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EU LAW TRAINING IN ENGLISH LANGUAGE:  
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING  
FOR EUROPEAN NOTARIES AND JUDGES



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# Case law of the Italian Supreme Court

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# Public policy and succession: the problem

A classic problem about public policy and private international law concerns the possibility that the foreign law that should be applied in Italy does not provide for the reserved share and the necessary succession.



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## Case law on the merits

The case law on the merits originally held that the reserved share was mandatory (for example, Court of Appeal of Milan, 4 December 1992).

This, in particular, because the provisions on it are of public policy, because of the principles of solidarity of the family institution protected by the Italian Constitution.



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# Supreme Court

Court of Cassation, No 5832 of 24 June 1996, that denied the nature of rules of public policy of those on the reserved share.



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# The case of two fathers' child

By interim ruling no. 4382 of 22 February 2018, the First Chamber of the Supreme Court, referred to the First President for possible assignment to the United Sections of the proceedings relating to the appeal against the order of the Court of Appeal which had recognised under Article 67 of Law No 218 of 1995, in the Italian legal order, the foreign measure (from Canada), by which the parenting of a second father of two minors was established.



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## The decision of the Supreme Court

Supreme Court, SU, no. 12193 of 8 May 2019: according to the Supreme Court, the recognition of the effectiveness of a foreign judicial measure, by which the relationship of parentage between a child born abroad through the use of surrogacy and the intended parent with Italian citizenship has been established, is hindered by the prohibition of subrogation of maternity, provided for by Article 12, par. 6, of Law No. 40 of 2004, which can be qualified as a principle of public policy.



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