

INDEX

ARTICLES

J. CARRASCOSA GONZALEZ, Rules on Jurisdiction in the Proposal for the “Rome III” Regulation (in Spanish)	567
Z. CRESPI REGHIZZI, International Law and Domestic Law in Disputes Submitted to ICSID Arbitration	5
A. MALATESTA, The 2007 Hague Convention and Protocol on Maintenance Obligations	829
F. MOSCONI, Diplomacies on Extradition and Child-Begging: From 1870 to Nowadays	295
F. POCAR, I. VIARENGO, Regulation (EC) No 4/2009 on Matters Relating to Maintenance Obligations	805
T. SCOVAZZI, The Returning of the Obelisk of Axum and of the Venus of Cirene	555
S. TONOLO, The Law Applicable to Contracts of Carriage in the Rome I Regulation	309

REVIEWS

M.A. LOIODICE, The Use of Evidence in Criminal Proceedings in the Case-Law of the European Court of Human Rights	45
--	----

SHORTER ARTICLES, NOTES AND COMMENTS

L. ASCANIO, The <i>Mabr</i> between Muslim Law and Non-Islamic Societies	387
C. CAMPIGLIO, The Status of the Child Born under an International Surrogate Motherhood Agreement	589
S. CRESPI, Transfer Abroad of the Company Seat: The <i>Cartesio</i> Judgment	869
P. MENGOZZI, The Right to the Preservation of the Family Name of Under-Age Children Having the Citizenship of both a Non-EC Member State and Italy ..	69
C. OTERO GARCÍA-CASTRILLÓN, A Few Remarks on the Law Governing International Oil Contracts (in Spanish)	351
N. PARISI, The European Evidence Warrant in the Judicial Cooperation System in Criminal Matters between EU Member States	327
G. PERONI, The Appeal to the <i>Corte di Cassazione</i> against Non-Contentious Jurisdiction Decisions and Regulation (EC) No 2201/2003	85

P. RATTI, Reference to Unidroit Principles in Domestic and Arbitral Decisions	915
G. SERRANÒ, Foreign State Immunity and International Crimes in the Recent Case-Law of the <i>Corte di Cassazione</i>	605
L. TOMASI, The Right to a Name between Freedom of Movement and Fundamental Rights	891
S. TONOLO, Recognition in Italy of Foreign Acts and Measures Concerning the Right to a Name	849

CASES IN ITALIAN COURTS

Adoption: 66.

Bankruptcy: 23, 82.

Civil proceedings: 9, 21, 35, 39, 42, 66, 68, 70, 71, 89.

Contracts: 10, 41, 59.

Criminal proceedings: 14, 18, 20, 33, 46, 56, 58, 74.

Divorce: 6, 31, 54.

EC Regulation No 1346/2000: 32.

EC Regulation No 44/2001: 13, 27, 35, 40, 44, 51, 69, 89, 91.

EC Regulation No 2201/2003: 9, 42.

EC Regulation No 805/2004: 19, 34.

European Community Law: 23.

Extradition: 16, 24, 26, 76, 77, 78, 80, 86.

Foreigner: 3, 12, 15, 22, 25, 28, 30, 52, 63, 67, 70, 72, 81, 88.

Foreign judgments and administrative acts: 4, 5, 19, 32, 36, 37, 38, 40, 43, 49, 55, 68, 84.

Foreign law: 6.

Form of deeds: 21, 39.

International abduction of children: 42, 48, 53.

Jurisdiction: 9, 12, 13, 17, 27, 35, 44, 47, 50, 51, 61, 62, 64, 65, 69, 73, 75, 82, 83, 85, 87, 89, 90, 91, 92.

Legal separation: 31, 54.

Marriage: 8.

Nationality: 60, 79.

Personality rights: 7, 57, 79, 93.

Public policy: 38, 41, 43, 55.

Relations between parents and children: 9.

Treaties and general international rules: 1, 2, 4, 5, 10, 11, 20, 22, 24, 26, 29, 36, 37, 38, 41, 42, 44, 45, 48, 49, 53, 57, 58, 59, 62, 64, 65, 70, 71, 74, 77, 83, 84, 85, 86, 90, 92, 93.

Trusts: 2.

1. *Lazio Regional Administrative Tribunal, 20 April 2007 No 3518* 629
 The so-called Venus of Cyrene, which was found by the Italian army in Cyrenaica in 1913 and was brought to Italy in 1915, cannot be qualified as a finding discovered in the Italian metropolitan territory, since – based on the principle of effectiveness – Italian sovereignty was not established at such date.
 Based on the principle of reconstruction of each national cultural patrimony, which is set forth by a provision of customary international law referred to by Article 10 of the Constitution as well as by various international conventions ratified by Italy, the so-called Venus of Cyrene shall be returned to the State of Libya, it being irrelevant that the modalities for such return are regulated by a series of agreements in simplified form entered into between Italy and Libya.
2. *Reggio Emilia Tribunal, order 14 May 2007* 729
 Pursuant to Article 13 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition, a “domestic” trust governed by the law of the State of Jersey can be recognised in Italy if the concrete purpose for which it has been created appears worthy.
3. *Corte di Cassazione, 25 July 2007 No 16417* 173
 For the purposes of ascertaining the existence of a persecution preventing the expulsion of a foreigner pursuant to Article 19(1) of Legislative Decree of 25 July 1998 No 286 – i.e. that said foreigner may be potentially subject to persecution in his State of origin on, among other things, grounds of sexual orientation – it shall be verified whether, under the law of said State, homosexual orientation constitutes *per se* a crime, or a crime occurs only in case of exhibition of homosexual practices that do not conform with the public sentiment in said State. Said ascertainment requires a rigorous examination of the relevant evidence that is aimed, first of all, at verifying the actual sexual orientation of the foreigner.
4. *Corte di Cassazione, 2 August 2007 No 17005* 175
 The appeal against a decision refusing enforcement, lodged pursuant to Article 40 of the Brussels Convention of 27 September 1968, is subject to the same time limits laid down by Article 36 of said Convention for the appeal against the decision authorising enforcement. Said time limits run from the date on which the decision is notified. A party shall necessarily lodge its appeal against a decision issued by such Court on an application for recognition of a judgment prior to filing an appeal to the *Corte di Cassazione*, since the proceedings laid down by said Convention for the recognition in a Contracting State of a judgment given in another Contracting State are three-instance proceedings.
5. *Corte di Cassazione, 2 August 2007 No 17006* 175
 The appeal against a decision refusing enforcement lodged pursuant to Article 40 of the Brussels Convention of 27 September 1968, is subject to the same time limits laid down by Article 36 of said Convention for the appeal

against the decision authorising enforcement. Said time limits run from the date on which the decision is notified. A party shall necessarily lodge its appeal against a decision issued by such Court on an application for recognition of a judgment prior to filing an appeal to the *Corte di Cassazione*, since the proceedings laid down by said Convention for the recognition in a Contracting State of a judgment given in another Contracting State are three-instance proceedings.

6. *Reggio Emilia Tribunal, 3 September 2007* 638

Pursuant to Article 31 of Law of 31 May 1995 No 218, a divorce may be granted on the basis of the law of Vietnam, being the national law of the spouses, if the parties have proved the contents of said law pursuant to the rule laid down by Article 14(2) of Law of 31 May 1995 No 218.

7. *Bologna Tribunal, decree 11 September 2007* 99

The registrar general of births, deaths and marriages (*ufficiale di stato civile*) shall not proceed with the automatic correction of the family name of a minor who is the natural child of Italian citizens, is born in Canada and holds both the Canadian and Italian nationality since his birth as it would provided Article 98(2) of Presidential Decree of 3 November 2000 No 396. Instead, Article 95(3) shall apply, and therefore the right of said minor to maintain both family names (i.e. that of his father and that of his mother), as attributed to him in Canada, shall be recognised.

Article 95(3) prevails over Article 98(2) of Presidential Decree No 396/2000 based on the recognition of the rights set forth under Articles 2, 3, 29(2) and 10(2) of the Constitution.

8. *Council of State, first division, opinion 24 October 2007 No 3105* 177

After the entry into force of Presidential Decree of 3 November 2000 No 396 – which has repealed Article 115(2) of Civil Code and the related requirement to publish the banns in Italy – the requirement that the future spouses make public in advance their will to marry before a foreign authority abroad applies only if it is provided for by the law of the place of celebration or by international conventions or special provisions of law.

9. *Corte di Cassazione (plenary session), 2 November 2007 No 23030* 104

No review before the *Corte di Cassazione* is admissible against any orders concerning the termination or reinstatement of the parental authority or the foster care, or any orders adopted pursuant to Article 333 of Civil Code, since said orders are not assisted by *res iudicata* effect (*giudicato sostanziale*). In fact, they have the less intense effects that are typical of *in camera* decisions issued in non-contentious proceedings (*giurisdizione volontaria*), which can be modified or revoked for pre-existing or supervening reasons by the same court that issued them.

Nor can a preliminary ruling on jurisdiction be brought in relation to proceedings aimed at the issuance of said non-contentious orders, since jurisdiction declared by the court in said proceedings, whether expressed or implied, is instrumental to the decision on the merits and is not different in nature from such decisions on the merits. The fact that the order can be revoked and the rejected application can be re-filed bars any foreclosure effect (*effetto preclusivo*). Accordingly, there is no ground for the substitutive intervention of the plenary session of the *Corte di Cassazione*.

The decision of the Italian Juvenile Court that, acting as a *ad quem* judge (*giudice del rinvio*) and lacking the enforceability in Spain of the Italian decision

granting the care of the child to the parent residing in Italy, has ordered the return of the child to Spain following his transfer to Italy by such parent, determines a new factual situation that requires a new decision by the competent court pursuing to the criteria laid down by EC Regulation No 2201/2003 of 27 November 2003 and cannot be used to question the nature and effects of an order issued pursuant to Article 317-*bis* of Civil Code and the means of appeal available against it.

10. *Corte di Cassazione, 16 November 2007 No 23794* 178
 Article 1705 of Civil Code, rather than Articles 10 and 12 of the Ottawa Convention of 28 May 1988 on International Financial Leasing, applies to a financial leasing contract entered into between two Italian companies having their seat in Italy, even though said provisions of the Ottawa Convention may constitute a useful term of comparison for the purpose of determining the consequences of a breach of contract by the supplier.
11. *Corte di Cassazione, 28 November 2007 No 24743* 180
 Article 12(1) of the bilateral Convention of 25 October 1979 between Italy and the Ivory Coast– as construed in light of the purpose of the Convention and of the context in which said provision is included, in accordance with the rules on the interpretation of treaties laid down by Articles 31 and 32 of the Vienna Convention of 23 May 1969 – provides that a steamship company established under Italian law using for the maritime traffic with said State, among others, ships that do not fly the Italian flag can participate to the reserved share of maritime traffic (*riserva di traffico marittimo*) provided for by said Convention, even if it lacks the qualification of “Italian shipping company” within the meaning of Article 3 of Law No 210/1991.
12. *Corte di Cassazione (plenary session), 29 November 2007 No 24814* 182
 Italian courts have jurisdiction over an action brought by a Saudi Arabian citizen against an Italian company, since the fulfilment of the condition of reciprocity laid down by Article 16 of the Preliminary Provisions to Civil Code – which is a factual requirement for the existence of the right claimed by the foreigner – is a question of substance, and therefore cannot constitute grounds for the defendant to object the lack of jurisdiction of Italian courts in any stage or instance of the proceedings pursuant to Article 11 of Law of 31 May 1995 No 218.
13. *Corte di Cassazione (plenary session), order 13 December 2007 No 26089* 108
 Pursuant to Article 19(a) of EC Regulation No 44/2001 of 22 December 2000, the employer can be sued in the courts of the place where the employee habitually carries out his work.
 Italian courts have jurisdiction over a dispute between an Italian employee and a French company if said employee has actually carried out his work in Italy, regardless of his initial allegations to the contrary.
14. *Corte di Cassazione (criminal), 19 December 2007 No 47133* 467
 As far as the execution of a European arrest warrant issued by a foreign judicial authority is concerned, Article 18(1) of Law of 22 July 2005 No 69, which has implemented the EC Framework Decision No 2002/584/JHA on the European arrest warrant, prevents the surrender of a person charged of a theft occurred in Germany if part of the criminal conduct – which also constitutes instigation to commit a crime – has been planned and carried out also on the Italian territory. On the contrary, a decision to allow the execution of an arrest

warrant beyond the term of sixty days from the adoption of a measure limiting personal freedom which is set forth by Article 17(2) of the aforesaid Law, does not prevent the surrender of the requested person, since said term is not mandatory.

15. *Corte di Cassazione, 20 December 2007 No 26822* 183
 The recognition of the status of political refugee is conditional upon the social, political and legal situation in the State of origin and its correlation with the specific situation of the applicant
 In this respect, the first condition cannot be based solely on circumstances that are considered to be well-known, and the second one cannot be simply inferred from the first. On the contrary, it is relevant for this purpose that a situation of persecution exists whereby the person concerned is likely to incur in specific sanctions affecting his physical integrity or personal freedom due to the fact that he belongs to an ethnic group, association, political or religious party, or to his attitude or life style.
16. *Corte di Cassazione (criminal), 21 December 2007 No 47527* 184
 A Court of Appeal that has granted an application for extradition abroad shall order the detention of the person being extradited based solely on the relevant request made by the Ministry of Justice. In fact, the requirement of preventive detention, which constitute a condition to order the detention of a person pursuant to Article 714(2) of Code of Criminal Procedure, are no longer relevant. If the person being extradited has been released due to the fact that the needs for preventive detention have ceased, a specific request of the Ministry of Justice is necessary to justify the adoption of an order of detention.
17. *Corte di Cassazione (plenary session), 28 December 2007 No 27172* 186
 For the purpose of contesting an order of payment issued by the Italian custom's authority, the person required to make said payment can only bring an action before Italian courts. In particular, it is irrelevant for the purposes of jurisdiction whether goods in Community transit have been put on the market in Italy for consumption.
18. *Corte di Cassazione (criminal), 16 January 2008 No 2450* 467
 As far as the execution of a European arrest warrant issued by a foreign judicial authority is concerned, Article 18(1) of Law of 22 July 2005 No 69, which has implemented the EC Framework Decision No 2002/584/JHA on the European arrest warrant, prevents the surrender of a person charged of a theft occurred in Germany if part of the criminal conduct – which also constitutes instigation to commit a crime – has been planned and carried out also on the Italian territory. On the contrary, a decision to allow the execution of an arrest warrant beyond the term of sixty days from the adoption of a measure limiting personal freedom which is set forth by Article 17(2) of the aforesaid Law, does not prevent the surrender of the requested person, since said term is not mandatory.
19. *La Spezia Tribunal, order 7 February 2008* 735
 Pursuant to Article 615(1) of the Code of Civil Procedure, the enforceability in Italy of a judgment issued in another Member State and certified as a European Enforcement Order pursuant to EC Regulation No 805/2004 of 21 April 2004 cannot be suspended if none of the grounds occur, that such Regulation considers as legitimate grounds to refuse (Article 21) or suspend (Article 23) the enforcement of a European Enforcement Order.

20. *Corte di Cassazione (criminal), 8 February 2008 No 6342* 187
- In cases where Article 11 of Law of 16 March 2006 No 146 implementing the United Nations Convention and Protocols against Transnational Organized Crime provides for the confiscation of cash or other property held by a criminal for a value corresponding to the assets that constitute the product, proceeds or price of the crime, a preventive seizure of assets of equivalent value (*sequestro preventivo per equivalente*) pursuant to Article 321(2) of Code of Criminal Procedure is also allowed.
21. *Corte di Cassazione (plenary session), order 13 February 2008 No 3410* 188
- A special power of attorney issued in Panama and authenticated on a subsequent date by a notary public in Luxembourg is null and void, due to the lack of the requirement that the document be signed before the notary public after he has ascertained the identity of the signatory. In fact, pursuant to Article 12 of Law of 31 May 1995 No 218, a power of attorney *ad litem* used in proceedings being held in Italy, even if granted abroad, is governed by Italian procedural law, which allows said power of attorney to be granted by notarial deed (*atto pubblico*) or by a document with authenticated signature (*scrittura privata autenticata*), and refers to the substantive law of the State in which it has been granted for its formal validity; however, the foreign law shall at least contemplate notarial deeds and documents with authenticated signature and regulate them in a manner not conflicting with the fundamental requirements applicable to them under the Italian legal system.
22. *Corte di Cassazione, 19 February 2008 No 4197* 469
- Pursuant to Article 31(3) of Legislative Decree of 25 July 1998 No 286, in case of serious reasons related to the psychological and physical development of a foreign child who is on the Italian territory, the Juvenile Court may issue an authorisation to enter or stay in Italy for a determined period of time to the relatives of said child, even if an expulsion order has been issued against them. As said reasons are related to the existence of fortuitous and exceptional emergency situations which seriously endanger the normal development of the personality of the child so as to require the support of a parent, they do not occur in case of merely ordinary circumstances, such as the child's need to complete school or the opportunity to avoid that he is forced to abandon the social environment in which he is integrated. The general, programmatic rule laid down by Article 3 of the New York Convention of 20 November 1989 on the Rights of the Child, pursuant to which "*the best interests of the child shall be a primary consideration*" is not in contrast with the above interpretation as said Convention specifies the scope of application of the aforesaid principle, stating that it does not apply where the separation results from measures legitimately adopted by a State. Accordingly, from an interpretative point of view, said provision does not have an absolute and unlimited scope of application, and the need to maintain legality and security that is underlying the expulsion order is not *per se* subordinated to the best interests of the child.
23. *Corte di Cassazione, 5 March 2008 No 5962* 471
- The provisions of Italian law concerning the *action paulienne* in insolvency proceedings - which are laid down by Article 67 of the Bankruptcy Law, as in force prior to the reform implemented by Law Decree No 35 of 2005, converted into Law No 80 of 2005 - with specific reference to the revocation of bank transfers, are not in contrast with the freedom of establishment, provision of services and movement of capital laid down by the EC Treaty.

24. *Corte di Cassazione (criminal, plenary session), 6 March 2008 No 10281* 190
 In case of active extradition, the principle of speciality laid down by Article 14(1) of the European Convention on Extradition of 13 December 1957 and by Article 721 of Code of Criminal Procedure does not apply to personal precautionary measures for the prevention of crimes (*misure di prevenzione personali*) and to the proceedings for the application thereof. Accordingly, a person who has been extradited in Italy on different grounds may be subjected to the aforesaid personal precautionary measures and proceedings, without the need to previously file an additional request for extradition with the State that has ordered the surrender of said person.
25. *Corte di Cassazione (plenary session), 7 March 2008 No 6172* 196
 The proceedings laid down by Article 44 of Legislative Decree of 25 July 1998 No 286 for bringing a civil action against discrimination are interim proceedings. Therefore, pursuant to Article 669-*quaterdecies* of Code of Civil Procedure, the provisions regulating uniform interim proceedings laid down in Book IV, Title I, Heading III of Code of Civil Procedure apply, to the extent compatible, to the aforesaid proceedings. As a consequence, a decree issued by the Court of Appeal ruling on the appeal against an order issued pursuant to the aforesaid provision cannot be considered as final and with decisional content, and thus neither the review by the *Corte di Cassazione* pursuant to Article 111 of the Constitution nor the special proceedings for a preliminary ruling on jurisdiction are admissible.
26. *Corte di Cassazione (criminal, plenary session), 18 March 2008 No 11971* 472
 As to extradition relationships between Italy and the United States of America that are regulated by the bilateral Treaty of 13 October 1983, the waiver of the protection granted by the rule of speciality declared in the ordinary proceedings (*giudizio di cognizione*) by the person being extradited, whether in the territory of the requested State or before the judicial authorities of the requesting State, makes said rule ineffective.
27. *Corte di Cassazione (plenary session), 20 March 2008 No 7444* 113
 Pursuant to Article 23 of EC Regulation No 44/2001 of 22 December 2000, the requirement that a clause conferring jurisdiction be in writing is satisfied by the signature of the relevant contract as a whole. It is not necessary that said clause be approved specifically and independently in writing, even in case it is included among the general terms and conditions drafted by one of the parties and written on the back of the signed contract, provided that the contract contains an express reference to said general terms and conditions.
 Italian courts do not have jurisdiction over an action, brought by a dentist against the publisher of a European guidebook having its seat in Spain, and aimed at ascertaining that the contract for the publication therein of the advertisement concerning the professional activities of said dentist is null and void in case the contract contains a valid clause conferring jurisdiction to Spanish courts. In fact, said contract cannot be qualified as a contract concluded by a consumer within the meaning of Article 15 of EC Regulation No 44/2001 since it has not been entered into for a purpose which can be regarded as being outside the professional activities of said dentist, i.e. for his private needs as a consumer.
28. *Corte di Cassazione (plenary session), order 27 March 2008 No 7933* 474
 In a case in which neither Law of 30 July 2002 No 189 nor Presidential Decree of 16 September 2004 No 30 apply for reason of time, the decision of the local head of police administration (*questore*) refusing residence permit for

humanitarian reasons and ordering the removal of the person concerned from the national territory, issued following a negative decision of the Central Commission for the Recognition of the Status of Refugee, may be appealed before administrative courts. In fact, said order is not a mere consequence of the proceedings resulting from the application for asylum but, on the contrary, is issued as a result of an autonomous political-administrative evaluation of the local head of police administration (*questore*) as to the existence of any reason for protection laid down in Articles 5(6) and 19(1) of Legislative Decree of 25 July 1998 No 286.

29. *Corte di Cassazione (criminal), 28 March 2008 No 13234* 736
- Pursuant to Article 1 of the New York Convention of 17 March 1966 on the Elimination of All Forms of Racial Discrimination, to discriminate means to take any action implying any distinction, exclusion, restriction or preference based on race, colour, descent etc. which has the purpose of “nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.
30. *Corte di Cassazione, order 3 April 2008 No 8582* 740
- Article 28 of Legislative Decree of 25 July 1998 No 286, as subsequently amended, shall be interpreted in the sense that the right to family reunion shall be granted also to a person who has obtained a residence permit while waiting to acquire the Italian citizenship. In fact, pursuant to Article 11 of Presidential Decree of 18 October 2004 No 334, said permit is issued, for the entire duration of the procedure for granting such right, to any person who already holds a residence permit for other reasons.
31. *Reggio Emilia Tribunal, 3 April 2008* 737
- Pursuant to Article 31(2) of Law of 31 May 1995 No 218, the judicial separation of two foreign spouses can be granted even if their common national law does not provide for it. The fact that the husband has obtained a divorce judgment in the State of origin is irrelevant, if it is not proved that said judgment is final or that the requirements for its recognition pursuant to Articles 64 and 65 of Law No 218 are satisfied.
32. *Corte di Cassazione (plenary session), 14 April 2008 No 9743* 407
- Due to the immediate recognition of the judgment opening the main proceedings handed down by a court of another Member State, pursuant to Articles 16 and 17 of EC Regulation No 1346/2000 of 29 May 2000, without the possibility to verify whether said court had jurisdiction, additional main insolvency proceedings cannot be opened in Italy.
33. *Corte di Cassazione (criminal), 17 April 2008 No 16213* 740
- With reference to the European arrest warrant, a request for surrender of a person pursuant to EC Framework Decision No 2002/584/JHA of 13 June 2002, which has been implemented in Italy by Law of 22 April 2005 No 69, shall be executed even if it relates to crimes that have been committed prior to the date on which said Framework Decision entered into force, where the benefit of conditional suspension (*sospensione condizionale*) of sentence with respect to said crimes has been revoked by a later sentence issued for facts occurred after such date. In fact, the unitary nature of the execution proceedings justifies the application of the arrest warrant procedure also in relation to earlier facts.

34. *Milan Tribunal, order 23 April 2008* 741
- The certification of a judgment as a European Enforcement Order pursuant to Article 6 of EC Regulation No 805/2004 of 21 April 2004 does not constitute a mere administrative certification, but rather a jurisdictional activity. Accordingly, a certification of a judgment as a European Enforcement Order issued by the clerk's office (*cancelleria del tribunale*) shall be revoked pursuant to Article 10 of the aforesaid Regulation.
35. *Torino Tribunal, 24 April 2008* 640
- Pursuant to Articles 1 and 2 of EC Regulation No 44/2001 of 22 December 2000, said Regulation applies to an action brought by the trustee in bankruptcy of an Italian company against a Spanish company for the payment of the price due by the latter.
- Pursuant to Article 23(1) of EC Regulation No 44/2001 of 22 December 2000, Italian courts lack jurisdiction over a dispute brought by the trustee in bankruptcy of an Italian company against a Spanish company for the payment of the price due by the latter in case a valid clause conferring jurisdiction to Spanish courts is contained in the general terms and conditions of purchase printed on the back of the orders issued by said Spanish company, which have been accepted by the bankrupt Italian company through the issuance of invoices relating to the receivable in question. In fact, the requirement that the clause conferring jurisdiction be in writing is complied with even when the contract has been entered into by tacit acceptance, through performance of the same pursuant to Article 1327 of the Civil Code, particularly if said contractual relationship has been preceded by commercial transactions in which said clause has been applied, and there are no elements that may lead to presume that the will of any party is contrary to said uninterrupted practice.
- Pursuant to Article 123 of the Code of Civil Procedure, the court has the authority, but is not required, to appoint a translator in the event that documents drafted in a foreign language have been submitted by the parties.
36. *Corte di Cassazione, 9 May 2008 No 11628* 117
- Under Article 27 No 2 of the Brussels Convention of 27 September 1968, in proceedings for the recognition of judgments given in another Contracting State the sufficiency of the time for appearance cannot be inferred from the fact that the document which instituted the proceedings was duly served to the defendant. In fact, said provision requires that the courts of the requested State ascertain whether in the case at stake the defendant has had sufficient time to enable him to arrange for his defence starting from the date on which the aforesaid document has been duly served, having regard to the criteria laid down by the EC Court of Justice.
- Pursuant to Article 27 No 2 of the 1968 Brussels Convention, the fact that no appeal has been brought against the judgment to be recognised does not preclude any assessment as to whether the time for appearance was sufficient to enable the defendant to arrange for his defence, contrary to the provision of Article 34(2) of EC Regulation No 44/2001 of 22 December 2000, which is innovative and does not apply to the case at stake.
37. *Corte di Cassazione, 12 May 2008 No 11797* 127
- The appeal against a decision authorising enforcement of a judgment pursuant to Article 36 of the Brussels Convention of 27 September 1968 cannot be based upon the lack of the requirements laid down by Article

64 of Law of 31 May 1995 No 218, but only on the lack of the requirements laid down by Articles 27 and 28 of said Convention.

For the purpose of ascertaining a conflict with a decision given in a dispute between the same parties within the meaning of Article 27(3) of the 1968 Brussels Convention, "parties" can only be the persons among whom the proceedings have been instituted as a result of the filing of the relevant statement of claim.

The decision authorising enforcement in Italy of a judgment given in a Contracting State of the 1968 Brussels Convention is issued in proceedings for summary judgment (*procedimento monitorio*), where the party against whom enforcement is sought has no right to be heard or to make submissions. In fact, the possibility to exercise said rights is deferred to the subsequent opposition proceedings, which can be instituted by filing an opposition to summary judgment pursuant to Article 645 of Code of Civil Procedure. In said proceedings, the parties are entitled to specify and amend the original claims and objections within the limits laid down by Article 183 of Code of Civil Procedure.

38. *Cagliari Court of Appeal, 16 May 2008* 647
 Pursuant to Article 10 of the Hague Convention of 1 June 1970, a Contracting State may refuse to recognise a decision on divorce or judicial separation only if it is manifestly contrary to public policy.
 An Egyptian decision on divorce (*talaq*) between an Italian-Egyptian husband and an Egyptian wife (who married again thereafter) can be recognised in Italy if the wife – even though she did not participate to the proceedings – has had knowledge of the husband's will to divorce, and has not raised any economic claims before the court.
39. *Corte di Cassazione, 22 May 2008 No 13228* 135
 A special power of attorney *ad litem* granted abroad, which has been signed in a place different from that where the signature has been authenticated, is not apt to grant representative powers. In fact, pursuant to Article 2703 of Civil Code, which applies as *lex fori*, the fact that the signature has been made at the presence of the notary public and that the latter has ascertained the identity of the signatory shall unequivocally result from the authentication, even if said authentication is not drafted on the same day on which the signature has been made, but only thereafter.
40. *Corte di Cassazione, 23 May 2008 No 13425* 137
 As far as the recognition of a judgment given in another Member State is concerned, Article 34(2) of EC Regulation No 44/2001 requires the requested court to ascertain whether the document which instituted the proceedings has been served to the defendant in sufficient time to enable him to arrange for his defence in compliance with the procedural rules of the State in which the proceedings have been held and whether it complies with the fundamental principles of the legal system of the forum so that the fundamental rights of defence, and primarily the principle of adversary proceedings are not violated.
 Service of said document in accordance with the provisions of the law of the State where the defendant, being a legal person, has its seat, rather than pursuant to the provisions of the law of the State where the proceedings have been held, is in contrast with Article 34(2) of EC Regulation No 44/2001.
41. *Corte di Cassazione, 26 May 2008 No 13547* 409
 Pursuant to Article 395 No 4 of the Code of Civil Procedure, a judgment of

the *Corte di Cassazione* pursuant to which Article 6 of the Rome Convention of 19 June 1980 has been applied to several employment relationships entered into prior to the entry into force of said Convention shall be revoked. Notwithstanding said revocation, in accordance with Articles 25(1) and 31 of the Preliminary Provisions to the Civil Code, the application of US law to said employment relationships and the compliance with public policy of the relevant US provisions on compulsory social security and protection against unfair dismissal, as well as on severance pay (*trattamento di fine rapporto*) are confirmed.

42. *Corte di Cassazione, 27 May 2008 No 13829* 416

A decision ordering the return of a child, which is regulated by the Hague Convention of 25 October 1980 on International Child Abduction and by EC Regulation No 2201/2003 of 27 November 2003, is not only enforceable for the purpose of allowing the return of said child to the place of his habitual residence, but it also has the more general nature of an act ascertaining that the transfer in Italy of said child has been illegitimate and that no circumstances exist preventing the return of the child, pursuant to Article 13(a) and (b) of said Convention.

The interest to bring an action pursuant to Article 100 of the Code of Civil Procedure, and consequently to appeal to the *Corte di Cassazione* against the Italian decision to return a child, is to be affirmed even after said decision has been enforced if it contains a ruling with respect to one or more circumstances that – by effect of said decision becoming *res iudicata* – may cause a prejudice to the appellant.

A decision of ordinary courts that has been issued at the end of proceedings held in compliance with the *audi alteram partem* principle pursuant to the procedural rules laid down by Article 7 of Law of 15 January 1994 No 64, which has implemented the Hague Convention of 25 October 1980, and has ruled on the right of one of the parents to the return of the child pursuant to Article 12 of said Convention, has the substantive nature of a judgment and – once it has become final – may be relied upon by the other parent, who was a party to the same proceedings, as *res iudicata*.

43. *Corte di Cassazione (plenary session), 29 May 2008 No 14199* 425

Pursuant to Article 64 of Law of 31 May 1995 No 218, a Greek judgment requiring Germany to pay the costs of the proceedings brought by certain Greek heirs of civil victims of a slaughter made in Greece by the German army shall be declared enforceable in Italy, since said judgment has become *res iudicata* and is enforceable in Greece and is not in contrast with Italian public policy. The fact that immunity from jurisdiction is not recognised with respect to the acts of a State that qualify as crimes against humanity even though carried out in the exercise of its sovereign powers is consistent with the principle of absolute supremacy of the fundamental values of freedom and dignity of any human being, which is in force in the Italian legal system.

44. *Corte di Cassazione (plenary session), order 29 May 2008 No 14201* 651

The contrast between two principles of international law, concerning respectively the immunity of foreign States from jurisdiction in respect of sovereign activities and the liability of foreign States for international crimes – both of which are automatically applicable in the Italian legal system by virtue of Article 10 of the Constitution – shall be resolved by giving prevalence to the principle of higher ranking.

The respect of the inviolable rights of persons has assumed, even in the international legal system, the role of a fundamental principle.

Given that the respect of the inviolable rights of persons has assumed, also in the international legal system, the role of a fundamental principle, the Federal Republic of Germany shall have no immunity from jurisdiction for the fact that the German State has deported and obliged to forced labour certain Italian citizens during World War II.

Italian courts do not have jurisdiction over a claim for damages for forced labour brought by Italian citizens against a German company, neither pursuant to Article 2 nor pursuant to Article 5 of EC Regulation No 44/2001 of 22 December 2000.

45. *Council of State, sixth division, 23 June 2008 No 3154* 656

The obligation of a State to return assets of cultural value seized during military occupation or colonial annexation through military activities arises from the two principles of international law relating to, respectively, the prohibition of the use of force and self-determination of people.

The so-called Venus of Cyrene shall be returned to the State of Libya. The fact that the relevant implementing agreements between Italy and Libya are lacking any ratification and order of execution is irrelevant, giving the existence of a provision of international customary law providing for said obligation, which is referred to by Article 10 of the Constitution.

46. *Corte di Cassazione (criminal), 26 June 2008 No 25879* 742

Article 18(r) of Law of 22 April 2005 No 69, which has implemented EC Framework Decision No 2002/584/JHA of 13 June 2002 on the European arrest warrant, provides that surrender may be refused only if the arrest warrant has been issued for the purposes of executing a custodial sentence or detention order against an Italian citizen, and not also if the same has been issued against a foreigner residing in Italy. Said provision is not in contrast with the principles of the aforesaid Framework Decision, and namely with Article 4(6) of the same, since said Article allows, but does not require, the Member States of the European Union to extend the protections granted to their citizens also to foreigners staying or residing in their territory.

47. *Corte di Cassazione (plenary session), 1 July 2008 No 19600* 427

A ruling on jurisdiction over a foreigner or a foreign State does not have the effect of *res iudicata* in subsequent proceedings concerning the same relationship but involving different claims with respect to those constituting the object of the first proceedings. In fact, the criteria for affirming jurisdiction shall exist at the time of the relevant proceedings, also in light of Article 11 of Law of 31 May 1995 No 218.

In a case where a foreign State has entered into a preliminary agreement for the purchase of an immovable located in Italy subject to the condition that the necessary governmental authorisation be obtained, the Italian judgment requiring said State to pay damages for failing to obtain said authorisation within the fixed deadline does not have the effect of *res iudicata* with respect to the subsequent proceedings in which the seller has requested the payment of damages suffered due to the fact that said immovable has not been re-delivered to it.

The immunity from jurisdiction of a foreign State, and consequently the lack of jurisdiction of Italian courts, shall be declared if said State, after the issue of a judgment by Italian courts stating that an agreement for the sale and purchase of certain immovable is unenforceable, has occupied it and turned it

into the Commercial Office of the Embassy, rather than releasing it to the seller, since said use is within the power of a State to carry out its diplomatic mission and cannot be subject to review by Italian courts.

48. *Corte di Cassazione, 7 July 2008 No 18614* 143

Article 16 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction prohibits the judicial or administrative authorities of the State to which the child has been removed or in which he has been retained from deciding on the merits of rights of custody. Accordingly, the filing of claims relating to the relationship between the spouses or the parental authority is irrelevant for the purposes of the decision on the return of the child.

Pursuant to Article 17 of the 1980 Hague Convention, a decision issued in violation of Article 16 by a national court that was not aware that the child was being wrongfully retained, does not provide legitimate ground for refusing to return a child to his habitual residence.

The notion of habitual residence, on which the 1980 Hague Convention is based, must be construed as a factual situation meaning the place where the child, by virtue of a stable and continuous stay, has the centre of his affective relationships, including, but not limited to, the relationship with his parents.

49. *Corte di Cassazione, 10 July 2008 No 19067* 149

A declaration of enforceability in Italy of a notarial deed pursuant to Article 50 of the Brussels Convention of 27 September 1968 does not require said deed to be previously served to the debtor, since in case of a notarial deed there is no need to provide further information to the debtor, who has participated to the execution of the same.

Only questions regarding the requirements laid down by the Brussels Convention of 27 September 1968 for the enforceability of the relevant instrument can be raised in the appeal brought pursuant to Article 36 of said Convention. Any question concerning the validity of the agreement/deed authenticated by the notary of which enforcement is sought can only be raised in the ordinary proceedings for the opposition to the enforcement, since even the need to respect the public policy of the requested State is limited - pursuant to Article 50 of the Convention - to cases where the enforcement (as opposed to the execution) of the authenticated instrument is contrary to public policy.

50. *Corte di Cassazione (plenary session), order 17 July 2008 No 19601* 439

Italian courts have jurisdiction over an action concerning the ascertainment of the existence of a receivable of a foreign State *vis-à-vis* a third party, which is the object of a third party seizure. In fact, the question of whether the assets of a foreign State are exempted from seizure based on the fact that they are committed to the carrying out of its public functions is the object of the different proceedings concerning the opposition to enforcement.

51. *Corte di Cassazione, order 17 July 2008 No 19603* 442

A claim based on a cheque, not as a negotiable instrument (*titolo di credito*) but as a promissory note (*promessa di pagamento*), qualifies as a claim on matters relating to a contract for the purposes of Article 5 No 1 of EC Regulation No 44/2001 of 22 December 2000.

In relation to said claim, the place of performance of the obligation in question within the meaning of the aforesaid provision shall be determined on

- the basis of the law governing said obligation pursuant to the conflict of law rules of the court seised.
52. *Corte di Cassazione, 17 July 2008 No 19734* 742
 The *kafalah* contemplated by Islamic law – as regulated by the laws of Morocco – can constitute the pre-requisite for family reunion pursuant to Article 29(2) of Legislative Decree of 25 July 1998 No 286.
53. *Corte di Cassazione (criminal), 29 July 2008 No 31717* 445
 The Hague Convention of 25 October 1980 on International Child Abduction distinguishes the right of custody from the right of access, and provides for the immediate return of a child to the State of his habitual residence only in case of breach of the former.
 A parent who has the custody of the child and decides to move abroad together with said child does not commit the crime of elusion of an order regarding the custody of children, which is set forth by Article 388 of the Criminal Code.
54. *Modena Tribunal, 31 July 2008* 737
 Pursuant to Article 31(2) of Law of 31 May 1995 No 218, the judicial separation of two foreign spouses can be granted even if their common national law does not provide for it. The fact that the husband has obtained a divorce judgment in the State of origin is irrelevant, if it is not proved that said judgment is final or that the requirements for its recognition pursuant to Articles 64 and 65 of Law No 218 are satisfied.
55. *Trento Court of Appeal, division of Bolzano, 16 August 2008* 448
 A foreign judgment cannot be recognised and enforced in Italy insofar as it requires the payment of punitive damages since it is in contrast with public policy within the meaning of Article 64(g) of Law of 31 May 1995 No 218.
56. *Corte di Cassazione (criminal), 9 September 2008 no 34957* 744
 The question of constitutional legitimacy of Article 18 of Law of 22 April 2005 No 69 concerning the European arrest warrant, raised with reference to Article 3 of the Constitution – insofar as it does not contemplate the general pardon (*indulto*) among the grounds for refusing surrender alongside amnesty (*amnistia*) and statute of limitation (*prescrizione*) – is manifestly unfounded, since the rules on amnesty and statute of limitation have different structural features and produce different procedural and substantive effects.
57. *Corte di Cassazione, interim order 22 September 2008 No 23934* 152
 Considering the recent case law of the Constitutional Court and of the likely amendment to the relevant EC provisions as a result of the entry into force of the Treaty of Lisbon of 13 December 2007 (which refers, *inter alia*, to the Charter of Nice of 7 December 2000), it should be verified whether the provisions pursuant to which legitimate children shall be given their father's family name can be construed in accordance to the Constitution, or whether this issue has to be submitted again to the Constitutional Court.
58. *Corte di Cassazione (criminal, plenary session), 23 September 2008 No 36522* .. 158
 Article 12 of the Strasbourg Convention of 21 March 1983 on the Transfer of Sentenced Persons, which authorises the State where the sentence shall be served to modify the term of said sentence in favour of the sentenced person only in case of pardon, amnesty or commutation, shall be interpreted – contrary to

the view consistently adopted by the *Corte di Cassazione* – so that it applies to any equivalent mechanism which, under the law of a Party to the Convention, concerns the exercise, whether at an individual or a general level, of a power of clemency that is aimed in substance at reducing the term of a sentence. Based on the aforesaid interpretation, said Article 12 applies also to the general pardon (*indulto*), even if the latter is not expressly referred to in said Article.

59. *Corte di Cassazione, 7 October 2008 No 24765* 745
 Based on Article 29 of the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road, any limitation of the contractual liability of the carrier shall be excluded in case its gross negligence is ascertained, since Italian law, as the law of the forum, considers gross negligence as equivalent to wilful misconduct.
60. *Marche Regional Administrative Tribunal, 10 October 2008* 966
 Pursuant to Article 8(2) of Law of 5 February 1992 No 91, the competent government department is prevented from issuing a decree rejecting an application for the acquisition of the Italian citizenship through marriage after the expiration of the two-year mandatory term, such term running from the date of filing of said application.
61. *Corte di Cassazione (plenary session), order 13 October 2008 No 25038* 451
 Based on the combined provision of Article 9(2) and (5) – as amended by Legislative Decree of 9 January 2006 No 5 – and of Article 10 of the Bankruptcy Law, as well as of Article 25 of Law of 31 May 1995 No 218, Italian jurisdiction in bankruptcy matters is excluded only in case of effective and prompt transfer of the registered office abroad. Accordingly, Italian jurisdiction is not excluded in case such transfer is fictitious or fraudulent.
62. *Corte di Cassazione (plenary session), order 27 October 2008 No 25875* 169
 Pursuant to Article 50 of Law of 31 May 1995 No 218, Italian courts have jurisdiction over a dispute that concerns mainly a claim for recovery of the ownership of a deceased's estate (*petitio hereditatis*) and the partition of the co-ownership of said estate in relation to a succession opened in Italy and only incidentally and subordinately the validity and enforceability of a settlement entered into among the parties to said dispute. In fact, the above matter is excluded from the scope of application of the Lugano Convention of 16 September 1988 pursuant to Article 1 thereof.
 Pursuant to Article 6 of the Lugano Convention of 16 September 1988, Italian courts have jurisdiction over an action concerning the obligation to provide a statement of accounts with respect to the management of a succession opened in Italy, which has been brought against the persons managing the deceased's estate (two of whom are domiciled in Italy and one of whom is domiciled in Switzerland), because of the close connection arising from the unitary function of said action as aimed at retracing the assets of the deceased's estate, and because said action is preliminary to the action for recovery of the ownership of the deceased's estate that has been brought in the same proceedings.
63. *Corte di Cassazione, 30 October 2008 No 26063* 661
 In an action concerning the failure to perform a preliminary agreement for the sale and purchase of real property, a foreign citizen who intends to bring a claim against an Italian citizen alleging the fulfilment of the condition of reciprocity laid down by Article 16 of the Preliminary Provisions to the Civil

Code, in case of objection shall give evidence thereof since said condition constitutes a factual requirement for the existence of the foreigner's claim.

The ascertainment of the contents of the foreign law that ensures (or excludes) the existence of the condition of reciprocity constitutes a factual ascertainment, which, as such, is reserved to the lower courts. The latter shall proceed with said ascertainment pursuing the general criteria on burden of proof, rather than in accordance with the *iura novit curia* principle.

64. *Corte di Cassazione (plenary session), 13 November 2008 No 27044* 453
- Article 31(1)(c) of the Vienna Convention of 24 April 1963 [rectius: of 18 April 1961] on Diplomatic Relations shall be interpreted in the sense that immunity from jurisdiction is excluded, with respect to a diplomatic agent, both in case he actively exercises a professional or commercial activity outside his official functions (as literally provided for) and in case he is the passive party of the relevant relationships, if they are carried out in the Italian State as relationships of private law, i.e. completely outside of his official functions and authority.
65. *Corte di Cassazione (plenary session), order 13 November 2008 No 27045* 664
- Pursuant to Article 17 of the Lugano Convention of 16 September 1988, Italian courts do not have jurisdiction over an action brought by an Italian company against a Swiss company in order to ascertain that no brokerage contract exists between them, if a clause conferring jurisdiction to Swiss courts has been signed by both parties.
66. *Corte di Cassazione, 14 November 2008 No 27239* 666
- A decree of the Juvenile Court that has become *res iudicata* and has granted a request of the adoptive parents for an order not to proceed with the registration of a foreign adoption decision due to the fact that the placement within the adoptive family turned out to be contrary to the interests of the child pursuant to Article 35(6) of Law of 4 May 1983 No 184, cannot be appealed by said child (who has in the meantime become of age), if the first instance proceedings have been held exclusively between the adoptive parents and the *pubblico ministero*, without the intervention of his guardian (*tutore*) or special curator (*curatore speciale*). In fact, said child has not been a party to the proceedings against which the appeal has been brought, and therefore may challenge the fact that his legal representative has not been summoned in said proceedings only through the opposition by third parties (*opposizione di terzo*) pursuant to Article 404 of the Code of Civil Procedure.
67. *Corte di Cassazione (plenary session), 17 November 2008 No 27310* 746
- In a case regarding the recognition of the status of refugee during the period in which Article 1 of Law Decree of 30 December 1989 No 416 (converted into law by Law of 28 February 1990 No 39) applied, the principles regulating the burden of proof of the applicant shall be interpreted consistently with the provisions of EC Directives No 2004/83/EC and 2005/85/EC, even prior to the entry into force of Legislative Decrees of 19 November 2007 No 251 and of 28 January 2008 No 25, which have implemented said Directives. Accordingly, the court has the duty to cooperate in ascertaining the circumstances that are relevant for the purpose of the recognition of the status of refugee, and has broader powers to investigate on its own motion (which the court would have anyway as a result of the adoption of the *in camera* proceedings, applicable to the action in question even prior to the

entry into force of the rule laid down by Article 35 of Legislative Decree No 25/2008, which expressly provides for the adoption of such proceedings).

68. *Corte di Cassazione (plenary session), 18 November 2008 No 27338* 670

In a case where it is necessary to proceed with the enforcement of foreign judgments in order to ensure their implementation, Italian courts have jurisdiction to hold the proceedings for their recognition pursuant to Article 67 of Law of 31 May 1995 No 218 even if currently there are no assets in Italy on which enforce such decisions. Giving the nature and limits of said proceedings, the Court of Appeal shall only ascertain, for the purpose of ruling upon the recognition of the relevant judgments, that the requirements for their automatic recognition laid down by Article 64 of said Law are satisfied.

An interest to bring the action (*interesse ad agire*) for the ascertainment of the requirements for the recognition of a foreign judgment pursuant to Article 67 of Law No 218 of 1995 exists in all cases in which at least one of the circumstances laid down by the first paragraph of said provision actually occurs, i.e. if the foreign judgment is not complied with, its recognition is challenged or it is necessary to proceed with enforcement.

69. *Corte di Cassazione, 18 November 2008 No 27389* 457

In light of the extensive interpretation of Article 27 of EC Regulation No 44/2001 of 22 December 2000 given by the EC Court of Justice, *lis pendens* exists between a claim for damages arising from a road accident caused by a German motor vehicle, which has been brought before Italian courts against the Italian Central Office providing insurance assistance to car drivers circulating internationally, and a claim brought before German courts by a German insurance company for the ascertainment that non-economic damages have not occurred. Said *lis pendens* excludes, at present, the jurisdiction of Italian courts.

70. *Corte di Cassazione (plenary session), 9 December 2008 No 28873* 674

A decree issued on appeal, as a result of *in camera* contentious proceedings, which has denied the right to the judicial ascertainment of the status of stateless, can be appealed to the *Corte di Cassazione* since said decree contains a ruling that is final and has the nature of a decision pursuant to Article 111(7) of the Constitution.

The Ministry of Interior is entitled to participate to the proceedings concerning the ascertainment of the stateless status, since the judicial recognition of the same is binding for the purpose of the certification of said status by the Ministry pursuant to Article 17 of Presidential Decree of 12 October 1993 No 572.

The ordinary courts have jurisdiction over a request for the recognition of the stateless status pursuant to the New York Convention of 28 September 1954 and to Article 17 of Presidential Decree of 12 October 1993 No 572, since the relevant proceedings concern the status and capacity of persons (on which the Tribunal is exclusively competent pursuant to Article 9 of the Code of Civil Procedure) and affect rights (*diritti soggettivi*) of civil and political nature. Judicial protection of said rights is always granted by Article 113 of the Constitution and the New York Convention prescribes the jurisdiction of the State where the stateless person habitually resides.

71. *Turin Court of Appeal, decree 17 December 2008* 968

Pursuant to Article 9 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, the provisions

regulating Italian civil proceedings apply to the examination of witnesses in Italy. A special method or procedure can be allowed if it is not incompatible with the internal law of the State of execution and its performance is not impossible because of the judicial practices of such State or because of practical difficulties.

72. *Milan Tribunal, 18 December 2008* 460
- Due to the constitutional relevance of the right to health based on Article 32 of the Constitution, a foreigner not resident in Italy shall be indemnified for the health damage suffered as a result of a harmful event that occurred in Italy (and specifically for the death occurred in a road accident) and for other types of non-economic damages, such as damages in favour of his relatives arising from the death, regardless of the condition of reciprocity pursuant to Article 16 of the Preliminary Provisions to the Civil Code.
- The place where the damaged person lives (i.e., in the present case, Egypt) and where she will use the compensation for non-economic damages arising out of the death of her relative is wholly irrelevant for the purpose of determining the amount of said damages.
- The right to economic damages arising from the harmful consequences on parental relationships of the death of the person who was providing economic support to his relatives does not qualify as a fundamental right and is therefore subject to reciprocity.
73. *Biella Tribunal, order 7 January 2009* 684
- An action for judicial separation pending in Italy cannot be suspended, pursuant to Article 7 of Law of 31 May 1995 No 218, because of an action for judicial separation pending in Senegal between the same parties, if there are doubts as to the recognition of the foreign judgment pursuant to Articles 64 and 65 of Law No 218 of 1995 due to possible violations of the right of defence.
74. *Corte di Cassazione (criminal), 13 January 2009 No 1031* 969
- The general pardon (*indulto*) applies also to persons who have been sentenced abroad and transferred to Italy to serve their sentence in accordance with the procedure established by the Strasbourg Convention of 21 March 1983 on the Transfer of Sentenced Persons.
75. *Corte di Cassazione (criminal), 13 January 2009 No 1072* 685
- The position of the *Corte di Cassazione* according to which the principle of customary law on immunity of States from jurisdiction with respect to sovereign activities does not apply in case of actions claiming a serious and brutal violation of fundamental rights, due to the higher ranking – in both the domestic and the international legal systems – of the provisions prohibiting international crimes, shall be confirmed. Accordingly, the immunity from jurisdiction shall not be granted to Germany in relation to a judgment of Italian military courts that has ruled, *inter alia*, that the German State is liable for damages in relation to a roundup and murder of partisans and civilians made by the Nazis during World War II.
76. *Corte di Cassazione (criminal), 13 January 2009 No 1109* 971
- The fact that the person being extradited has been sentenced in absence and without having knowledge of the proceedings against him does not prevent the acceptance of a request for extradition if the legal system of the requesting State recognises to said person the right to a new trial that fully complies with the *audi alteram partem* rule and with all rights of defence. Similarly, the fact that the crime is punished in a different way under the legal system of the requesting

State is not relevant for the purposes of the extradition, since the regulation of said crime falls within the discretionary power of said State, unless the punishment established by it is wholly unreasonable and manifestly in contrast with the principle of proportionality of the punishment.

77. *Corte di Cassazione (criminal), 13 January 2009 No 1122* 973
 Based on Article 12(2)(a) of the European Convention of 13 December 1957 on Extradition, Italian judicial authorities are not required – when processing a request for extradition by a Contracting State – to verify that the enforceable order on the basis of which said request has been made is effective, as such requirement is not mentioned by the aforesaid provision.
78. *Corte di Cassazione (criminal), 19 January 2009 No 1881* 974
 As far as extradition is concerned, the application of coercive measures against the person being extradited is allowed for the purposes of his surrender to the requesting State, it being irrelevant that a previous measure has been declared no longer effective due to the expiration of the terms laid down by Article 714 of the Code of Criminal Procedure. In fact, after the Minister of Justice has issued the extradition decree, the maximum terms of detention laid down by the aforesaid provision cease to apply and the modalities and terms specified by Article 708(4) and (5) of the Code of Criminal Procedure shall apply to the phase relating to the surrender of the person being extradited. Said modalities and terms imply a limited extension in time of the coercive measures, which shall be exclusively aimed at the execution of the request for extradition.
79. *Verona Tribunal, decree 21 January 2009* 698
 In light of the decision of the EC Court of Justice dated 20 October 2003, case C-148/02, the request of a French citizen and an Italian citizen aimed at giving to their child, who holds both citizenships, only the family name of his mother in accordance with French law, shall be granted because the Italian citizenship of the child shall not prevail as *per* Article 19 of Law of 31 May 1995 No 218.
80. *Corte di Cassazione (criminal), 29 January 2009 No 4263* 971
 The fact that the person being extradited has been sentenced in absence and without having knowledge of the proceedings against him does not prevent the acceptance of a request for extradition if the legal system of the requesting State recognises to said person the right to a new trial that fully complies with the *audi alteram partem* rule and with all rights of defence. Similarly, the fact that the crime is punished in a different way under the legal system of the requesting State is not relevant for the purposes of the extradition, since the regulation of said crime falls within the discretionary power of said State, unless the punishment established by it is wholly unreasonable and manifestly in contrast with the principle of proportionality of the punishment.
81. *Corte di Cassazione (criminal), 6 February 2009 No 5471* 929
 The condition of reciprocity laid down by Article 16 of the Preliminary Provisions to the Civil Code does not need to be satisfied in case of a claim concerning inviolable rights such as those regarding life and health, or when special provisions of law exclude its application to a foreigner.
 The relatives residing abroad of a foreign citizen, who was legitimately staying in Italy for reasons of work, are entitled to lodge a civil action in the relevant criminal proceedings (*costituzione di parte civile*), claiming for damages

resulting from the death of said foreign citizen in a road accident. In fact, in light of the constitutional principles of social solidarity, respect of equality and non discrimination, Article 1 of Regulation of 31 August 1999 implementing the Consolidated Act on Immigration – which does not require the condition of reciprocity in relation to foreign citizens holding a residence title or a stay permit for reasons of work and to their relatives – allows to conclude that the same legal protection applicable to the relatives of an Italian citizen in case of violation of the right to life shall be granted also to the relatives of a foreigner, regardless of whether they live in Italy together with the latter.

82. *Corte di Cassazione (plenary session), order 9 February 2009 No 3057* 934
 Pursuant to Article 9 of Bankruptcy Law, Italian courts have jurisdiction in relation to the declaration of bankruptcy of a company that, at the time of filing of the relevant petition in bankruptcy, had its registered office in Italy as the principle of *perpetuatio iurisdictionis* laid down by Article 5 of the Code of Civil Procedure makes it irrelevant that the registered office of said company has been transferred abroad after the filing of said petition.
83. *Corte di Cassazione (plenary session), order 9 February 2009 No 3059* 935
 Pursuant to Article 5 No 1 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over an action for payment of the price under a sale of movables brought against the buyer, domiciled in Denmark, if the buyer should have paid the price in Italy at the place of business of the seller, as provided for by Article 57(1) of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods.
84. *Bari Court of Appeal, 13 February 2009* 699
 In light of the principle whereby the best interests of the child shall be a primary consideration, which is laid down by the UN Convention of 20 November 1989 on the Rights of the Child and reaffirmed by EC Regulation No 2201/2003, as well as of the freedom of movement of persons within the European Union, emphasized by the EC Court of Justice in the cases *Garcia Avello* and *Grunkin*, two parental orders issued by the courts of the United Kingdom declaring the parentage with their Italian mother and English father of two children who have been given birth pursuant to an agreement for surrogate maternity and have been living since their birth with said two parents shall be declared enforceable in Italy pursuant to Articles 64, 65 and 67 of Law of 31 May 1995 No 218.
85. *Corte di Cassazione (plenary session), order 25 February 2009 No 4461* 713
 The immunity of the United States of America from the jurisdiction of Italian courts with respect to a dispute brought by Italian citizens aimed at declaring illegitimate the installation of nuclear weapons in the military base of Aviano shall be affirmed, based also on the London Convention of 19 June 1951 regarding the status of NATO forces. In fact, the exception to the aforesaid immunity principle affirmed by the recent case-law shall be limited to cases concerning international crimes involving deportation and forced labour, and the choice to install nuclear weapons in a military base pursuant to existing international commitments, aimed at satisfying needs of domestic and international security, cannot be considered as such.
86. *Corte di Cassazione (criminal), 27 February 2009 No 9000* 938
 The protection granted by the rule of speciality laid down by Article 14 of the European Convention of 13 December 1957 on Extradition applies, with

respect to the requested State and to the person who has been extradited, as long as said person remains in the territory of the requesting State after he has finally served his sentence. However, the aforesaid protection no longer applies if said person exits from the territory of the requesting State, in which case a new and different extradition procedure can be initiated, even in relation to facts occurred prior to the former extradition procedure, *vis-à-vis* the State in the territory of which said person is found. In this case, the consent of the first requested State is wholly irrelevant.

87. *Corte di Cassazione (plenary session), order 12 March 2009 No 5965* 941
 For the purposes of determining whether jurisdiction exists over an action on a guarantee, the distinction between typical guarantees (*garanzie proprie*) and atypical guarantees (*garanzie atipiche*) shall be definitively abandoned. On the contrary, it is only necessary to ascertain that said action has not been initiated speciously.
 Pursuant to Article 3(2) of Law of 31 May 1995 No 218, Italian courts have jurisdiction in relation to a case where a forwarding agent/carrier domiciled in Italy, which has been sued in subrogation by an insurance company pursuant to Article 1916 of the Civil Code, has initiated an action on a guarantee against a sub-carrier domiciled in Canada.
88. *Corte di Cassazione, 17 March 2009 No 6441* 722
 A non-EU citizen forming with an Italian citizen of the same sex a *de facto* couple that is duly registered in the State of origin of said non-EU citizen does not fall, also in light of the constitutional case-law, within the definition of “relative” under Article 30(1)(c) of Legislative Decree of 25 July 1998 No 286 and does not therefore have a right to family reunion.
89. *Corte di Cassazione (plenary session), order 19 March 2009 No 6597* 945
 A request for a ruling on venue (*regolamento di competenza*) pursuant to Article 47 of the Code of Civil Procedure is inadmissible in relation to a judgment issued by an Italian court that, after having ascertained the existence of international *lis pendens*, has declined jurisdiction in favour of French courts pursuant to Article 27 of EC Regulation No 44/2001 of 22 December 2000. In fact, said judgment rules on jurisdiction rather than on internal competence and therefore can only be subject to appeal.
90. *Corte di Cassazione (plenary session), order 27 March 2009 No 7427* 948
 Since the time of filing of the statement of claim shall be determined according to the national law of the court seised, for the purposes of the declaration of *lis pendens* pursuant to Article 21 of the Brussels Convention of 27 September 1968, Italian courts do not have jurisdiction if a foreign court has been seised of the dispute first.
91. *Corte di Cassazione (plenary session), order 27 March 2009 No 7428* 950
 EC Regulation No 44/2001 of 22 December 2000 applies to an action for the recovery of sums paid but not due (*azione di ripetizione dell'indebitato*) brought by the trustee in bankruptcy of an Italian company against a German company, being the assignee of a claim against the former, in order to recover certain sums paid in excess to the latter. Indeed, such action does not arise from the bankruptcy of said Italian company and is not strictly related thereto and therefore does not fall within the scope of the exclusion laid down by Article 1(2)(b) of said Regulation.
 Pursuant to Article 2 of EC Regulation No 44/2001, Italian courts do not

have jurisdiction over an action for the recover of sums paid but not due (*azione di ripetizione dell'indebitito*) brought by the trustee in bankruptcy of an Italian company against a German company. Nor do the special jurisdiction criteria laid down by Article 5(1) and (3) of said Regulation apply to the case in question since the recovery of sums paid but not due – that is characterised by Article 61 of Law of 31 May 1995 No 218 as an obligation arising by operation of the law – constitutes a third category that is different from both contractual and non-contractual obligations.

92. *di Cassazione (plenary session), order 2 April 2009 No 7991* 954

Pursuant to Article 6 No 2 of the Brussels Convention of 27 September 1968, in case of a dispute concerning the termination of a supply agreement entered into between two Italian companies, Italian courts have jurisdiction also in relation to the action for an “atypical guarantee” (*garanzia impropria*) brought by the defendant in the original proceedings against a Danish company for breach of contract by the latter and based upon the same defects of the goods sold, which constitute the basis of the original claim for breach of contract brought against said defendant. In fact, the courts of a Member State shall only ascertain whether the action brought by the plaintiff in such special forum was instituted solely for the purpose of removing the third party from the general forum of the domicile of the defendant.

93. *Catanzaro Tribunal, decree 14 April 2009* 959

Pursuant to Article 7 of the New York Convention of 20 November 1989 on the Rights of the Child, the right of the child to a name is a legal right, whose minimum content cannot be prejudiced by the parents by choosing a name that leaves the child open to ridicule or shame or that does not reflect the sex of the child.

Each Member State of the European Union may regulate the right to a name of its nationals taking into account national traditions in order to determine whether a name is a male or a female name.

Pursuant to Article 24 of Law of 31 May 1995 No 218, the right to a name is governed by the national law of the person.

The choice of the name Andrea made by the Italian parents for their daughter, who is an Italian citizen residing in France together with her parents, does not correspond to the interests of the child and may indeed cause a prejudice to her, since said name is traditionally associated with males (and is not used as a female name even in France). In such a case, pursuant to Articles 8 and 12 of the 1989 New York Convention, the State may amend the name of the child by provisionally placing before that another name that is traditionally a female name.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 2, 3, 10.

Brussels Convention of 1968: 21.

Community Law: 4, 12, 13, 25.

Consumer protection: 5.

Contracts: 8, 27.

EC Regulation No 1346/2000: 20.

EC Regulation No 1348/2000: 27.

EC Regulation No 44/2001: 15, 19, 23, 24, 25, 26, 28, 29.

EC Regulation No 2201/2003: 22.

EU Citizenship: 7.

Freedom of establishment: 17.

Freedom of movement of goods: 18.

Freedom of movement of persons: 7, 9, 11, 14, 16.

Judicial proceedings before the ECJ: 17, 27.

Name: 16.

Non contractual liability of the Community: 1.

Treaties and general international rules: 6, 12, 29.

1. *Court of First Instance, order 5 September 2007 case T-295/05* 497
 The Court of First Instance has no jurisdiction to declare the infringement of a EC patent by a Community institution, even where such decision were prejudicial to assess the non-contractual liability of the Community institutions under Articles 235 and 288 EC.
2. *Court of Justice, 29 January 2008 case C-275/06* 227
 Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, and Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) do not require the Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. However, national provisions transposing those directives must be interpreted so as to allow a fair balance to be struck between the various fundamental rights protected by the Community legal order and so as to avoid conflict with the other general principles of Community law, such as the principle of proportionality.
3. *Court of Justice, 14 February 2008 case C-449/06* 499
 Having regard to the direct applicability in the legal systems of the Member States of Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, the national court has an obligation to apply it in order to ensure compliance with the principle of non-discrimination.

4. *Court of Justice, 15 April 2008 case C-268/06* 500
- The principle of direct effectiveness of the provisions of a unconditional and sufficiently precise directive that may be relied upon by individuals as against the State, particularly in its capacity as an employer, can be applied in respect of provisions of agreements which, like the framework agreement on fixed-term work – annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – are the product of a dialogue, based on Article 139(1) EC, between management and labour at Community level and which have been implemented in accordance with Article 139(2) EC by a directive of the Council, of which they are thus an integral component. Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, is not unconditional and sufficiently precise for individuals to be able to rely upon it before a national court. Nonetheless, an authority of a Member State acting in its capacity as a public employer, pursuant to Article 10 EC, to Article 249(3) EC and to Directive 1999/70, may not adopt measures contrary to the objective pursued by that directive and the framework agreement on fixed-term work as regards prevention of the abusive use of fixed-term contracts, which consist in the renewal of such contracts for an unusually long term.
5. *Court of Justice, 17 April 2008 case C-404/06* 230
- Article 3 of Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees is to be interpreted as precluding national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of those defective goods until their replacement with new goods.
6. *Court of Justice, 3 June 2008 case C-308/06* 232
- The validity of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements cannot be assessed either in the light of the International Convention for the Prevention of Pollution from Ships, signed in London on 2 November 1973, as supplemented by the Protocol of 17 February 1978, since the Community is not bound by it even though all Member States are Parties to the same Convention, or in the light of the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982, since it does not establish rules intended to apply directly and immediately to individuals and to confer upon them rights or freedoms capable of being relied upon against States, irrespective of the attitude of the ship's flag State.
7. *Court of Justice, 10 July 2008 case C-33/07* 507
- The fundamental right of freedom of movement conferred by Article 18 EC pertaining to the *status* of a citizen of the Union under Article 17(1) EC includes the right for citizens of the European Union the right to leave the State of origin to enter another Member State.
- Article 18 EC and Article 27 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States do not preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there, provided that the

- personal conduct of that national constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it.
8. *Court of Justice, 10 July 2008 case C-173/07* 503
 Article 3(1)(a) of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as not applying to the case of an outward and return journey in which passengers who have originally departed from an airport located in the territory of a Member State to which the EC Treaty applies travel back to that airport on a flight from an airport located in a non-member country since the fact that the outward and return flights are the subject of a single booking cannot be interpreted as being a sole flight.
9. *Court of Justice, 17 July 2008 case C-94/07* 236
 A private-law association must observe the principle of non-discrimination in relation to workers within the meaning of Article 39 EC.
10. *Court of Justice, 17 July 2008 joined cases C-152/07 to C-154/07* 774
 An individual may not rely on a directive against a Member State where it is a matter of a State obligation directly linked to the performance of another obligation falling, pursuant to that directive, on a third party. However mere adverse repercussions on the rights of third parties, even if the repercussions are certain, do not justify preventing such individual from invoking the provisions of a directive against the Member State concerned.
 Insofar an individual can rely on a directive before a national administrative court to challenge a decision of such judicature annulling an administrative act, since the recovery from other individuals of the loss caused by the removal of benefits derived to a third party by such annulment, cannot be regarded as an obligation falling on a third party pursuant to the directive relied on before the referring court.
11. *Court of Justice, 25 July 2008 case C-127/08* 510
 Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States precludes legislation of a Member State which requires a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that directive.
 Article 3(1) of Directive 2004/38 must be interpreted as meaning that a national of a non-member country who is the spouse of a Union citizen residing in a Member State whose nationality he does not possess and who accompanies or joins that Union citizen benefits from the provisions of that directive, irrespective of when and where their marriage took place and of how the national of a non-member country entered the host Member State.
12. *Court of Justice, 3 September 2008 joined Cases C-402/05 P and C-415/05 P* ... 198
 Article 308 EC would allow, in the special context of Articles 60 and 301 EC, the adoption of Community measures concerning not one of the objectives of the Community but one of the objectives under the EU Treaty in the sphere of

external relations, including the CFSP. Nevertheless, Article 308 EC, jointly with Articles 60 EC and 301 EC, could be included in the legal basis of the Council Regulation (EC) No 881/2002 of 27 May 2002, since the objective pursued by the contested regulation is immediately to prevent persons associated with Usama bin Laden, the Al-Qaeda network or the Taliban from having at their disposal any financial or economic resources, in order to impede the financing of terrorist activities and this objective can be made to refer to one of the objects which the EC Treaty entrusts to the Community.

The obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness.

The Community judicature must, in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the contested regulation, are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations. The contested EC Regulation No 881/2002 must be annulled so far as concerns the appellants, because, in the procedure for its adoption the appellants' rights of defence, in particular the right to be heard, their right to an effective legal remedy and to respect for property have been infringed.

13. *Court of Justice, 11 September 2008 case C-265/07* 776
 Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions is to be interpreted as not precluding a national provision pursuant to which a creditor, in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction, cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority.
14. *Court of Justice, 11 September 2008 case C-447/07* 778
 The principle of freedom of movement of persons provided for by Article 39 EC precludes that the posts of master and chief officer on all vessels flying the Italian flag shall be reserved to Italian nationals.
15. *Court of Justice, 2 October 2008 case C-372/07* 216
 Article 22(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that proceedings, in the context of which one of the parties alleges that a decision adopted by an organ of a company has infringed rights that it claims under that company's Articles of Association, do not concern the validity of the decisions of the organs of a company within the meaning of that provision.
16. *Court of Justice, 14 October 2008 case C-353/06* 221
 Article 18 EC precludes the authorities of a Member State, in applying national law determined by the conflict of law rules of the same State adopting nationality as a connecting factor, from refusing to recognise a child's surname, as determined and registered in a second Member State in which the child – who, like his parents, has only the nationality of the first Member State – was born and has been resident since birth.

17. *Court of Justice, 16 December 2008 case C-210/06* 477
- A court hearing an appeal against a decision of a lower court, responsible for maintaining the commercial register, rejecting an application for amendment of information entered in that register, must be classified as a court or tribunal which is entitled to make a reference for a preliminary ruling under Article 234 EC, regardless of the fact that neither the decision of the lower court nor the consideration of the appeal by the referring court takes place in the context of *inter partes* proceedings.
- As Community law now stands, Articles 43 and 48 EC are to be interpreted as not precluding legislation of a Member State under which a company incorporated under the law of that Member State may not transfer its seat to another Member State whilst retaining its *status* as a company governed by the law of the Member State of incorporation.
18. *Court of Justice, 16 Decembre 2008 case C-205/07* 1034
- Article 29 EC does not preclude national rules which prohibit a supplier, in cross-border distance selling, from requiring an advance or any payment from a consumer before expiry of the withdrawal period, but Article 29 EC does preclude a prohibition, under those rules, on requesting, before expiry of that period, the number of the consumer's payment card.
19. *Court of Justice, 10 February 2009 case C-185/07* 487
- The order issued by court of a Member State to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement is incompatible with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
20. *Court of Justice, 12 February 2009 case C-339/07* 493
- The courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction, under Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, to decide an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State.
21. *Court of Justice, 2 April 2009 case C-394/07* 977
- With regard to the public policy clause referred to in Article 27(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978, 1982, 1989 and 1996 Accession Conventions, the court of the State in which enforcement is sought may take into account the fact that the court of the State of origin ruled on the applicant's claims without hearing the defendant, who entered appearance before it but who was excluded from the proceedings by order on the ground that he had not complied with the obligations imposed by an order made earlier in the same proceedings, if, following a comprehensive assessment of the proceedings and in the light of all the circumstances, it appears to it that that exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard.
22. *Court of Justice, 2 April 2009 case C-523/07* 750
- A decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term 'civil matters', for the purposes of Article 1(1) of 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, where that decision was adopted in the context of public law rules relating to child protection.

The concept of 'habitual residence' under Article 8(1) of Regulation No 2201/2003 is an autonomous notion that must be interpreted in the light of the context of the provisions and the objective of the Regulation. Thus, taking account of all the circumstances specific to each individual case, habitual residence must be interpreted as meaning that it corresponds to the place of the physical presence of the child, not in any way temporary or intermittent, and that the residence of the child reflects some degree of integration in a social and family environment.

A protective measure provided for by the law of a Member States, such as the taking into care of children, may be decided under Article 20 of Regulation No 2201/2003, in matters of parental responsibility, by a national court which is not competent for the merits, if the following conditions are satisfied: the measure must be urgent; it must be taken in respect of persons in the Member State concerned, and it must be provisional.

The national court which has taken provisional or protective measures is not required to transfer the case to the court of another Member State having jurisdiction. However, in so far as the protection of the best interests of the child so requires, that national court must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

23. *Court of Justice, 23 April 2009 case C-533/07* 761

A contract under which the owner of an intellectual property right grants its contractual partner the right to use that right in return for remuneration is not a contract for the provision of services within the meaning of the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and enforcement of judgments in civil and commercial matters.

In order to determine, under Article 5(1)(a) of Regulation No 44/2001, the court having jurisdiction over an application for remuneration owed pursuant to a contract under which the owner of an intellectual property right grants to its contractual partner the right to use that right, reference must continue to be made to the principles which result from the case-law of the Court of Justice on Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

24. *Court of Justice, 23 April 2009 case C-167/08* 770

Article 43(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a creditor cannot lodge an appeal against a decision on a request for a declaration of enforceability if he has not formally appeared as a party in the proceedings in which another creditor of the same debtor applied for that declaration of enforceability.

25. *Court of Justice, 28 April 2009 case C-420/07* 984

The suspension of the application of the *acquis communautaire* in those areas of the Republic of Cyprus in which the Government of that Member State does not exercise effective control, provided for by Article 1(1) of Protocol No 10 on Cyprus to the Act concerning the conditions of accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, does not preclude the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to a judgment which is given by a Cypriot court sitting in the area of the island effectively controlled by the Cypriot Government, but concerns land situated in areas not so controlled.

An action between individuals having as its object to obtain damages for unlawfully taking possession of land, the delivery up of that land, its restoration to its original state and the cessation of any other unlawful intervention, must be regarded as concerning 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 44/2001.

Given that the *forum rei sitae* rule provided for in Article 22(1) of Regulation No 44/2001 concerns the international jurisdiction of the courts of the Member States and not their domestic jurisdiction, Article 35(1) of Regulation No 44/2001 does not authorise the court of a Member State to refuse recognition or enforcement of a judgment given by the courts of another Member State concerning land situated in an area of the latter State over which its Government does not exercise effective control.

The fact that a judgment given by the courts of a Member State concerning land situated in an area of that State over which its Government does not exercise effective control, cannot, as a practical matter, be enforced where the land is situated does not constitute a ground for refusal of recognition or enforcement under Article 34(1) of Regulation No 44/2001 and it does not mean that such a judgment is unenforceable for the purposes of Article 38(1) of that Regulation.

The recognition or enforcement of a default judgment cannot be refused under Article 34(2) of Regulation No 44/2001 where the defendant was able to commence proceedings to challenge the default judgment and those proceedings enabled him to argue that he had not been served with the document which instituted the proceedings or with the equivalent document in sufficient time and in such a way as to enable him to arrange for his defence.

26. *Court of Justice, 14 May 2009 case C-180/06* 1000

In a situation in which a consumer seeks, in accordance with the legislation of the Member State in which he is domiciled and before the court for the place in which he resides, an order requiring a mail-order company established in another Member State to pay a prize which that consumer has apparently won, and where that company, with the aim of encouraging that consumer to conclude a contract, sent a letter addressed to him personally of such a kind as to give him the impression that he would be awarded a prize if he requested payment by returning the 'prize claim certificate' attached to that letter, but without the award of that prize depending on an order for goods offered for sale by that company or on a trial order, such legal proceedings brought by the consumer are covered by Article 15(1)(c) of Council Regulation (EC) No

44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, on condition that the professional vendor has undertaken in law to pay that prize to the consumer; where that condition has not been fulfilled, such proceedings are covered by the same provision only if the consumer has in fact placed an order with that professional vendor.

27. *Court of Justice, 25 June 2009 case C-14/08* 1011

The court called upon to adjudicate on an appeal against a court clerk's refusal to effect the service of documents requested may refer the question for a preliminary ruling to the Court of Justice pursuant to Articles 68 and 234 CE.

The definition of 'extrajudicial document', within the meaning of Article 16 of Regulation No 1348/2000, is a Community law concept.

The service of a notarial act, in the absence of legal proceedings falls within the scope of Council Regulation (EC) No 1348/2000 of 29 May 2002 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

28. *Court of Justice, 2 July 2009 case C-111/08* 1020

The exception provided for in Article 1(2)(b) of Council Regulation No 44/2001 (EC) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to a judgment of a court of Member State regarding registration of ownership of shares in a company having its registered office in same Member State, according to which the transfer of those shares was to be regarded as invalid on the ground that the court of that State did not recognise the powers of a liquidator from another Member State in the context of insolvency proceedings conducted and closed in this latter State.

29. *Court of Justice, 9 July 2009 case C-204/08* 1025

Article 33 (1) of the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air is not applicable for the purpose of determining which court has jurisdiction over an action brought by a passenger claiming his right to a standardised and lump-sum payment following the cancellation of a flight, as based on Article 7 of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, but not claiming the right of compensation for damage occasioned by delay in the carriage by air in the context of Article 19 of the Montreal Convention.

The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on Regulation (EC) No 261/2004, is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.

DOCUMENTS

Agreement between Italy and Switzerland on military service of dual nationals (Rome, 26 February 2007)	238
Amendments to the Italian implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (Legislative Decree 3 October 2008 No 159)	242
Amendments to immigration and asylum provisions (Legislative Decree 3 October 2008 No 160)	247
New version of annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings (Regulation (EC) No 788/2008 of 24 July 2008)	249
Circular note of the Ministry of Interiors No 5659 of 22 May 2008 on formalities relating to marriages to be celebrated abroad	258
Commission Decision 2009/26/EC of 22 December 2008 on the request from the United Kingdom to accept Regulation (EC) No 593/2008 of the European Parliament and the Council on the law applicable to contractual obligations (Rome I)	518
Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)	519
Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark	780
Regulation (EC) No 280/2009 of 6 April 2009 amending Annexes I, II, III and IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	786
Commission Decision 2009/451/EC of 8 June 2009 on the intention of the United Kingdom to accept Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation	1037
Council Regulation EC No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations	1038
Commission Communication relating to the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	1068
Amendments to the general rules [on the participation of Italy to the legislative process of the European Union and the procedures to comply with Community Legislation] (Law 4 February 2005 No 11)	1069
Amendments to immigration and asylum provisions (Law 15 July 2009 No 94)	1072
New rules on the criminal jurisdiction of the lower courts (<i>giudice di pace</i>) relating to the entry and the illegal stay of foreign citizens (Law 15 July 2009 No 94)	1089
Amendments to Law of 5 February 1992 No 91 on Italian nationality (Law 15 July 2009 No 94)	1091

Amendments to the Civil Code with respect to the marriage of foreign citizens in Italy (Law 15 July 2009 No 94)	1091
Amendments to the Italian implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and revoking the refugee status (Law 15 July 2009 No 94)	1092
Amendments to the Criminal Code, to the Code of Criminal Procedure and to the implementation, coordination and transitory rules of the Code of Criminal Procedure relating to immigration (Law 15 July 2009 No 94)	1093
The Resolution of the Institute for International Law at the Naples Session (3-11 September 2009)	1096

CURRENT EVENTS AND RECENT DEVELOPMENTS

Switzerland opens its borders to the Schengen area (C. Sanna)	259
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from September 2008 to January 2009) – Contracting Parties of the Hague Conventions in force – On the entry into force of Rome I Regulation in the UK – Additional determination of programmed entries of non-EC nationals in Italy for 2008 – EC and the Hague Convention on choice of forum – Regulation (EC) No 1393/2007 implemented in Denmark – Introduction of Euro in Slovakia – Amendments to the ECJ Rules of Procedure – Amendments to Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman’s duties – On the co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) – On co-operation in fight to terror and cross-border crime – Corrigendum to Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment – New provisions concerning restrictive measures in relation to Iran, Liberia, Ivory Coast, Congo, illegal authorities of the island of Anjouan in the Union of the Comoros and Zimbabwe – Codified version of EC Directives on the protection of employees in the event of the insolvency of their employer – United Nations Convention against corruption – Fifth Report of the Commission on citizenship of the Union (2004-2007) – Communication from the Commission on effective consular protection in third countries – Proposal for a Directive on consumers’ rights – Proposal for a Directive on undertakings for collective investment in transferable securities – Green Paper of the EC Commission on the transparency of debtors’ assets for purposes of enforcement of judgments in the EU – Amendments to conflict rules for non-contractual obligations in the UK	271
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from February 2009 to April 2009) – The EC signs the Convention on choice-of-court agreements – Report on the application of Directive 2003/86/EC on the right to family reunification – EC Directive for returning illegally staying third-country nationals – Amendments to the Rules of Procedure and to other internal rules of the EC jurisdictional bodies – New EC Directive on timeshare contracts – Amendments to the EC Regulation laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons – Codified ver-	

sion of EC Regulation on the export of cultural goods – On the European company – Third-country issuers and disclosure requirements – Prorogation of the co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) – New provisions concerning restrictive measures in relation to Iraq, Liberia, Zimbabwe, Somalia, Congo and Uzbekistan – EC Directive on the protection of the environment through criminal law – Framework Decision on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters – Framework Decision on the mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty – Framework Decision on the mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions – Framework Decision on combating racism and xenophobia – Framework Decision on the protection of personal data in criminal matters – On the fight against terrorism – On control of exports of military technology and equipment – Regulation (EC) No 1393/2007 on the service of acts implemented in Denmark – Participation of Denmark to international agreements concerning EC Regulations Brussels I and No 1393/2007 on service of documents – On the European judicial network – A network for legislative cooperation – Towards a European e-Justice strategy – Proposal for the signing by the EC of a Protocol on railway rolling stock – Proposal for a Regulation on cross-border payments – Recent developments in the consumer collective redress – Council conclusions supporting the Council of Europe’s work in the area of criminal justice – Italian circular note on formalities for the marriage in Italy of Brazilian citizens 535

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from May 2009 to June 2009) – Amendments to the consolidated law on financial intermediation and to the issuers’ regulation – Towards a revision of the Brussels I Regulation – Codified version of the EC Directive on injunctions for the protection of consumers’ interests – Commission opinion on the request from the United Kingdom to accept Regulation (EC) No 4/2009 on maintenance obligations – Framework Decision on the principle of mutual recognition of decisions rendered in the absence of the person concerned at the trial – New provisions concerning restrictive measures in relation to Birmania/Myanmar, Iraq, Liberia and Congo – New list of central authorities nominated by the Member States to deal with the return of cultural objects unlawfully removed from a Member State pursuant to Directive 93/7/EC – On the exchange of information extracted from the criminal record between Member States – Jurisdictional bodies of the European Patent Office and requests for preliminary rulings to the EJC 791

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from July 2009 to October 2009) – The law implementing EC rules in Italy for 2008 – Council decision on the conclusion of the new Lugano convention – Two Regulations on the agreements between Member States and third countries relating to the matters governed by EC Regulations No 2201/2003, No 4/2009, Rome I and Rome II – Agreement between the EC and Korea concerning cooperation on anti-competitive activities – Amendments to Directives 98/26/EC and 2002/47/EC on securities on financial instruments – EC Directive providing for measures against employers of illegally staying third-country nationals – Amendments to the rules of procedure and to the practical instructions of the Court of First Instance – New provisions concerning restrictive measures in relation to Birmania/Myanmar, North Korea, Iran and Liberia – Towards the strengthening of the European judicial network

in civil and commercial matters – Commission evaluation on the Hague Programme, the action plan and the future Stockholm Plan – News on the implementation of EC consumer rights law – Opinion of the Committee of the Regions on a Draft Directive on consumer rights – On measures to improve the functioning of the single market – New German provisions on maintenance obligations	1098
<i>Notices.</i> Eighteenth meeting of the European Group on Private International Law (Bergen, 19-21 September 2008) – The 2009 courses of the Hague Academy of International Law – X Award “Giuseppe Barile e Pietro Verri” on international humanitarian law, human rights and refugee law – The 2008 SIDI award for young Italian scholars	286

BOOK REVIEWS

(See Italian Index)

