 6 months whereas 3 out of the 4, 75%, applications made to Italy were resolved in less than 6 months. Two of these were determined in less than 3 months. As with return applications, Italy is one of the fastest jurisdictions considered in the 1999 Statistical Survey, although with regard to access applications the numbers are small and must therefore be considered with caution.

8. CONCLUSIONS

Italy came late to the 1980 Hague Convention only ratifying in 1995. It was one of the last of the original 15 EU States to do so (see ante at 1.1). However, it may be that Italy has benefited from other Contracting States' experience. Certainly for the most part Italy is fully compliant with the recommendations as to good practice contained in the *Guide to Good Practice on Central Authority Practice and Implementing Measures*, recently prepared by the Permanent Bureau of the Hague Conference⁴⁰ and seems well placed to meet the challenges set by the revised Brussels II Regulation.⁴¹

The Central Authority, which is adequately staffed, operates efficiently and effectively. Having made no reservation to Article 24 the Central Authority will accept applications both in English and in French, as well as in Italian. Furthermore, the Central Authority has its own Translation Service to translate, at its own expense, documents into Italian as and when required for most court proceedings with regard to incoming applications and to translate applications from Italian with regard to outgoing applications. The

Authority has, in co-operation with the Foreign Affairs Ministry, produced an informative booklet (updated in 2003) about child abduction and it also maintains a web page on the Ministry of Justice web site giving information about the Convention. Both the booklet and the web site, however, are solely in Italian and it would be helpful if at least some of the information about the Italian system were to be made available in English and / or French. Like many of those in other jurisdictions, the Italian Central Authority seeks to encourage the parties to reach a voluntary settlement (though such settlements are explored by bodies such as the Police of the Children Office). Attempts to contact the abductor are not made, however, where there is felt to be a danger of the abductor fleeing or harming the child. Furthermore, in order to avoid delays, it is the normal practice to contact the abductor and to institute court proceedings at the same time. One consequence of this practice is that the number of out of court voluntary returns is below the global norm but this is offset by settlements made in court proceedings and ratified (*omologato*) by the court itself. This latter practice might also contribute to the overall speed of court resolutions (see post).

Although applicants are free to petition the court directly themselves, the normal practice is for the State to bring the proceedings. This is done by the Central Authority transmitting the application to the Prosecutor (*Procuratore della Repubblica*) who then seeks a return order in court. Provided this procedure is followed it is at no cost to the applicant. However, although the applicant need not attend the hearing and is not obliged to give evidence, if he does wish to do so (and there are those that say that this is advisable)⁴² then it will be at the applicant's own cost.⁴³ Costs of repatriation are always at the parties' expense.

Original jurisdiction to hear Convention applications is vested exclusively⁴⁴ in the Juvenile Court (*Tribunale per i Minorenni*). Given that there are 29 such courts, each of them having territorial jurisdiction, there is the obvious danger that some will lack experience of the 1980 Hague Convention and in this sense it might be said that Italy needs to consider concentrating jurisdiction within a few of these courts in line with the recommendation of the *Guide to Good Practice: Implementing Measures*.⁴⁵ On the other hand, it must be emphasised that Juvenile Court is a specialised court comprising not just career judges (that is, gowned) but also other experts with particular competence in children issues. Convention applications are heard by a panel of four, namely two judges and two experts. No particular complaint has been voiced about the general competence or expertise of these courts.

Another distinctive feature of the Italian system when dealing with abduction is to permit appeals only to the Supreme Court (*Corte di Cassazione*) and only on points of law. One immediate consequence of this restricted right is that appeals are relatively infrequent. Indeed according to the 1999 Statistical Survey⁴⁶ none of the return applications made in 1999 were appealed.⁴⁷ An appeal, in any event, will not prevent enforcement of any return order made by the Juvenile Court (see ante at 3.7), which helps to explain the overall speed with which abducted children are returned from Italy.

The disadvantage of the Italian appeal system is that appeals can take a very long time to be heard, there being no expedited procedure for abduction cases. This of course is a big disadvantage if it is sought to appeal against a refusal to return.⁴⁸

Appeals apart, however, the Italian system seems well adapted to provide for speedy disposals of 1980 Hague Convention applications. In particular proceedings for return are brought by the Prosecutor by an emergency procedure known as *ricorso in via d'urgenza* which is faster than proceeding through the normal court system. According to Article 7, para. 3, of the 1994 Act (the Implementing Law) the court should reach its decision within 30 days. The findings of the 1999 Statistical Survey⁴⁹ bear testimony to the success of this strategy since Italy is among the fastest of all EU Member States and certainly the quickest among the civil law jurisdictions in disposing of Hague applications. It seems well placed to meet the tough six week target set by Article 11(3) of the revised Brussels II Regulation.⁵⁰

Finally, it should be said that as of January 2005 Italy has accepted virtually all accessions, though recently seems to have adopted a policy of accepting a host of accessions at considerable intervening periods.⁵¹

9. SUMMARY OF CONCERNS

- Information and advice about abduction as well as statistical data on applications dealt with by the Central Authority are solely in Italian.
- Applicants wishing to appear in court proceedings can only do so at their own expense by hiring private lawyers.
- Jurisdiction to hear applications under the 1980 Hague Convention is vested in too many courts.
- There is no expedited procedure for hearing appeals.
- There can be long gaps between accepting accessions.

10. SUMMARY OF GOOD PRACTICES

- The Central Authority is efficient in handling child abduction cases and will accept applications made in English, French or Italian.
- There is helpful information both about the Convention and the domestic law for dealing with abduction, both in a booklet and on a web site.
- The Central Authority has its own Translation Service and translates documents free of charge.
- The Central Authority can prosecute a case before the court at no cost to the applicant.
- Jurisdiction is vested in specialist Juvenile Courts comprising professional judges and experts.
- There is a limited right of appeal, on points of law, only to the Supreme Court.
- There is a successful expedited procedure for dealing with Hague applications.
- Italy has accepted virtually every accession.

APPENDIX

As at 1 January 2005, the Convention is in force between the following 72 Contracting States and Italy.

| Contracting State | Entry into Force |
|---|-------------------------|
| ARGENTINA | 1 MAY 1995 |
| AUSTRALIA | 1 MAY 1995 |
| AUSTRIA | 1 MAY 1995 |
| BAHAMAS | 1 APRIL 1997 |
| BELARUS | 1 AUGUST 2001 |
| BELGIUM | 1 MAY 1999 |
| BELIZE | 1 APRIL 1997 |
| BOSNIA AND HERZEGOVINA | 1 MAY 1995 |
| BRAZIL | 1 AUGUST 2001 |
| BULGARIA | 1 AUGUST 2004 |
| BURKINA FASO | 1 APRIL 1997 |
| CANADA | 1 MAY 1995 |
| CHILE | 1 AUGUST 1996 |
| CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION | 1 SEPTEMBER 1997 |
| CHINA-MACAO SPECIAL ADMINISTRATIVE REGION | 1 MARCH 1999 |
| COLOMBIA | 1 SEPTEMBER 2000 |
| COSTA RICA | 1 AUGUST 2001 |
| CROATIA | 1 MAY 1995 |
| CYPRUS | 1 APRIL 1997 |
| CZECH REPUBLIC | 1 MARCH 1998 |
| DENMARK | 1 MAY 1995 |
| ECUADOR | 1 APRIL 1997 |
| EL SALVADOR | 1 AUGUST 2001 |
| ESTONIA | 1 AUGUST 2004 |
| FIJI | 1 NOVEMBER 1999 |
| FINLAND | 1 MAY 1995 |
| FORMER YUGOSLAV REPUBLIC OF MACEDONIA | 1 MAY 1995 |
| FRANCE | 1 MAY 1995 |
| GEORGIA | 1 AUGUST 2001 |
| GERMANY | 1 MAY 1995 |
| GREECE | 1 MAY 1995 |
| GUATEMALA | 1 AUGUST 2004 |
| HONDURAS | 1 APRIL 1997 |
| HUNGARY | 1 APRIL 1997 |
| ICELAND | 1 APRIL 1997 |
| IRELAND | 1 MAY 1995 |
| ISRAEL | 1 MAY 1995 |
| LATVIA | 1 AUGUST 2004 |
| LITHUANIA | 1 AUGUST 2004 |
| LUXEMBOURG | 1 MAY 1995 |
| MALTA | 1 AUGUST 2004 |
| MAURITIUS | 1 APRIL 1997 |
| MEXICO | 1 APRIL 1997 |
| REPUBLIC OF MOLDOVA | 1 NOVEMBER 1998 |
| MONACO | 1 APRIL 1997 |
| NETHERLANDS | 1 MAY 1995 |
| NEW ZEALAND | 1 APRIL 1997 |

| | |
|--------------------------|------------------|
| NICARAGUA | 1 AUGUST 2004 |
| NORWAY | 1 MAY 1995 |
| PANAMA | 1 APRIL 1997 |
| PARAGUAY | 1 AUGUST 2001 |
| PERU | 1 AUGUST 2004 |
| POLAND | 1 FEBRUARY 1996 |
| PORTUGAL | 1 MAY 1995 |
| ROMANIA | 1 SEPTEMBER 2000 |
| SAINT KITTS AND NEVIS | 1 APRIL 1997 |
| SERBIA AND MONTENEGRO | 1 MAY 1995 |
| SLOVAK REPUBLIC | 1 FEBRUARY 2001 |
| SLOVENIA | 1 APRIL 1997 |
| SOUTH AFRICA | 1 AUGUST 2001 |
| SPAIN | 1 MAY 1995 |
| SRI LANKA | 1 AUGUST 2004 |
| SWEDEN | 1 MAY 1995 |
| SWITZERLAND | 1 MAY 1995 |
| TRINIDAD AND TOBAGO | 1 AUGUST 2004 |
| TURKEY | 1 JULY 2000 |
| TURKMENISTAN | 1 AUGUST 2001 |
| UNITED KINGDOM | 1 MAY 1995 |
| UNITED STATES OF AMERICA | 1 MAY 1995 |
| URUGUAY | 1 JULY 2001 |
| UZBEKISTAN | 1 AUGUST 2001 |
| VENEZUELA | 1 JANUARY 1997 |
| ZIMBABWE | 1 APRIL 1997 |

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¹ With the exception of Denmark which is not a party to this Regulation – see Article 1(3).

² Council Regulation (EC) No. 1347/2000 of 28 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses OJ No. L160, 30.6.2000, p. 19.

³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338 , 23.12.2003, p. 1 (hereafter Council Regulation).

⁴ Except Denmark, see Article 2(3).

⁵ <http://www.hcch.net>

⁶ Article 80 of the Constitution states that: “The Houses authorise through laws the ratification of international treaties which are of a political nature, or which call for arbitration or legal settlements, or which entail changes to national territory or financial burdens or changes in the laws”.

⁷ In this respect mention may be made of the *Cooperation Agreement between the Government of the Italian Republic and the Government of the Tunisian Republic on family and woman matters of the 24 June 1999* (published on the Official Diary No. 11 of the 15 January 2000, Ordinary Supplement), although it does not concern child abduction.

⁸ See post at 4.1 / 4.2, n. 28.

⁹ Jurisdictionally, the entire territory of the Republic is divided into 26 districts and three divisions. For every district and division there is a Court of Appeal and a Juvenile Court. There are 164 courts of first instance (civil divisions).

¹⁰ The Constitutional Court has rejected as not founded a constitutional complaint concerning Articles 1, 2 and 7 of the 1994 Act. See decision No. 231 of 4-6 June 2001.

¹¹ See post at 3.6.

¹² For a discussion on the participation of experts in the Juvenile Court see Leonardo Lenti, (*a cura di*), *Tutela civile del minore e diritto speciale della famiglia*, in *Trattato di diritto di famiglia*, vol. VI, Milano, 2002, at pp. 76-86.

¹³ State Police maintains a web site, at <http://www.bambiniscamparsi.it>, on which photos and information about missing children are published. This web site is linked to the International Network of Missing Children web sites coordinated by the National Center for Missing & Exploited Children (NCMEC).

¹⁴ Note: the Central Authority's duty of communicating to the applicant the date of the hearing before the Juvenile Court is closely related to the applicant's right to be heard, see Supreme Court judgment No. 746 of 28 January 1999, *Griffin v. Cinelli*, where the Supreme Court stated that the non observance of this guarantee can nullify the judgment.

¹⁵ See ante at 2.2. Pending a return proceeding in the Juvenile Court, the civil local court dealing with legal separation and custody of the abducted child must stay the judgment until the Juvenile Court decides on the abduction case. See Supreme Court judgment No. 10090 of 15 October 1997, *Alati v. Ministero di Grazia e Giustizia*.

¹⁶ As Andrea Cannone, *L'affidamento dei minori nel diritto internazionale privato e processuale*, Bari, 2000, p. 229, (hereafter 'Cannone') points out, this short time-limit complies fully with the need to deal expeditiously with applications under Article 11 of 1980 Hague Convention. On this point see also Supreme Court judgement No. 15295 of 29 November 2000, *Marino v. Tinè*. According to the Supreme Court, return orders have to be issued on the premise of the removal of the child from the person having its custody, as a factual situation, without taking into account whether he has the right of custody but having regard to the "a priori paramount importance of the interest of the child to go back to its habitual residence". See Supreme Court judgment No. 13823 of 8 November 2001, *Sheldon v. Marciano*. On the same point see Supreme Court judgment No. 2748 of 25 February 2002, *Smith v. Giannino*, stressing that it is a requirement of return applications that the applicant was effectively exercising the custody of the abducted child.

¹⁷ See Alberto Salzano *La sottrazione internazionale di minori*, Milano, 1995, p. 90 (hereafter 'Salzano').

¹⁸ See Salzano, *ibid.*, p. 96.

¹⁹ According to the findings in *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October on the Civil Aspects of International Child Abduction* drawn up by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias, available at http://www.hcch.net/index_en.php?act=publications.details&pid=2845&dtid=32 (hereafter the '1999 Statistical Survey'), 40% of return applications made to Italy in 1999 involved children under the age of 5 and a further 42% involved children aged between 5 and 9.

²⁰ The child's objections are only relevant until the decision by the Juvenile Court is taken: see Constitutional Court judgment No. 231 of 6 July 2001.

²¹ See Graziana Campanato, Vittorio Rossi, Serena Rossi, *Il minore e il giudice civile*, Padova, 2000, pp. 210-211.

²² On the restrictive interpretation of the Articles 13 and 20 exceptions in the Italian case law, see Cannone, *op. cit.*, n. 16, pp. 231-233.

²³ The provision has been interpreted by the Supreme Court as preventing parties from requesting the Juvenile Court to modify or revoke its order. See Supreme Court judgment No. 746 of 28 January 1999, *Griffin v. Cinelli*.

²⁴ See Article 325, para. 2, of the Civil Procedure Code (*Codice di procedura civile*).

²⁵ Following the decision of the Supreme Court judgment No. 11999 of 25 September 2001, *Curtet v. Magalhaes*, evidence already submitted to the merits court cannot be re-examined by the Supreme Court.

²⁶ In fact according to the 1999 Statistical Survey, *op. cit.*, n. 19, there were no appeals in respect of return applications made in 1999, see post at 7.1.2.

²⁷ Ironically, according to the 1999 Statistical Survey, *op. cit.*, n. 19, none of the access applications made in 1999 was resolved voluntarily, see post at 7.2.2.

²⁸ The leading cases are: Supreme Court judgment No. 455 of 5 March 1971, and Supreme Court judgment No. 2925 of 18 November 1999.

²⁹ Under Italian law married parents have joint custody but after divorce or separation the court determines which parent will exercise the guardianship and the parental authority (Article 155 of the Civil Code). Unmarried couples with minors are in the same legal position as married parents in respect to child issues.

³⁰ See Article 3, b, of the Act on Passports No. 1185 of 21 November 1967, as modified by Article 24 of the Act No. 3 of the 16 January 2003. For further information, see <http://www.poliziadistato.it/pds/cittadino/passaporto/>

³¹ Note the modification by Article 146 of the Law No. 689/1981 enabling a parent with parental authority but without custody to prosecute the other parent.

³² These powers have been introduced by Article 34 of the Decree of the President of the Republic No. 200 of 5 May 1967.

³³ See http://www.giustizia.it/minori/autorita_centra_conv.htm

³⁴ The following analysis is based on the 1999 Statistical Survey, *op. cit.*, n. 19.

³⁵ The USA, England and Wales, Germany, Australia and France handled more cases in 1999. According to the 2002 statistics Italy handled 120 applications comprising 67 incoming cases and 53 outgoing cases. The Italian Central Authority publishes annual statistics, see http://www.giustizia.it/statistiche/statistiche_dgm/analisi_statistiche/AC_2002.pdf

³⁶ According to the annual statistics produced by the Italian Central Authority, *ibid.*, there were 22 incoming applications (including both return and access applications) from the USA made in 2000, with 17 in 2001 – but only 6 cases in 2002. In each of these years Germany made the most applications.

³⁷ In fact the overall proportion was even greater because in 2 further applications in which the outcome was described as ‘other’ the children were in fact returned, see post, n. 38.

³⁸ One of the ‘other’ outcomes concerned 3 children, one child was returned voluntarily, the other 2 were judicially returned. In a second application, the child was returned but the circumstances were not stated. The outcomes of the other 3 applications were not available.

³⁹ Council Regulation, op. cit., n. 3.

⁴⁰ See *Guide to Good Practice*, Parts I *Central Authority Practice* and II *Implementing Measures* (*Jordan’s Family Law*, 2003) and available on the Hague Conference on Private International Law web site http://www.hcch.net/index_en.php?act=conventions.publications&dtid=3&cid=24

⁴¹ Council Regulation, op. cit., n. 3 and discussed ante at 1.

⁴² This at any rate, is the advice of the Australian Central Authority, see their guide: *International Child Abduction – a guide for parents and practitioners* (2001) at <http://www.law.gov/childabduction>

⁴³ Anne-Marie Hutchinson, Rachel Roberts and Henry Setright *International Parental Child Abduction* (*Family Law*, 1998), p. 136, advise clients to agree on a fixed fee rather than an hourly rate.

⁴⁴ This in itself is in contrast to the normal position in guardianship matters, see ante at 2.2.

⁴⁵ *Jordan’s Family Law*, 2003, para 5.1.

⁴⁶ The 1999 Statistical Survey, op. cit., n. 19.

⁴⁷ See ante at 7.1.2.

⁴⁸ According to the 1999 Statistical Survey, op. cit., n.19, the judicial refusal rate was higher than the global norm, though the overall return rate was also higher, see the discussion ante at 7.1.2.

⁴⁹ The 1999 Statistical Survey, op. cit., n. 19.

⁵⁰ See the analysis at ante at 7.1.3.

⁵¹ See the discussion ante at 1.2.

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