

# INDEX

## ARTICLES

C. CONSOLO, The New Proceedings for Interim Relief (with Full Cognizance) for the Ascertainment of the Effectiveness of Foreign Judgments in Italy after Legislative Decree No. 150/2011 .....	513
Z. CRESPI REGHIZZI, “Contract” and “Tort”: The Characterization of Obligations in EU Private International Law .....	317
M. FRIGO, Insolvency of Undertakings and Insolvency of States: Analogies and Elements of Differentiation .....	865
C. HONORATI, Provisional Measures and the Recast of Brussels I Regulation: A Missed Opportunity for a Better Ruling (in English) .....	525
P. IVALDI, C.E. TUO, Fundamental Rights and European Union Private International Law with a View to the EU Accession to the ECHR .....	7
F. MOSCONI, C. CAMPIGLIO, Same-Sex Marriages: “Federal” Level and State Level in Europe and in the United States .....	299
F. MUNARI, L. SCHIANO DI PEPE, Standards of Protection for Seafarers: Substantial and Private International Law Issues in European Union Law .....	37
B. NASCIBENE, Fair Trial and Defence Rights in Antitrust Proceedings before the Commission: In Need for a Reform? .....	827
I. QUEIROLO, L. CARPANETO, Critical Remarks on the Extension of Party Autonomy to “Rome III” Regulation .....	59
L.G. RADICATI DI BROZOLO, Non-National Rules and Conflicts of Laws: Reflections in Light of the Unidroit and Hague Principles (in English) .....	841
T. SCHILLING, The Enforcement of Foreign Judgments in the Jurisprudence of the European Court of Human Rights (in English) .....	545

## SHORTER ARTICLES, NOTES AND COMMENTS

C. AMALFITANO, F. PERSANO, State Responsibility for Non-Compliance with European Union Law and Limitation Period in Actions for Damages .....	111
L. ASCANIO, Linguistic Ambiguities and Interpretative Pitfalls on Repudiation in Morocco .....	573
P. CELLE, M.E. DE MAESTRI, Subsidiary Protection between Court of Justice and <i>Corte di Cassazione</i> .....	97
G. D’AGNONE, The Interpretation of Clauses on Waiting Periods in the Case-Law of ICSID Tribunals: Obligations or Recommendations? .....	897

P. FRANZINA, On Service by Mail of Judicial Documents under the 1965 Hague Convention .....	341
M. LOPEZ DE GONZALO, A. LA MATTINA, Assignment of Claims and Prorogation of Jurisdiction .....	87
S. MARINO, Infringement of Personality Rights in the European Civil Judicial Cooperation .....	363
S. MARINO, New Developments in Online Torts .....	879
C.M. MARIOTTINI, Statutory Ceilings on Damages under the Rome II Regulation: Shifting Boundaries in the Traditional Dichotomy between Substance and Procedure? (in English) .....	647
L. SANDRINI, Creditor's Protection Pending the <i>Exequatur</i> Proceedings under the Brussels I Regulation .....	595
G. SERRANÒ, Remarks on the Judgment of the International Court of Justice on Jurisdictional Immunities of the State .....	617

#### CASES IN ITALIAN COURTS

*Adoption*: 66.

*Bankruptcy*: 7.

*Civil proceedings*: 28, 42, 43, 52, 58, 59, 63, 65, 70, 77, 80.

*Contracts*: 40, 57.

*Criminal proceedings*: 12, 14, 18, 23, 64.

*EC Regulation No 1346/2000*: 7, 67.

*EC Regulation No 44/2001*: 2, 27, 39, 42, 43, 45, 49, 74, 75, 77, 78.

*EC Regulation No 2201/2003*: 1, 13, 15, 75.

*EC Regulation No1896/2005*: 52.

*Extradition*: 8.

*European Union law*: 36.

*Filiation*: 73.

*Foreigner*: 5, 6, 9, 10, 17, 19, 25, 32, 33, 34, 48, 56, 76.

*Foreign judgments and administrative acts*: 13, 15, 20, 21, 22, 29, 35, 38, 44, 46, 66, 71.

*Foreign law*: 5, 46.

*International abduction of children*: 1, 3, 47, 60, 61, 68.

*Jurisdiction*: 1, 2, 11, 13, 14, 15, 27, 37, 39, 42, 43, 45, 49, 50, 55, 57, 59, 62, 64, 65, 67, 69, 72, 74, 75, 78, 81.

*Legalisation*: 28.

*Legal separation:* 75.

*Marriage:* 30, 31, 54, 79.

*Matrimonial property:* 51.

*Nationality:* 26, 41.

*Non-contractual obligations:* 5.

*Personality rights:* 4, 53.

*Public policy:* 13, 31, 38, 56, 73.

*Status and legal capacity of natural persons:* 51.

*Treaties and general international rules:* 3, 8, 11, 24, 28, 30, 32, 40, 46, 47, 50, 57, 59, 60, 61, 64, 68, 69, 70, 71, 72, 79, 81.

*Trusts:* 24.

1. *Milan Juvenile Court, decree 5 February 2010* ..... 140

Pursuant to Article 10 of EC Regulation No 2201/2003 of 27 November 2003, in case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction on questions regarding the custody of the child until the child has acquired a habitual residence in another Member State.

Based on Recital No 12 of EC Regulation No 2201/2003, which sets out the prevailing importance of the best interests of the child, in particular of the criterion of proximity, the concept of habitual residence does not necessarily imply a particular intention (*animus*) of the child, since it directly refers to a question of fact and therefore to the country where the child, based on a constant and enduring stay, has the centre of his affective relationships, including, but not limited to, the relationship with his parents, as they arise from his everyday life in said place.

Article 20 of EC Regulation No 2201/2003 allows the courts of a Member State to take a provisional and urgent measure in matters of parental responsibility aimed at granting to one of the parents the custody of the child who is in the territory of said State if the courts of another Member State, which have jurisdiction to hear the substance of the dispute on custody rights pursuant to said EC Regulation, have already issued a decision that provisionally grants the custody of the child to the other parent and said decision has been declared enforceable in the territory of the first Member State. When the practical means for the exercise of the rights of access have not been exhaustively regulated by the decision issued by the judicial authorities of the Member State having jurisdiction as to the substance of the matter, it is for the Italian probate courts (*giudice tutelare*) to determine such measures, provided that the essential principles laid down by said decision are complied with.

2. *Lecco Tribunal, 15 April 2010* ..... 221

In case of a sale of movables, the place of delivery within the meaning of Article 5(1)(b) of EC Regulation No 44/2001 of 22 December 2000 shall be the place of final destination of the goods. Accordingly, any action, including an action for payment, shall be brought before the courts of said place and, if said place is located abroad, Italian courts do not have jurisdiction. Said criterion cannot be derogated by a statement contained in an invoice, since this is not a

valid clause conferring jurisdiction pursuant to Article 23 of said EC Regulation. In fact, an invoice is not an agreement but merely a document issued for tax purposes.

3. *Corte di Cassazione, 19 May 2010 No 12293*. ..... 225

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction requires, even with respect to cases where the rights of custody over a child were jointly conferred to the parents, that the rights falling within the definition of ‘rights of custody’, i.e. the rights relating to the care of the child and, in particular, the right to determine the child’s place of residence, were actually exercised at the time of removal or retention, or would have been so exercised but for the removal or retention. The court shall therefore verify whether the parent alleging the breach of his/her rights of custody was actually exercising such rights, even in case of joint rights. On the other hand, the hearing of the child, which was already provided for by Article 12 of the New York Convention of 24 November 1989 on the Rights of the Child, has become a mandatory requirement in judicial proceedings concerning a child pursuant to Article 6 of the Strasbourg Convention of 25 January 1996 on the Exercise of Children’s Rights. As a consequence, even if the hearing is not required in proceedings for wrongful retention because said proceedings are by their own nature urgent and aimed at restoring the pre-existing situation, such a hearing is generally deemed appropriate – as specifically contemplated by Article 11(2) of EC Regulation No 2201/2003 of 27 November 2003 – in order to evaluate the possible objection of the child to his return pursuant to Article 13(2) of the 1980 Hague Convention, unless this appears inappropriate having regard to the age or degree of maturity of the child or, all the more, if it would cause harm to the child.

4. *Prato Tribunal, 16 July 2010*. ..... 145

Pursuant to Article 24 of Law of 31 May 1995 No 218, the existence and contents of personality rights are governed by national law. However, if said law does not regulate and permit a change of sex, the foreigner is entitled to enjoy the benefit granted by Article 3 of Law of 14 April 1982 No 164, by undergoing medical surgery at Italian hospitals in order to change sex. In fact, this would not amount to medical tourism or to an abuse of law.

5. *Turin Tribunal, 20 July 2010*. ..... 227

The condition of reciprocity required under the combined provision of Article 16 of the Preliminary Provisions to the Civil Code and Article 2 of Legislative Decree of 25 July 1998 No 286, as amended by Law of 30 July 2002 No 189 – which shall be ascertained by the court on its own motion pursuant to Article 14 of Law of 31 May 1995 No 218 – is satisfied in favour of the plaintiffs in an action for damages brought by the relatives of an employee who is an Albanian citizen against the employer, an Italian company, and its insurance company as a consequence of a fatal accident occurred to said employee in Spain. In fact, Articles 624 and 640 and followings of the Albanian Civil Code are interpreted so as to grant the right to compensation for the non-economic damages arising from the loss of family life. Such right is granted to the close relatives and heirs of, or persons living with, the persons whose health has been harmed or who died and is not subject to the Albanian citizenship of the claimant. Pursuant to Article 62 of Law No 218 of 1995, Spanish law applies to the relevant claim for damages as the law of the place where the harmful event occurred. However, negligence shall be evaluated pursuant to Italian rules on safety standards in the workplace, since said rules

are mandatory pursuant to Article 17 of said Law. The amount of damages to be awarded to compensate on an equitable basis the suffering of the damaged persons shall be adapted in light of its real purchasing power in the foreign country where said amount will be spent.

6. *Corte di Cassazione (criminal), 19 January 2011 No 1328* ..... 954

In order to determine whether a non-EU citizen is legally present in Italy pursuant to Legislative Decree of 6 February 2007 No 30, which has implemented Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and in light of the definition of family member laid down by Article 2 of the aforesaid Legislative Decree, the court shall verify whether – based on the laws of the Member State where said non-EU citizen has allegedly married a EU citizen of the same sex – said union can be qualified, or at least be considered equivalent to, a marriage. In fact, the status of spouse would exempt said non-EU citizen from the need to produce documents evidencing that he/she is a citizen of the Union, since these two status are considered equivalent by the law.

7. *Rome Tribunal, 2 February 2011* ..... 667

Pursuant to Article 13 of EC Regulation No 1346/2000 of 29 May 2000, no action paulienne (*azione revocatoria*) can be brought in relation to the payment of certain amounts under a contract if the beneficiary of said payment proves that, pursuant to Article 3 of the Rome Convention of 19 June 1980, said contract is governed by the law of a Member State different from the State of the opening of the proceedings and that said action paulienne is not allowed by the bankruptcy laws of the State whose law governs the contract.

8. *Corte di Cassazione (criminal), 15 February 2011 No 5760* ..... 231

For the purposes of granting a request for extradition made by the judicial authorities of the United States of America, Article 10(3)(b) of the Treaty on Extradition between Italy and the United States, which prevails over the relevant domestic provisions, requires the request to be accompanied by a summary of the facts providing a ‘reasonable basis’ to believe that the person sought committed the offense for which extradition is requested. Differently from the rule laid down by Article 705(1) of the Code of Criminal Procedure, the requested State shall not independently evaluate the evidence on which the sentence issued against the person sought is based.

9. *Corte di Cassazione, order 18 February 2011 No 4138* ..... 464

As far as international protection of foreigners is concerned, both the subsidiary protection pursuant to Legislative Decrees of 19 November 2007 No 251 and of 28 January 2008 No 25 and a residence permit for humanitarian reasons pursuant to Articles 5(6) and 19(1) of Legislative Decree of 25 July 1998 No 286 can be granted if an actual risk exists that the foreigner be subject to death penalty, torture or inhuman or degrading treatment. However, the above coincidence of the applicable requirements does not exclude a residual protection granted by the issue of permits grounded on humanitarian considerations or on reasons different from those underlying the granting of subsidiary protection or related to a limited and confined period of time, as provided for by Article 32(3) of Legislative Decree of 25 July 1998 No 286.

10. *Corte di Cassazione, order 18 February 2011 No 4139* ..... 233
- The rules on burden of proof laid down by Article 3 of Legislative Decree of 19 November 2007 No 251 for the purpose of establishing whether a person is entitled to a measure of international protection shall be interpreted so that, if the applicant does not provide evidence of certain facts that are relevant for the purposes of the decision, the factual allegations that are not supported by evidence shall be deemed truthful if said applicant: (a) has made any reasonable effort to detail his application; (b) has provided appropriate reasons for the possible lack of other significant elements, the statements made are consistent and plausible and can be reconciled with the general and specific information concerning the case; (c) has lodged his application as soon as possible or had valid reasons to delay the lodging thereof; (d) based on the checks carried out, is a reliable person.
11. *Rome Tribunal (industrial and intellectual property division), 18 February 2011* 148
- Pursuant to Articles 2 and 5(3) of the Brussels Convention of 27 September 1968, Italian courts are not competent to hear claims aimed at ascertaining that foreign parts of a European patent have not been infringed and at declaring that the behaviour of the plaintiffs was legally correct where the seat of the defendant is not located in Italy and the requirements for establishing the jurisdiction of the courts for the place where the harmful event occurred are not satisfied. In fact, in order for said courts to have jurisdiction, said harmful event shall be alleged as certain (and therefore shall have occurred prior to the starting of the action) and the relevant behaviour shall be alleged as illegal.
12. *Corte di Cassazione (criminal), 4 March 2011 No 8812* ..... 465
- The rule laid down by Article 707 of the Code of Criminal Procedure – whereby a judgment denying extradition precludes the granting of a subsequent, further request for extradition made by the same State for the same facts (so-called extraterritorial *res iudicata*) – does not apply if the first negative judgment dealt only with procedural or preliminary questions, without ruling on the merits of the request.
13. *Perugia Court of Appeal, 10 March 2011* ..... 153
- In case of *lis pendens* within the meaning of Article 19 of EC Regulation No 2201/2003 of 27 November 2003 between a divorce action brought in Spain and an action for legal separation brought in Italy, Spanish courts (rather than Italian courts) have jurisdiction if they have granted the relevant claim through a provisional judgment (regardless of the subsequent service thereof) prior to the lodging of the claim in Italy.
- A Spanish judgment that has granted divorce without a previous period of personal separation is not in contrast with public policy within the meaning of Article 22 of EC Regulation No 2201/2003.
- A Spanish divorce judgment that has been rendered in proceedings where the statement of claim has been served to the defendant according to the rules on untraceable persons even though the plaintiff was aware of the defendant's place of residence in Italy cannot be recognised, since it is in contrast with procedural public policy within the meaning of Article 22(a) of EC Regulation No 2201/2003. Moreover, the fact that said judgment has not been appealed by the defendant does not constitute acceptance of a foreign judgment pursuant to Article 22(b) of said Regulation.
- Given that the Spanish divorce judgment cannot be recognised, Italian courts have jurisdiction over an action for legal separation between the same

spouses if, pursuant to Article 3 of EC Regulation No 2201/2003, the last habitual residence of the spouses was located in Italy and one of them still resides there.

14. *Corte di Cassazione (criminal), 11 March 2011 No 10088* ..... 467

In order to establish whether Italian courts have jurisdiction on offences committed through a criminal association, the place where the association is active shall be determined. For this purpose, relevance may be given to the place where the single offences aimed at implementing the overall criminal scheme have been committed if, due to their number and importance, they are to be considered as decisive for said determination.

15. *Arezzo Tribunal, order 15 March 2011* ..... 161

A decision whereby Polish judicial authorities have ruled on the custody of children who have been legally taken to said State cannot be recognised in Italy if when said decision was issued the habitual residence of the children was located in Italy. Thus, said decision shall be construed as a provisional and protective measure pursuant to Article 20 of EC Regulation No 2201/2003 of 27 November 2003.

Pursuant to Article 3 of EC Regulation No 2201/2003, Italian courts have jurisdiction over an action for legal separation brought by a spouse residing in Italy against the other spouse who has moved to Poland if the last common residence of the spouses was located in Italy. Pursuant to Article 12 of said Regulation, said courts have also jurisdiction over an action relating to the custody of the children – which has been brought together with the action for legal separation – if the defendant did not challenge said jurisdiction upon entering an appearance in the separation proceedings and both spouses exercise parental responsibility over the children. However, jurisdiction shall be transferred to Polish judicial authorities pursuant to Article 15 of said Regulation, since the children have acquired habitual residence in Poland further to a legal removal and a prolonged stay there. In fact, the children have now established a particular connection with Poland, which implies that Polish judicial authorities are better placed to hear the entire case.

16. *Corte di Cassazione, order 24 March 2011 No 6879* ..... 233

As far as international protection of foreigners is concerned, both the subsidiary protection pursuant to Legislative Decrees of 19 November 2007 No 251 and of 28 January 2008 No 25 and a residence permit for humanitarian reasons pursuant to Articles 5(6) and 19(1) of Legislative Decree of 25 July 1998 No 286 can be granted if an actual risk exists that the foreigner be subject to death penalty, torture or inhuman or degrading treatment. However, the above coincidence of the applicable requirements does not exclude a residual protection granted by the issue of permits grounded on humanitarian considerations or on reasons different from those underlying the granting of subsidiary protection or related to a limited and confined period of time, as provided for by Article 32(3) of Legislative Decree of 25 July 1998 No 286.

17. *Corte di Cassazione, order 24 March 2011 No 6880* ..... 165

Considering that the law currently provides for a plurality of measures of international protection, the granting of subsidiary protection (as opposed to the recognition of the status of political refugee) does not require the ascertainment of a situation of persecution of the applicant, but is subject to the different

requirements provided for by Articles 2(g) and 14 of Legislative Decree of 29 December 2007 No 250.

If an arrest warrant has been issued against the applicant for facts committed during certain protests in the country of origin, the court cannot deny subsidiary protection without previously ascertaining the legal grounds on the basis of which said warrant has been issued, by simply stating that the applicant is not known to have political or ideological opinions in contrast with those of the government. In fact, the court shall verify whether the applicant is under a real risk to be subject to death penalty, torture or detention under inhuman or degrading conditions as a result of the warrant issued against him.

18. *Corte di Cassazione (criminal), 28 March 2011 No 12451* ..... 469

As far as extradition abroad is concerned, preventive detention, which has been ordered to ensure that the person being extradited is surrendered to the requesting State, does not cease its effects when the ministerial decree providing for the surrender is stayed by order of the administrative courts.

19. *Corte di Cassazione, 4 April 2011 No 7614* ..... 470

Lacking any express legislative provision to the contrary, disputes concerning the status of a stateless person shall be heard and decided upon with the participation of the Ministry of Internal Affairs and the relevant proceedings shall be held in the form of ordinary proceedings (*ordinario giudizio di cognizione*) rather than in the form of *in camera* proceedings before the Tribunal.

20. *Arezzo Tribunal, 7 April 2011* ..... 169

A Cuban divorce judgment cannot be recognized in Italy as it fails to meet the requirement under Article 64(b) of Law of 31 May 1995 No 218 when the document instituting the proceedings has been served in compliance with the *lex fori* on the wife – an Italian and Cuban citizen resident and domiciled in Italy – at the last domicile she had in Cuba prior to her moving to Italy ten years before, and the subsequent service of said judgment – which has become *res iudicata* in a period of time too short to allow the defendant to appeal against it – has not been proved. As a result, the action for legal separation brought by the wife in Italy can proceed.

21. *Corte di Cassazione (plenary session), 8 April 2011 No 8038* ..... 173

Pursuant to Article 64(a) of Law of 31 May 1995 No 218, a foreign judgment can be recognized in Italy only if it is issued by a court which would have jurisdiction based on the criteria that, in a corresponding case, would have grounded the jurisdiction of Italian courts towards a foreigner. Accordingly, a judgment issued by Chilean courts in relation to the custody of a child, who is an Italian and Chilean citizen, shall be recognized in Italy if the defendants were residing in Chile and the child was a Chilean citizen at the time of lodging of the document instituting the proceedings.

22. *Monza Tribunal, 11 April 2011* ..... 786

An Ukraine divorce judgment can be recognized in Italy even if no decision on legal separation has been issued before it. In fact, said judgment is not in conflict with public policy within the meaning of Article 64(g) of Law of 31 May 1995 No 218. However, said recognition does not preclude the adoption of economic measures in the Italian proceedings for legal separation that have been previously initiated and are still pending.



23. *Corte di Cassazione (criminal), 18 April 2011 No 15578* ..... 788
- Pursuant to the combined provision of Articles 705(2) and 698 of the Code of Criminal Procedure – which apply if no international convention exists between the requesting State and the requested State – a request for extradition made by foreign authorities cannot be granted if the crime with which the person being extradited is charged is punished under the laws of the requesting State with a penalty, such as forced labour, that is contrary to the provisions on fundamental rights, and particularly to Article 4(2) of the 1950 European Convention on Human Rights and Article 5(2) of the Charter of Fundamental Rights of the European Union.
24. *Mantua Tribunal, order 18 April 2011* ..... 176
- Pursuant to Articles 13 and 15(1)(e) of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, a liquidating trust whose express purpose is to protect the creditors by segregating all assets of an undertaking when it is already insolvent is null and void *ab origine* since it constitutes a private act directly aimed at avoiding the liquidation of the assets by the competent bodies of the bankruptcy procedure.
- Pursuant to Article 15(2) of the 1985 Hague Convention, a trust cannot be ‘harmonized’ by the court if it does not contain any clauses limiting its operation in cases of declared insolvency, by providing in particular the re-transfer to the liquidator of the assets contributed to the trust.
25. *Rome Court of Appeal, 22 April 2011* ..... 179
- In a case regarding the recognition of the status of refugee, the principles regulating the burden of proof of the applicant shall be interpreted in accordance with the provisions of Directive 2004/83/EC. Accordingly, the court has the duty to cooperate in ascertaining the facts that are relevant for the purpose of the recognition of the status of refugee, by exercising broader powers to investigate on its own motion.
26. *Corte di Cassazione, 27 April 2011 No 9377* ..... 181
- No effect can be granted to a document certifying that a person holds the Italian citizenship, issued by Lebanese authorities to a former Italian citizen who has lost said citizenship following the voluntary acquisition of the Lebanese citizenship pursuant to Article 8 No 1 of Law of 13 June 1912 No 555. In fact, each State has exclusive authority to determine who are its citizens.
- Pursuant to Article 12(2) of Law No 555 of 1912, the children of a person who loses the Italian citizenship become foreigners when they acquire the new foreign citizenship of their parent. Said provision is neither unreasonable nor constitutionally illegitimate.
27. *Corte di Cassazione (plenary session), order 29 April 2011 No 9517* ..... 186
- Pursuant to Article 19(2) of EC Regulation No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a labour dispute between a flight assistant on flights taking off from an Italian airport and a Belgian airline. In fact, said employee mainly carried out his work aboard airplanes flying the Belgian flag and therefore the place where he habitually carried out his work is Belgium, where the seat of the company that has employed him is also located.
28. *Corte di Cassazione, 3 May 2011 No 9687* ..... 188
- If the registration of the birth or death of a person, which has occurred abroad, has been made by the registrar general of births, deaths and marriages (*ufficiale di stato civile*) who was competent pursuant to the law of the place

where such event occurred, proof of such registration – if it has not been recorded in Italy – shall be provided through a certificate issued by said registrar general, as Article 452 of the Civil Code, whereby proof of said events can be given with any means in the absence of any registration in Italy or abroad, is inapplicable to the given case.

Any person intending to use in Italy a certificate of birth, death or marriage issued in the United States shall request the legalisation of said certificate to Italian diplomatic or consular authorities or the issuance of an *apostille* by the competent US authorities pursuant to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. Said formal requirements cannot be replaced with any equivalent formality.

29. *Corte di Cassazione, 5 May 2011 No 9970* ..... 381

Pursuant to Article 28 of the Brussels Convention of 27 September 1968, a French judgment concerning an agency agreement shall be recognised and enforced in Italy even where it was rendered in violation of a clause conferring jurisdiction to Italian courts because under French law such agreement is characterized as an employment contract and hence such clause is valid only if it is entered into after the dispute has arisen (on the basis of Article 17, last paragraph). Indeed, the Convention does not allow the courts of the State where recognition is sought to review the jurisdiction of the courts of the State of origin, except in case of conflict with the provisions of Sections 3, 4 or 5.

30. *Piacenza Tribunal, decree 5 May 2011* ..... 790

Pursuant to Article 116 of the Civil Code, in order to marry in Italy, a foreigner shall submit to the Italian registrar general of births, deaths and marriages (*ufficiale dello stato civile*) a declaration of the competent authorities stating that there are no reasons preventing his/her marriage (*nulla osta*). However, if said declaration has not been issued due to the fact that the other future spouse, an Italian citizen, did not convert to the Muslim faith, the refusal by the Italian registrar general to publish the banns shall be considered illegitimate.

31. *Treviso Tribunal, decree 9 May 2011* ..... 383

A deed attesting that two Moroccan citizens are married is not in contrast with public policy and can therefore be registered even if the spouses did not expressly state their will to marry as required by Articles 7 and 9 of Presidential Decree of 3 November 2000 No 396. In fact, said declaration is not required under Moroccan law.

32. *Corte di Cassazione, order 10 May 2011 No 10177* ..... 792

The qualification of political refugee shall be considered as a status and a legal right (*diritto soggettivo*). Pursuant to the Geneva Convention of 29 July 1951 and, currently, to the Directive 2005/85/EC, which has been implemented by Legislative Decree of 28 January 2008 No 25, the status of political refugee can be granted if the applicant cannot, or is not willing to, return to the State where he/she was previously habitually living due to a well-founded fear of being personally and directly persecuted by reason of he/she belonging to an ethnic group, association, political or religious party or of his attitude or life style. Accordingly, for the purpose of granting said status, the social, political and legal situation in the State of origin is relevant only if it is directly connected with the specific position of the applicant, who is likely to incur in specific sanctions harming his/her psychological or physical integrity.

33. *Corte di Cassazione, order 10 May 2011 No 10202* ..... 954
- For the purposes of ascertaining whether an application for international protection is grounded, the lower court cannot base its assessment exclusively on the credibility of the applicant. In fact, pursuant to Article 8(3) of Legislative Decree of 28 January 2008 No 25, the court has a duty to cooperate in order to verify the real situation in the applicant's country of origin through the exercise on its own motion of power-duties to investigate and obtain documents. Further the exercise of such powers is a consequence of the proceedings being held in the form of *in camera* proceedings.
34. *Corte di Cassazione, order 10 May 2011 No 10204* ..... 236
- As far as international protection is concerned, the persecution or fear of persecution by the governments of other countries is irrelevant for the purposes of the recognition of the status of refugee or the granting of subsidiary protection if the requesting person was residing in said countries on a permanent basis, but was neither a citizen nor native of said countries. In such a case, said person shall request international protection to the authorities of his country of origin, which are required to grant such protection to their citizens.
35. *Rome Court of Appeal, 11 May 2011* ..... 386
- In a case where the recognition of a foreign judgment (specifically, a decision of the courts of Ontario in matters relating to maintenance) is challenged, the assessment of whether the requirements for recognition are satisfied can also be made by the court on its own motion pursuant to Article 67 of Law of 31 May 1995 No 218, although within the limits of the findings of the proceedings.
36. *Corte di Cassazione, 17 May 2011 No 10813* ..... 192
- The State's liability for the late or partial implementation of Directive 82/76/EEC concerning the grants to be provided in favour of trainee specialists admitted to university courses of specialization shall be qualified as contractual liability, since it does not arise from a tort but rather from the failure to comply with a pre-existing obligation, which constitutes the source of said liability.
- In light of the case law of the EC Court of Justice, the statute of limitation period applicable to an action for damages against the State for failure to properly implement a Directive runs from the date on which the first harmful effects occurred and further harmful effects can be foreseen, even if said date falls before the (incorrect) implementation of said Directive.
- The statute of limitation applicable to actions for damages arising from the failure to properly implement a Directive is the ordinary term of ten years.
37. *Corte di Cassazione (plenary session), order 18 May 2011 No 10862* ..... 217
- Pursuant to Article 4 of Law of 31 May 1995 No 218, Italian courts have jurisdiction over an action brought by an Italian bank against a US company – respectively the assignee and the assigned debtor of a receivable for the payment of the price under a sales agreement – if the assignment agreement and the subsequent confirmation letters exchanged between the parties contain a clause conferring jurisdiction to Italian courts. Said clause is enforceable even *vis-à-vis* the assignees of the receivable that succeeded to the rights of the creditor/assignor towards the assigned debtor, provided that the latter has expressly accepted said clause. The fact that said clause conferring jurisdiction has not been specifically approved in writing by the assigned debtor pursuant to Articles 1341 and 1342 of the Civil Code is irrelevant, if the counterparty has expressly requested to approve the clauses agreed after the assignment and set

out in the confirmation letters, and said letters have been signed and returned by the assigned debtor without any objections.

38. *Corte di Cassazione, 20 May 2011 No 11163* ..... 391
- In the proceedings concerning the appeal against an *ex parte* decree that has declared that a foreign judgment awarding damages that has become *res iudicata* in the country of origin is enforceable in Italy, Italian courts cannot review the substantial and procedural aspects of the dispute as verified by foreign courts, including the standing (*legittimazione attiva*) of the person who has been recognised by said judgment as mandatee (*mandatario*) of the persons originally entitled to claim damages for the purpose of requesting the enforcement of said judgment in Italy, unless, with reference to this specific issue, the appellant has submitted evidence showing the lack of said standing.
- Following the granting of an application for recognition (*delibazione*) – which has been lodged as a counterclaim in the appeal against an *ex parte* decree that has declared a foreign judgment enforceable in Italy – the legitimacy and enforceability of said decree can only be verified with reference to the effects resulting from its enforcement, i.e., in this case, upon the opposition to the registration of a mortgage on an immovable that has been subject to the subsequent enforcement procedure.
- Pursuant to Article 64(1)(g) of Law of 31 May 1995 No 218, the enforcement in Italy of a Greek judgment which requires Germany to indemnify the victims of a slaughter committed in Greece by Nazi armed forces during World War II is not in contrast with public policy since Germany cannot invoke immunity from jurisdiction in relation to major war crimes that have breached the inviolable rights of persons and that were carried out in the territory of the State of origin of the judgment of which enforcement is sought.
39. *Corte di Cassazione (plenary session), order 23 May 2011 No 11289* ..... 409
- Pursuant to Article 24 of EC Regulation 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action for termination of an agreement concerning commercial representation and agency brought against a German citizen if the latter has entered an appearance objecting only that the procedural rules applicable to labour disputes shall apply to said action but not that the court seised lacks jurisdiction (which, on the contrary, has been expressly accepted by him). In fact, there is no need to enter into an agreement complying with the requirements of Article 20 of said EC Regulation, in light of the general terms laid down by said Article 24.
40. *Corte di Cassazione, 26 May 2011 No 11581* ..... 411
- Pursuant to Article IX(4) of the London Convention of 19 June 1951 and Article 8(e) of the Paris Agreement of 26 July 1961, local civilian employees of NATO and of the Allied Headquarters in Italy shall be entitled to legal and economic conditions of employment and work that shall not be worse than the conditions (considered as a whole) applied in the receiving State. For such purpose reference shall be made to those labour activities that are the most similar to those carried out by said employees.
41. *Lazio Regional Administrative Tribunal, first division, 30 May 2011 No 4826* ..... 671
- Table 4 attached to Presidential Decree of 3 March 1995 No 171 laying down the rules implementing Articles 2 and 4 of Law of 7 August 1990 No 241 with respect to proceedings for which the branches of the Ministry of Foreign Affairs are competent, provides that the overall duration of the proceedings for

verifying that a person holds the Italian citizenship *iure sanguinis* (i.e. as a descendant of an Italian citizen) and for the issue of the relevant certificate cannot exceed 240 days.

The behaviour of the Consulate General of Italy at San Paolo, Brazil which – after activating an on-line reservation system for the legalisation of Brazilian certificates of birth (*certificati di stato civile*) for the purpose of granting the Italian citizenship – does not conclude the related proceedings within the time limit laid down by Italian law is illegitimate.

42. *Corte di Cassazione (plenary session), order 8 June 2011 No 12410* ..... 416
- Pursuant to Article 27 of EC Regulation No 44/2001 of 22 December 2000, in case of international *lis pendens* the court subsequently seised shall stay proceedings and decline jurisdiction after the jurisdiction of the court first seised is finally established. Said provision implies a sort of temporary lack of jurisdiction, since it is substantially aimed at depriving the court subsequently seised of its authority to adjudicate the case for the period necessary to establish whether the court first seised has jurisdiction. Accordingly, an appeal for a preliminary ruling on jurisdiction pursuant to Article 41 of the Code of Civil Procedure can be made before the *Corte di Cassazione* if the lower court did not stay its proceedings, for the purpose of obtaining the stay of the same.
- Pursuant to Article 27 of EC Regulation No 44/2001, *lis pendens* exists between the proceedings for payment of damages previously initiated in Germany and the proceedings for negative declaratory relief subsequently brought in Italy, even if a sham company – which has been incorporated *ad hoc* in Italy to initiate the proceedings there and implement a delaying strategy – is a party to the Italian proceedings in addition to the parties to the German proceedings.
43. *Corte di Cassazione (plenary session), order 8 June 2011 No 12411* ..... 420
- Pursuant to Article 27 of EC Regulation No 44/2001 of 22 December 2000, in case of *lis pendens* between Italian proceedings – which have been initiated to obtain a negative declaration seeking to establish that no damages are due – and German proceedings – which have been subsequently initiated for the quantification of the same damages – the Italian court, as the court first seised, has authority to establish whether it has jurisdiction. For this purpose, in addition to any action taken by the court on its own motion, the parties may also exercise all rights granted to them by the law, including the right to obtain from the *Corte di Cassazione* a preliminary ruling on the existence of jurisdiction pursuant to Article 41 of the Code of Civil Procedure.
- Italian courts do not have jurisdiction over an action for a declaration that no damages are due if said action has been brought against a company having its seat in Germany and concerns certain activities carried out by German companies in Germany, where the consequences of such activities also occurred.
44. *Corte di Cassazione, 9 June 2011 No 12646* ..... 422
- A Romanian judgment that has recognised a person as being the natural father of a child and has ordered him to pay for its support – which is based upon the declarations of the mother and on further circumstantial evidence and satisfies the *audi alteram partem* requirements provided for by Article 64(1)(b) of Law of 31 May 1995 No 218 – can be recognised in Italy.
45. *Corte di Cassazione (plenary session), order 13 June 2011 No 12907* ..... 955
- Pursuant to both Article 3 of Law of 31 May 1995 No 218 and Article 19 of EC Regulation No 44/2001, the fact that the defendant resides or is domiciled in

Italy, regardless of his/her nationality, constitutes the general jurisdictional criterion in a dispute on employment matters.

46. *Corte di Cassazione, 14 June 2011 No 12963* ..... 424  
 Pursuant to Article 50 of the Brussels Convention of 27 September 1968, the so-called *Grundschild*, i.e. the acknowledgment of a debt of a certain amount, which has been made before a notary public in Germany and is aimed, among other things, at allowing immediate enforcement actions on the assets of the debtor, shall be declared enforceable in Italy if it is enforceable in Germany pursuant to Article 794(1) No 5 ZPO, which applies according to Article 15 of Law of 31 May 1995 No 218.
47. *Corte di Cassazione, 16 June 2011 No 13241* ..... 691  
 In proceedings related to the return of a child following to her/his wrongful abduction, the hearing of the child is not necessary in light of his/her young age (eight year old) – since such young age allows for a presumption of immaturity – and in light of the superior interest of the minor not to be involved in judicial proceedings opposing his/her parents.
48. *Corte di Cassazione, 4 July 2011 No 14556* ..... 956  
 Pursuant to Article 4 of EC Regulation No 343/2003 of 18 February 2003, the Member State responsible for examining an application for international protection is that with which the application for asylum has first been lodged. As a consequence, if the foreigner seeking asylum is irregularly staying in another Member State and he/she has reiterated his/her application in said State, the authorities of said State can only replace the other Member State in examining the application pending before the latter or they can require that the foreigner be taken back by the responsible State, but they cannot expel said foreigner.
49. *Corte di Cassazione (plenary session), order 5 July 2011 No 14654* ..... 432  
 Italian courts do not have jurisdiction over a dispute brought by an Italian company against the representative of a Luxembourg insurance company for payment of future damages that said Italian company may suffer as a consequence of the execution of a ‘ruinous settlement’ entered into by said representative in the United Kingdom as Article 5 No 3 of EC Regulation No 44/2001 of 22 December 2000 – whereby the courts for the place where ‘the harmful event occurred’ have jurisdiction in matters relating to tort – shall be interpreted in the sense that said place is where immediate and direct harm occurred. The different place where further economic consequences arising from the harmful conduct have possibly occurred or will occur is wholly irrelevant.
50. *Corte di Cassazione (plenary session), order 12 July 2011 No 15233* ..... 441  
 Articles 46 and 50 of Law of 31 May 1995 No 218 apply even after the entry into force of EC Regulation No 44/2001, since, similarly to the Brussels Convention of 27 September 1968, said Regulation does not apply to disputes concerning wills and successions.  
 Pursuant to Article 50 of Law No 218 of 1995, Italian courts have jurisdiction even if only one of the jurisdictional criteria laid down by said provision applies.  
 The fact that an immovable is located abroad excludes the jurisdiction of Italian courts in matters relating to succession if jurisdiction would be based solely on the criterion that the defendant is domiciled or resident in Italy or on the acceptance of Italian jurisdiction by the defendant pursuant to Article 50(d)

of Law No 218 of 1995. However, in this same case Italian jurisdiction is not excluded if jurisdiction is based on any of the other criteria laid down by Article 50, since in such cases the location abroad of some of the assets forming part of the succession does not imply derogation from Italian jurisdiction.

51. *Council of State, first division, opinion 12 July 2011 No 2/52* ..... 447
- Article 19 of Presidential Decree of 3 November 2000 No 396, which permits the registration – on a voluntary basis – of deeds of birth, marriage and death that are made abroad and concern foreign citizens residing in Italy, does not preclude the subsequent registration of deeds made in Italy, such as matrimonial agreements (*convenzioni matrimoniali*), or the delivery of an unabridged copy of the latter to the persons mentioned in the deed and to other interested parties.
52. *Mantua Tribunal, order 14 July 2011* ..... 911
- The opposition to a European order for payment pursuant to Article 16 of EC Regulation No 1896/2006 of 12 December 2006 can be submitted even through a registered letter with return receipt sent to the court of origin.
- The transfer to ordinary civil proceedings following the lodging of an opposition to a European order for payment, which is provided for by Article 17 of EC Regulation No 1896/2006, shall occur in compliance with the formalities laid down by Article 645 of the Code of Civil Procedure. In fact, said provision appears to be the one that is most specifically aimed at regulating the transfer from proceedings for summary judgment (*rito monitorio*), where the hearing of the other party is merely possible and in any case occurs at a later stage, to ordinary proceedings, where the *audi alteram partem* principle is fully applied.
- The court may consider a request for stay of enforcement made pursuant to Article 649 of the Code of Civil Procedure only after an opposition to the European order for payment is duly lodged pursuant to Article 645 of the Code of Civil Procedure. Said request cannot be made pursuant to Article 700 of the Code of Civil Procedure since said provision has a residual nature and therefore does not apply if specific remedies are given.
53. *Novara Tribunal, decree 14 July 2011* ..... 958
- Since the family name is the first and immediate constitutive element of personal identity, Romanian law – pursuant to which the husband’s family name replaces the one of the wife following the marriage – shall be applied to a married woman who has also acquired the Italian citizenship.
54. *Constitutional Court, 20 July 2011 No 245* ..... 132
- Article 116(1) §of the Civil Code, as amended by Article 1(15) of Law of 15 July 2009 No 94, is constitutionally illegitimate insofar as it requires a foreigner to submit a document certifying that he is regularly staying within the Italian territory in order to marry in Italy.
55. *Corte di Cassazione (plenary session), order 20 July 2011 No 15880* ..... 676
- Italian courts have jurisdiction in relation to the bankruptcy of a company that – prior to the opening of the relevant insolvency proceedings – has transferred its registered office from Italy to another Member State if, from all facts of the case, it can be inferred that said transfer did not correspond to an actual transfer of the centre of main interests of the company. In fact, the above circumstances allow to overcome the presumption that the registered office coincides with the real centre of the company’s interests.

56. *Varese Tribunal, decree 23 July 2011* ..... 916  
 In light of a constitutionally oriented interpretation of Article 29(2) of Legislative Decree of 25 July 1998 No 286, the delegation of parental authority over children made by the mother to the children's grandmother, which is contemplated by the law of Ecuador for the purpose of allowing a sort of fostering of children to a close relative in situations of extreme poverty, is not in contrast with public policy and justifies family reunion.
57. *Corte di Cassazione (plenary session), 26 July 2011 No 16248* ..... 959  
 Pursuant to Article IX(4) of the London Convention of 19 June 1951, Italian law applies to an employment relationship between the United Kingdom and an Italian citizen who is resident in Italy and has been hired in Naples to provide assistance in the entering into of lease agreements and in the maintenance of real property used to house UK military personnel in Italy, and can therefore be qualified as local civilian worker. Moreover, Italian courts have jurisdiction over a dispute brought by said employee and aimed at obtaining a declaration that his/her dismissal is null and void, his/her reinstatement at work, the indemnification of damages and the payment of wages that became due in the meantime as well as of the increase in said wages due as a result of the higher job title that should have been granted to said employee.
58. *Corte di Cassazione (plenary session), 27 July 2011 No 16390* ..... 678  
 Pursuant to Articles 641 and 647 of the Code of Civil Procedure, a summary injunction (*decreto ingiuntivo*) becomes enforceable if it is challenged beyond the term of forty days set out therein. Consequently, all defences raised by the appellant, including those of lack of jurisdiction and non-applicability of Italian law, are inadmissible.
59. *Corte di Cassazione (plenary session), order 2 August 2011 No 16862* ..... 681  
 Pursuant to Article 21 of the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, in case of international *lis pendens* the court subsequently seised shall stay its proceedings and, thereafter, decline jurisdiction when the jurisdiction of the court first seised is finally established. Said provision implies a sort of temporary lack of jurisdiction, since it is substantially aimed at depriving the court subsequently seised of its authority to adjudicate the case for the entire period necessary to establish whether the court first seised has jurisdiction. Accordingly, an appeal for a preliminary ruling on jurisdiction pursuant to Article 41 of the Code of Civil Procedure can be made before the *Corte di Cassazione* for the purpose of obtaining the stay of the proceedings (if the lower court did not stay them) or a ruling that the court subsequently seised definitely lacks jurisdiction (if, as in this case, the jurisdiction of the court first seised has been established).  
 The Italian proceedings for legal separation pursuant to Articles 150 and followings of the Civil Code and the Swiss proceedings between the same parties for the staying of the joint household pursuant to Article 175 of the Swiss Civil Code have the same object and cause of action. Accordingly, if said proceedings have been instituted reciprocally by the parties before a Swiss court and an Italian court, the latter shall finally decline jurisdiction if the jurisdiction of the Swiss court, being it the court first seised, has been established.
60. *Corte di Cassazione (plenary session), 2 August 2011 No 16864* ..... 684  
 For the purpose of establishing jurisdiction in case of wrongful removal of a child, a change of the place of habitual residence of the child that occurs after the



lodging of the relevant application is irrelevant if it is a consequence of provisional measures issued in urgent cases. In fact, the provisions conferring jurisdiction to the courts of the State where the child is present, such as Articles 13 and 15 of EC Regulation No 2201/2003 of 27 November 2003 and Article 12 of the Hague Convention of 25 October 1980 on International Child Abduction, derogate from the ordinary rule whereby jurisdiction shall be determined at the time of lodging of the document instituting the proceedings (so-called *perpetuatio iurisdictionis* principle) and are laid down to deal with exceptional circumstances.

61. *Corte di Cassazione, 11 August 2011 No 17201* ..... 690
- In case of an international child abduction, the hearing of the child – which was already provided for by Article 12 of the 1989 New York Convention on the Rights of the Child – is not required, pursuant to Article 7(3) of Law of 15 January 1994 No 64, in proceedings for the return of the child to his/her original habitual residence even if it is thought that said hearing has become essential, unless it appears inappropriate having regard to the age or degree of maturity of the child, as now specifically provided for by Article 11(2) of EC Regulation No 2201/2003, Article 13 of the Hague Convention of 25 October 1980 on International Child Abduction and Articles 3 and 6 of the Strasbourg Convention of 25 January 1996 on the Exercise of Children’s Rights.
- The hearing of a child who has understanding has a cognitive value, since its outcome may allow the court to directly assess whether there is a grave risk for the child that his/her return would expose him/her to psychological harm or otherwise place him/her in an intolerable situation pursuant to Article 13 of the 1980 Hague Convention. Although the child’s objection to being returned cannot constitute the exclusive basis for rejecting the application, it is an element strengthening the view of the court that the child would suffer a prejudice, which is independent and sufficient ground to derogate from the general principle requiring his/her immediate return.
62. *Rome Military Court, 23 August 2011* ..... 793
- Italian courts have jurisdiction over a claim brought in criminal proceedings against a foreign State for the damages caused to the civilian population by crimes against humanity committed by the military troops of said State in Italy during World War II.
63. *Corte di Cassazione, order 16 September 2011 No 19017* ..... 697
- The special proceedings for a ruling on venue (*regolamento di competenza*) concerning the authority to appoint a new guardian/manager (*amministratore di sostegno*) and to revoke the previous one – which has been brought on his own motion by the Italian consul of the place where the beneficiary currently resides against the guardianship court (*giudice tutelare*) of the place where said beneficiary was residing before his relocation – is admissible. In fact, the consul has such authority based on an evolutionary interpretation of Article 34 of Presidential Decree of 5 January 1967 No 200 laying down provisions on consular functions and powers. However, if the aforesaid relocation was not voluntary, the court for the place where the guardianship procedure was opened and the first appointment was made retains competence to appoint and revoke the guardian/manager. Any such factual change of the residence or domicile of the beneficiary is wholly irrelevant.
64. *Rossano Tribunal, 20 September 2011* ..... 699
- Italian courts have jurisdiction over a claim for damages brought against the

Federal Republic of Germany by the heirs of an Italian citizen who was taken prisoner abroad by Nazi armed forces and was subsequently brought to Germany and forced to work there to the benefit of the Third Reich. Italian courts have jurisdiction regardless of the place where the harmful event occurred, since the rules of international law aimed at repressing the commission of serious international crimes prevail over those concerning the immunity of foreign States.

However, said claim shall be rejected since – prior to the formation of the rule of international law whereby crimes against humanity are not subject to a limitation period – said crimes were subject to the statute of limitation provided for by national law. The aforesaid rule of international law cannot be applied retroactively, since the provisions on statute of limitation have a substantial nature pursuant to Article 25(2) of the Constitution, especially if the statute of limitation applicable to said crimes had already expired at the time when said rule came into existence.

65. *Milan Court of Appeal, 22 September 2011* ..... 918

Pursuant to Article 3(1) of Law of 31 May 1995 No 218, Italian courts have jurisdiction over the proceedings for opposition against a summary judgment (*decreto ingiuntivo*) brought by an Italian company against a US company, since the domicile of the company that submitted the opposition is located in Italy. For the above purpose, the seat of the company shall be treated as its domicile in accordance with Article 53 of the Brussels Convention of 27 September 1968 and Article 60 of EC Regulation 44/2001 of 22 December 2000. A clause conferring jurisdiction to the courts of the Washington State is irrelevant, since, pursuant to Article 17(5) of the Brussels Convention of 27 September 1968 (which provision has not been reproduced in EC Regulation No 44/2001), if said clause was agreed for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of said Convention.

Article 2710 of the Civil Code applies to an abstract of the accounting documents of a US company made by a notary public and apostilled by the Washington Secretary of State. In fact, pursuant to Article 12 of Law No 218 of 1995, the procedural rules on evidence applicable in proceedings before Italian courts are those laid down by Italian law, and therefore said abstract can be considered equivalent to an accounting record suitable to constitute evidence between entrepreneurs.

66. *Corte di Cassazione, 23 September 2011 No 19450* ..... 731

As far as the recognition of foreign decisions related to abandoned children is concerned, the provisions of special laws on adoption of children prevail over the general provisions laid down with the reform of Italian Private International Law pursuant to Article 41 of Law of 31 May 1995 No 218. Consequently, a request for the recognition of a foreign decision granting the custody of a child pursuant to *kafalah* can be made – under penalty of inadmissibility – only pursuant to Law of 31 December 1998 No 476 on international adoption (as opposed to Articles 66 and 67 of Law No 218 of 1995).

67. *Corte di Cassazione (plenary session), order 3 October 2011 No 20144* ..... 735

Based on Articles 9 and 10 of the bankruptcy law, as amended by Legislative Decree of 9 January 2006 No 5, and on Article 25 of Law of 31 May 1995 No 218, the jurisdiction of Italian courts on bankruptcy matters can be derogated only pursuant international conventions or provisions of Community law. Accordingly, said jurisdiction can only be excluded where

the registered office of a company has been actually and timely transferred to a non-EU Member State, i.e. in case said transfer is not sham or instrumental.

Pursuant to Article 3(1) of EC Regulation No 1346/2000 of 29 May 2000, the courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. However Italian courts retain jurisdiction if a company has transferred its registered office abroad prior to the lodging of the bankruptcy petition and said transfer appears to be sham, due to the fact that no business activity has been carried out in the new office and that the centre of the directional, administrative and organizational activities of the company has not been moved to said new office.

68. *Corte di Cassazione, order 5 October 2011 No 20365* ..... 739
- In an international case concerning the wrongful removal of children by one of their parents, the Juvenile Court shall verify whether the exception to the rule requiring the immediate return of the children laid down by Article 13(1)(b) of the Hague Convention of 25 October 1980 applies if there is a serious risk that their return would expose them to physical or psychological harm or otherwise place them in an intolerable situation. Such assessment implies a factual investigation, which shall be governed by the overriding principle of the protection of the children. Said Article 13 does not authorize any limitation as to the relevant sources of evidence. In fact, in the given proceedings the court may decide on the basis of simple 'information', consistently with the rule applicable to *in camera* proceedings.
69. *Corte di Cassazione (plenary session), 4 November 2011 No 22883* ..... 923
- Italian courts have jurisdiction over a dispute concerning the delivery of goods under a sale agreement pursuant to Article 5 No 1 of the Brussels Convention of 27 September 1968, which applies to defendants that do not have their seat in a Contracting State by virtue of the reference made to it by Article 3(2) of Law of 31 May 1995 No 218. In light of Article 31(1)(a) of the Vienna Convention of 11 April 1980, the relevant place of delivery shall be the Italian port where the goods have been handed over to the first carrier, regardless of any indication as to the place of final destination of the goods. In fact, the clause 'C & F' contained in the agreement – pursuant to which freight and other transport charges shall be borne by the seller – does not imply that the parties have agreed upon a different place of delivery.
70. *Corte di Cassazione, 9 November 2011 No 23290* ..... 449
- Pursuant to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial Documents (which has replaced Article 10 of the agreement between Italy and San Marino of 31 March 1939), the service of a judicial document made by mail to a person domiciled in San Marino is valid, since the objection of said State to the use of postal channels is contained in an annex to the legislative instrument ratifying said Convention and therefore is made within an act that has only administrative value.
71. *Corte di Cassazione, 21 November 2011 No 24415* ..... 927
- Pursuant to Article 3(b) of the Convention of 15 November 1967 between Italy and Tunisia on judicial assistance in civil, commercial and criminal matters, the recognition and enforcement of judgments and arbitral awards and extradition, for the purposes of recognising a judgment a time for appearance

of ninety days shall be granted to a defendant summoned before the courts of the State where he/she does not have his/her residence or domicile. Accordingly, the mere fact that the granted time for appearance is shorter than that provided for by said Convention does *per se* prevent the recognition of the relevant judgment.

72. *Corte di Cassazione (plenary session), order 25 November 2011 No 24906* ..... 931

Pursuant to Article 1(2) No 2 of the Lugano Convention of 16 September 1988, said Convention applies to an action for liability arising from an abuse of the seller under a distribution agreement, which is brought by the buyer under said agreement, an Italian company – against the seller – a company having its seat in Switzerland – even if the plaintiff is being liquidated and has entered into a judicial scheme of arrangement with its creditors (*concordato preventivo*). In fact, said action does not directly arise from the above mentioned scheme of arrangement and therefore the insolvency proceedings to which the plaintiff is subject do not have any “attractive force” vis-à-vis said action.

Pursuant to Article 17 of the Lugano Convention of 16 September 1988, Italian courts do not have jurisdiction over an action for liability based upon Article 9 of Law of 18 June 1998 No 192 arising from an abuse of the seller under a distribution agreement, which is brought by the buyer, an Italian company, against the seller, a company having its seat in Switzerland, if said agreement contains a clause conferring jurisdiction to Swiss courts with respect to any dispute arising from or related to said agreement.

In fact, on one side said clause envisages both claims for contractual liability and for tort liability arising out of the same material facts; on the other side the present action is contractual in nature.

73. *Chiavari Tribunal, 12 December 2011* ..... 937

A declaration of paternity based on DNA testing can be granted in the proceedings for ascertaining natural paternity brought by an adult daughter after it has been verified that, pursuant to the applicable law, said daughter is not the legitimate child of either the first or the second husband of her mother. In fact, Italian private international law aims at and favours the recognition of the status of children.

The provisions of Australian law pursuant to which, on one side, a mother can overcome the legal presumptions of paternity by indicating the father as “Not Stated” in the relevant register of births and, on the other side, a change of family name ordered by any person or entity different from the competent authorities does not imply an adoption conferring the status of legitimate child – which applies both in the Federal State and in the State where the birth of the daughter has been registered – is not in contrast with Italian public policy.

74. *Corte di Cassazione (plenary session), order 27 December 2011 No 28811* ..... 939

Pursuant to Article 5 No 3 of EC Regulation No 44/2001, Italian courts do not have jurisdiction over an action for damages brought by an Italian company against a bank having its seat in Spain as a consequence of the alleged wrongdoing of said bank, which would have allowed certain debtors of the plaintiff to transfer money on a bank account that was unduly opened by third parties in the name of the plaintiff in one of the offices of said bank. In fact, the harmful event shall be deemed to have occurred in Spain, and the place where any future consequences arising from such event have occurred or may occur is irrelevant.

75. *Belluno Tribunal, 30 December 2011* ..... 452

Pursuant to Article 3(1)(a) of EC Regulation No 2201/2003 of 27

November 2003 – which applies also to citizens of non-EU Member States – Italian courts have jurisdiction over an application for judicial separation lodged by a spouse who is a foreign citizen and has resided in Italy for more than a year before the application was made.

Pursuant to Article 8 of EC Regulation No 2201/2003, Italian courts have jurisdiction over a claim concerning the custody of the children if they are habitually resident in Italy.

Even though the questions relating to the faults and the responsibility for the marital crisis do not fall within the scope of application of EC Regulation No 2201/2003, under Italian procedural rules currently in force the request that a spouse be declared responsible for the separation cannot be subject to jurisdictional rules different from those applicable to the main application for separation, to which said EC Regulation applies.

Pursuant to Article 5 No 2 of EC Regulation No 44/2001 of 22 December 2000 (which applies for reason of time), Italian courts have jurisdiction over a claim for maintenance that is ancillary to an application for judicial separation over which said courts already have jurisdiction.

Pursuant to Article 3(1) of Law of 31 May 1995 No 218, Italian courts have jurisdiction over a claim for the allocation of the family home if the defendant spouse resides in Italy.

Based on Article 31(2) of Law No 218 of 1995, a personal separation is governed by Italian law if it is not contemplated by the common foreign law of the spouses (i.e., in this case, the Moudawana of Morocco).

76. *Reggio Emilia Tribunal, 13 February 2012* ..... 457

In light of its literal meaning, of the rules and practice of the European Union and of the case law of the European Court of Human Rights, the term ‘spouse’ as contained in Article 2(b) No 1 of Legislative Decree of 6 February 2007 No 30 – implementing the Directive 2004/38/EC on the right of citizens of the European Union to move and reside freely – shall be interpreted so as to include same-sex spouses.

In case of a couple married in Spain, family reunion with the Italian spouse shall be granted to the other spouse, a non-EU citizen of the same sex. In fact, the European Union is specifically competent with respect to the recognition of the status of spouse for purposes of exercising free movement.

77. *L'Aquila Court of Appeal, order 23 February 2012* ..... 744

Pursuant to Article 47(3) of EC Regulation No 44/2001 of 22 December 2000, during the time for lodging an appeal against the decree declaring the enforceability of a judgment issued in another Member State, a preservation order (*sequestro conservativo*) shall not be granted automatically, but only if the applicable requirements laid down by national law are satisfied.

The appeal against said order – which has been brought pursuant to Article 669-terdecies of the Code of Civil Procedure pending the time for lodging an appeal against the decree declaring the enforceability of an English judgment issued in the first stage of the proceedings for declaration of enforceability – is admissible and shall be granted if said order has been issued notwithstanding lack of evidence of the existence of a danger in delay (*periculum in mora*), lack of any reasoning as to the need to proceed without hearing the other party and of any provision relating to the subsequent review of the order in presence of said other party pursuant to Article 669-sexies(2) of the Code of Civil Procedure.

78. *Corte di Cassazione (plenary session), order 27 February 2012 No 2926* ..... 941

Pursuant to Articles 2 and 6 No 1 and to Article 5 No 3 of EC Regulation

44/2001 of 22 December 2000 Italian courts have jurisdiction over an action for pre-contractual liability arising from the breach by intermediaries of their information duties vis-à-vis their clients, which has been brought by the Municipality of Milan – jointly with an action for contractual liability – against various intermediaries having their seat in Italy, in certain other Member States of the European Union and in the United States of America, respectively. In fact, the place where the harmful event occurred is located in Italy and, if a plaintiff brings a main claim and a concurrent claim against a foreign defendant, the existence of jurisdiction shall be verified with exclusive reference to the main claim.

Pursuant to Article 23 of EC Regulation No 44/2001, Italian courts have jurisdiction over the concurrent action for liability arising from a consultancy and arranging agreement entered into with some of the aforesaid defendants, which is governed by general terms and conditions that have been executed by the parties and contain a clause conferring jurisdiction to Italian courts. The clause conferring jurisdiction to English courts set out in Article 13 of the ISDA Master Agreement, which governs a derivative agreement allegedly linked with the aforesaid consultancy agreement, is irrelevant since the wording “relating to this Agreement” contained in said clause – which shall be interpreted in a rigorously restrictive manner – cannot be construed as referring to all contractual and non-contractual disputes that are in any way linked to the contractual adoption of derivative instruments, and also since the effects of the alleged contractual link do not concern the question of jurisdiction.

79. *Corte di Cassazione, 15 March 2012 No 4184* ..... 747

According to Italian law, two persons of the same sex having a stable relationship as a couple may not marry in Italy or obtain the registration of a marriage celebrated abroad. However, they are entitled to apply to national courts in order to enforce their right to receive the same treatment applicable to a married couple and, if necessary, to raise the relevant questions of constitutional illegitimacy of the provisions of law currently in force, since they are beneficiaries of the right to family life pursuant to Article 8 of the 1950 European Convention on Human Rights.

The fact that a same-sex marriage celebrated abroad cannot be registered in Italy does not depend any longer upon its inexistence or invalidity, but rather upon the fact that the relevant act of marriage would not produce any legal effect in the Italian legal system.

80. *Turin Court of Appeal, 14 May 2012* ..... 768

Since the International Court of Justice ruled that Italy has violated international law by not recognizing the immunity of Germany in disputes brought by Italian citizens who have been deported to Germany and forced to work there or by the heirs of said citizens, an action brought by one of said heirs in respect of which the plenary session of the *Corte di Cassazione* ruled, prior to the issuance of said judgment, that Italian courts have jurisdiction further to the special proceedings for a preliminary ruling on jurisdiction pursuant to Article 41 of the Code of Civil Procedure, has become inadmissible. In fact, on the one hand said decision on jurisdiction has a mere hypothetical value in accordance with Article 386 of the Code of Civil Procedure, since it refers solely to the facts alleged in the proceedings at the time of its issuance and is without prejudice to any question concerning the admissibility of the action. On the other hand, said judgment of the Hague Court, by which not only the Italian State but also its courts are bound pursuant to Articles 10 and 11 of the Constitution, has

remarkably changed the legal reference framework, thereby preventing the review of the merits of the dispute.

81. *Corte di Cassazione (criminal), 9 August 2012 No 32139* ..... 775

Italian courts do not have jurisdiction over a claim for damages brought in criminal proceedings against Germany as the party bearing civil liability (*responsabile civile*) of a slaughter committed in Italy by Nazi armed forces during World War II. In fact, the judgment of the International Court of Justice dated 3 February 2012 ruled that Italy did not respect, in certain judicial decisions, the immunity of the Federal Republic of Germany. Even if said judgment does not directly and immediately bind Italian courts or specifically refer to the dispute in question, it expresses the current status of international law and is consistent with the international obligations of Italy. To the contrary, the previous case law of the *Corte di Cassazione*, pursuant to which the protection of human rights prevails over the immunity of foreign States from jurisdiction, shall now be considered as a mere contribution to the formation of a new rule of international law that is not yet shared by the international community and, as such, cannot be further applied. Accordingly, the recognition of the immunity of foreign States in relation to acts or behaviors that violate fundamental human rights does not raise a question of constitutional legitimacy, since the aforesaid judgment of the Hague Court shows that an international custom relevant under Article 10(1) of the Constitution – which may constitute an ‘interposed provision’ in the constitutional preliminary ruling based on the mechanism laid down by Article 117 of the Constitution – does not currently exist.

#### EU CASE-LAW

*Consumer protection*: 32.

*Contracts*: 2

*EC Regulation No 1346/2000*: 15, 18, 24, 35.

*EC Regulation No 44/2001*: 5, 9, 13, 14, 16, 19, 23, 28, 29, 30, 34, 37, 38.

*EC Regulation No 2201/2003*: 33.

*EC Regulation No 805/2004*: 28.

*EC Regulation No 864/2007*: 20.

*EU Citizenship*: 3, 6, 8, 17.

*EU Law*: 1, 4, 7, 10, 21, 27, 31.

*Freedom of establishment*: 11, 22, 36.

*Freedom to provide services*: 16, 28.

*Judicial proceedings before the Court of Justice*: 12, 23, 26.

*Liability of Member States*: 21.

*Rome Convention of 1980*: 25.

1. *Court of Justice, 22 December 2010 case C-279/09* ..... 483

The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, *inter alia*, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.

In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.

In making that assessment, the national court must take into consideration the subject-matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the relevant law and procedure; and the applicant's capacity to represent himself effectively. In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and whether or not those costs might represent an insurmountable obstacle to access to the courts.

With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, *inter alia*, the form of the legal person in question and whether it is profit-making or non-profit-making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.

2. *Court of Justice, 1 March 2011 case C-236/09* ..... 482

Article 5(2) of Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services is invalid with effect from 21 December 2012.

The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, *inter alia*, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.

In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.

In making that assessment, the national court must take into consideration the subject-matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the relevant law and procedure; and the applicant's capacity to represent himself effectively. In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and



whether or not those costs might represent an insurmountable obstacle to access to the courts.

With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, *inter alia*, the form of the legal person in question and whether it is profit-making or non-profit-making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.

3. *Court of Justice, 8 March 2011 case C-34/09* ..... 479

Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.

4. *Court of Justice, 8 March 2011 case C-240/09* ..... 800

Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters approved on behalf of the European Community by Decision 2005/370/EC of 17 February 2005 does not have direct effect in EU law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that Convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an environmental protection organisation, such as the Lesoochránárske zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU Union environmental law.

5. *Court of Justice, 12 April 2011 case C-235/09* ..... 243

Article 98(1) of Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Regulation (EC) No 3288/94 of 22 December 1994, must be interpreted as meaning that the scope of the prohibition against further infringement or threatened infringement of a Community trade mark, issued by a Community trade mark court whose jurisdiction is based on Articles 93(1) to (4) and 94(1) of that regulation, extends, as a rule, to the entire area of the European Union.

Article 98(1), second sentence, of Regulation No 40/94, as amended by Regulation No 3288/94, must be interpreted as meaning that a coercive measure, such as a periodic penalty payment, ordered by a Community trade mark court by application of its national law, in order to ensure compliance with a prohibition against further infringement or threatened infringement which it has issued, has effect in Member States to which the territorial scope of such a prohibition extends other than the Member State of that court, under the conditions laid down in Chapter III of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, with regard to the recognition and enforcement of judgments. Where the national law of one of those other Member States does not contain a coercive measure similar to that ordered by the Community trade mark court, the objective pursued by that measure must be attained by the competent court of that other Member State by having recourse

to the relevant provisions of its national law which are such as to ensure that the prohibition is complied with in an equivalent manner.

6. *Court of Justice, 5 May 2011 case C-434/09* ..... 480

Article 3(1) of 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 must be interpreted as meaning that it is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State.

Article 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States.

7. *Court of Justice, 10 May 2011 case C-147/08* ..... 800

Articles 1, 2 and 3(1)(c) of Directive 2000/78 preclude a provision of national law such as paragraph 10(6) of that Law of the Land of Hamburg, under which a pensioner who has entered into a registered life partnership receives a supplementary retirement pension lower than that granted to a married, not permanently separated, pensioner, if in the Member State concerned, marriage is reserved to persons of different gender and exists alongside a registered life partnership such as that provided for by the Law on registered life partnerships (*Gesetz über die Eingetragene Lebenspartnerschaft*) of 16 February 2001, which is reserved to persons of the same gender, and there is direct discrimination on the ground of sexual orientation because, under national law, that life partner is in a legal and factual situation comparable to that of a married person as regards that pension. It is for the referring court to assess the comparability, focusing on the respective rights and obligations of spouses and persons in a registered life partnership, as governed within the corresponding institutions, which are relevant taking account of the purpose of and the conditions for the grant of the benefit in question.

8. *Court of Justice, 12 May 2011 case C-391/09* ..... 798

National rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language relate to a situation which does not come within the scope of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

Article 21 TFEU must be interpreted as not precluding the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to amend, on the birth certificate and marriage certificate of one of its nationals, the surname and forename of that person in accordance with the spelling rules of another Member State.

The same provision does not preclude the competent authorities of a Member State from refusing to amend the joint surname of a married couple

who are citizens of the Union, as it appears on the certificates of civil status issued by the Member State of origin of one of those citizens, in a form which complies with the spelling rules of that latter State, on condition that that refusal does not give rise, for those Union citizens, to serious inconvenience at administrative, professional and private levels, this being a matter which it is for the national court to decide. If that proves to be the case, it is also for that court to determine whether the refusal to make the amendment is necessary for the protection of the interests which the national rules are designed to secure and is proportionate to the legitimate aim pursued.

Similarly, it is not contrary to Article 21 TFUE the refuse of competent authorities of a Member State to amend the marriage certificate of a citizen of the Union who is a national of another Member State in such a way that the forenames of that citizen are entered on that certificate with diacritical marks as they were entered on the certificates of civil status issued by his Member State of origin and in a form which complies with the rules governing the spelling of the official national language of that latter State.

9. *Court of Justice, 12 May 2011 case C-144/10* ..... 239

Article 22(2) of 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 not applying to proceedings in which a company pleads that a contract cannot be relied upon against it because a decision of its organs which led to the conclusion of the contract is supposedly invalid on account of infringement of its statutes.

10. *Court of Justice, 19 May 2011 case C-452/09* ..... 244

European Union law must be interpreted as not precluding a Member State from relying on the expiry of a reasonable limitation period as a defence in legal proceedings brought by an individual for the purpose of safeguarding rights conferred by a directive, even though the Member State did not transpose that directive correctly, on condition that, by its conduct, such Member State was not responsible for the delay in bringing the action. The finding by the Court that there has been a breach of European Union law does not affect the starting point of the limitation period, in the case where that breach is not in doubt.

11. *Court of Justice, 24 May 2011 case C-54/08* ..... 801

The activity entrusted to notaries, as currently defined in the German legal system, does not, as such, involve a direct and specific connection with the exercise of official authority within the meaning of the first paragraph of Article 45 EC (now 51 first paragraph TFUE). Consequently, the nationality condition required by German legislation for the access to the profession of notary constitutes discrimination on grounds of nationality prohibited by Article 43 EC (now 49 TFUE).

Recital 41 of the Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications, stating that the application of the Directive is without prejudice to the application of Article 45 EC 'concerning notably notaries', does not imply that activities entrusted by notaries fall in the reservation of the first paragraph of Article 45 EC, nor that Directive 2005/36/EC does not apply to the activities of notaries.

12. *Court of Justice, 14 June 2011 case C-196/09* ..... 803

The Complaints Board of the European Schools is not such a court common to a number of Member States, comparable to the Benelux Court of Justice, rather it is a body of an international organization, instituted by all the

Member States and by the Union with the Luxembourg Convention of 21 June 1994, which, despite the functional links which it has with the Union, remains formally distinct from it and from those Member States. Thus, the mere fact that the Complaints Board is required to apply the general principles of EU law when it has a dispute before it is not sufficient to make the Board fall within the definition of ‘court or tribunal of a Member State’ and thus within the scope of Article 267 TFEU. Hence, the Court of Justice has no jurisdiction to rule on a reference for a preliminary ruling from the Complaints Board of the European Schools.

13. *Court of Justice, 13 October 2011 case C-139/10* ..... 241

Article 45 of 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 precluding the court with which an appeal is lodged under Article 43 or Article 44 of that Regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.

14. *Court of Justice, 18 October 2011 case C-406/09* ..... 242

The concept of ‘civil and commercial matters’ in Article 1 of 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 the same Regulation applies to the recognition and enforcement of a decision of a court or tribunal that contains an order to pay a fine with the purpose of ensuring compliance with a judgment given in a civil and commercial matter.

The costs relating to an exequatur procedure brought in a Member State, within which the recognition and enforcement of a judgment – rendered on the request to enforce an intellectual property right in another Member State – are sought, fall within Article 14 of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights.

15. *Court of Justice, 20 October 2011 case C-396/09* ..... 238

European Union law precludes a national court from being bound by a national procedural rule under which that court is bound by the rulings of a higher national court, where it is apparent that the rulings of the higher court are at variance with EU law, as interpreted by the Court of Justice.

The term ‘centre of a debtor’s main interests’ in Article 3(1) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted by reference to European Union law.

A debtor company’s main centre of interests, under the second sentence of Article 3(1) of Regulation No 1346/2000, must be determined by attaching greater importance to the place of the company’s central administration, as may be established by objective factors which are ascertainable by third parties. Where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in that place, the presumption in that provision cannot be rebutted.

Where a company’s central administration is not in the same place as its registered office, the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption unless a comprehensive assessment of all the relevant

factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State.

Where a debtor company's registered office is transferred before a request to open insolvency proceedings is lodged, the company's centre of main activities is presumed to be the place of its new registered office.

The term 'establishment' within the meaning of Article 3(2) of Regulation No 1346/2000 must be interpreted as requiring the presence of a structure consisting of a minimum level of organisation and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of goods in isolation or bank accounts does not, in principle, meet that definition.

16. *Court of Justice, 25 October 2011 in joined cases C-509/09 and C-161/10* ..... 475

Article 5(3) of 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 event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.

Article 3 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), must be interpreted as not requiring transposition in the form of a specific conflict-of-laws rule. Nevertheless, in relation to the coordinated field, Member States must ensure that, subject to the derogations authorised in accordance with the conditions set out in Article 3(4) of Directive 2000/31, the provider of an electronic commerce service is not made subject to stricter requirements than those provided for by the substantive law applicable in the Member State in which that service provider is established.

17. *Court of Justice, 15 November 2011 case C-256/11* ..... 968

EU law and, in particular, its provisions on citizenship of the Union, must be interpreted as meaning that it does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify.

18. *Court of Justice, 17 November 2011 case C-112/10* ..... 472

The expression 'conditions laid down' in Article 3(4)(a) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, which refers to conditions, that, under the law of the Member State where the debtor has the

centre of its main interests, prevent the opening of main insolvency proceedings in such a State, must be interpreted as not referring to conditions excluding particular persons from the category of subjects empowered to request the opening of such proceedings.

The term 'creditor' in Article 3(4)(b) of the Regulation, which is used to designate the persons empowered to request the opening of territorial insolvency proceedings, must be interpreted as not including an authority of a Member State whose task under the national law of that State is to act in the public interest, but which does not intervene as a creditor, or in the name or on behalf of those creditors.

19. *Court of Justice, 17 November 2011 case C-327/10* ..... 477

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 the application of the rules of jurisdiction laid down by that Regulation requires that the situation at issue in the proceedings of which the court of a Member State is seised is such as to raise questions relating to determination of the international jurisdiction of that court. Such a situation arises in a case in which an action is brought before a court of a Member State against a national of another Member State whose domicile is unknown to that court.

Regulation No 44/2001 must be interpreted as meaning that a consumer who is a party to a long-term mortgage loan contract, which includes the obligation to inform the other party to the contract of any change of address, renounces his domicile before proceedings against him for breach of his contractual obligations are brought, the courts of the Member State in which the consumer had his last known domicile have jurisdiction, pursuant to Article 16(2) of that Regulation, to deal with proceedings in the case where they have been unable to determine, pursuant to Article 59 of that Regulation, the defendant's current domicile and also have no firm evidence allowing them to conclude that the defendant is in fact domiciled outside the European Union.

Regulation No 44/2001 does not preclude the application of a provision of national procedural law of a Member State which, with a view to avoiding situations of denial of justice, enables proceedings to be brought against, and in the absence of, a person whose domicile is unknown, if the court seised of the matter is satisfied, before giving a ruling in those proceedings, that all investigations required by the principles of diligence and good faith have been undertaken with a view to tracing the defendant.

20. *Court of Justice, 17 November 2011 case C-412/10* ..... 479

Articles 31 and 32 of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), read in conjunction with Article 297 TFEU, must be interpreted as requiring a national court to apply the Regulation only to events giving rise to damage occurring after 11 January 2009 and that the date on which the proceedings seeking compensation for damage were brought or the date on which the applicable law was determined by the court seised have no bearing on determining the scope *ratione temporis* of the Regulation.

21. *Court of Justice, 24 November 2011 case C-379/10* ..... 972

By excluding any liability on the part of the Italian State for damage caused to individuals by an infringement of EU law attributable to a national court adjudicating at last instance where such an infringement results from interpretation of provisions of law or assessment of facts or evidence carried

out by that court and limiting such liability to cases of intentional fault and serious misconduct, pursuant to Article 2(1) and (2) of Law No 117 of 13 April 1988, the Italian Republic has failed to fulfil its obligations in connection with the general principle of the liability of Member States for breach of EU law by one of its courts adjudicating at last instance.

22. *Court of Justice, 29 November 2011 case C-371/10* ..... 802

A company incorporated under the law of a Member State which transfers its place of effective management to another Member State, without that transfer affecting its status of a company of the former Member State, may rely on Article 49 TFEU for the purpose of challenging the lawfulness of a tax imposed on it by the former Member State on the occasion of the transfer of the place of effective management.

Article 49 TFEU must be interpreted as not precluding legislation of a Member State under which the amount of tax on unrealised capital gains relating to a company's assets is fixed definitively, without taking account of decreases or increases in value which may occur subsequently, at the time when the company, because of the transfer of its place of effective management to another Member State, ceases to obtain profits taxable in the former Member State; it makes no difference that the unrealised capital gains that are taxed relate to exchange rate gains which cannot be reflected in the host Member State under the tax system in force there.

The legislation of a Member State which prescribes the immediate recovery of tax on unrealised capital gains relating to assets of a company transferring its place of effective management to another Member State at the very time of that transfer is contrary to Article 49 TFEU.

23. *Court of Justice, 1 December 2011 case C-145/10* ..... 478

Article 6(1) of 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 not precluding its application solely because actions against several defendants for substantially identical copyright infringements are brought on national legal grounds which vary according to the Member States concerned. It is for the referring court to assess, in the light of all the elements of the case, whether there is a risk of irreconcilable judgments if those actions were determined separately.

24. *Court of Justice, 15 December 2011 case C-191/10* ..... 473

Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings is to be interpreted as meaning that a court of a Member State that has opened main insolvency proceedings against a company, on the view that the centre of the debtor's main interests is situated in the territory of that Member State, can, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State only if it is established that the centre of that second company's main interests is situated in the first Member State.

Regulation No 1346/2000 is to be interpreted as meaning that, where a company, whose registered office is situated within the territory of a Member State, is subject to an action that seeks to extend to it the effects of insolvency proceedings opened in another Member State against another company established within the territory of that other Member State, the mere finding that the property of those companies has been intermixed is not sufficient to establish that the centre of the main interests of the company concerned by the action is also situated in that other Member State. In order to reverse the

presumption that this centre is the place of the registered office, it is necessary that an overall assessment of all the relevant factors allows it to be established, in a manner ascertainable by third parties, that the actual centre of management and supervision of the company concerned by the joinder action is situated in the Member State where the initial insolvency proceedings were opened.

25. *Court of Justice, 15 December 2011 case C-384/10* ..... 797

Article 6(2) of the 1980 Rome Convention on the law applicable to contractual obligations, opened for signature in Rome, must be interpreted as meaning that the national court seised of the case must first establish whether the employee, in the performance of his contract, habitually carries out his work in the same country, which is the country in which or from which, in the light of all the factors which characterise that activity, the employee performs the main part of his obligations towards his employer.

In the case where the national court takes the view that it cannot rule on the dispute before it under Article 6(2)(a) of the Rome Convention, the following Article 6(2)(b) must be interpreted as meaning that the concept of ‘the place of business through which the employee was engaged’ must be referred exclusively to the place of business which engaged the employee and not to that with which the employee is connected by his actual employment. Moreover, the possession of legal personality does not constitute a requirement which must be fulfilled by the place of business of the employer within the meaning of that provision;

The place of business of an undertaking other than that which is formally referred to as the employer, with which that undertaking has connections, may be classified as a ‘place of business’ if there are objective factors enabling an actual situation to be established which differs from that which appears from the terms of the contract, and even though the authority of the employer has not been formally transferred to that other undertaking.

26. *Court of Justice, 21 December 2011 case C-482/10* ..... 803

The Court of Justice of the European Union has jurisdiction to give preliminary rulings on questions concerning EU provisions in situations where the facts of the cases being considered by the national courts are outside the scope of EU law but where those provisions of EU law have been rendered applicable by domestic law due to a direct and unconditioned reference made by that law to the content of those provisions, in order to ensure that internal situations and situations governed by EU law are treated in the same way. Thus, since Article 1(1) of the Italian Law No 241 of 7 August 1990, introducing new rules governing administrative procedure and relating to the right of access to administrative documents, provides solely that administrative activity is regulated, *inter alia*, by ‘principles of EU legal system’ but does not contain a direct and unconditioned reference to UE law in order to regulate merely internal situations, the Court of Justice of the European Union does not have jurisdiction to respond to the questions of preliminary interpretation of EU law referred to in a general way by Article 1 (1) of Law No 241/1990. Hence, the Court of Justice of the European Union does not have jurisdiction to respond to the questions posed by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana (Italy).

27. *Court of Justice, 17 January 2012 case C-347/10* ..... 967

Since, under the rules and principles of international law relating to the legal regime applicable to the continental shelf, a Member State has sovereignty over the continental shelf adjacent to it – albeit functional and limited sovereignty – work carried out on fixed or floating installations positioned on



the continental shelf, in the context of the prospecting and/or exploitation of natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying EU law. A Member State which takes advantage of the economic rights to prospect and/or exploit natural resources on that part of the continental shelf which is adjacent to it cannot avoid the application of the EU law provisions designed to ensure the freedom of movement of persons working on such installations – with particular reference to Article 39 EC (now 45 TFEU) and 13(2) *litt. a* of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1606/98 of 29 June 1998.

Article 13(2) *litt. a* of Regulation No 1408/71 and Article 39 EC must be interpreted as precluding an employee, working on a fixed installation on the continental shelf adjacent to a Member State, from being in a position in which he is not compulsorily insured under national statutory employee insurance in that Member State solely on the ground that he is not resident there but in another Member State.

28. *Court of Justice, 15 March 2012 case C-292/10* ..... 794

Article 4(1) of 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 it does not preclude the application of Article 5(3) of the same Regulation to an action for liability arising from the operation of an Internet site against a defendant who is probably a EU citizen but whose whereabouts are unknown if the court seised of the case does not hold firm evidence to support the conclusion that the defendant is in fact domiciled outside the European Union.

EU law must be interpreted as meaning that it does not preclude the issue of judgment by default against a defendant on whom, given that it is impossible to locate him, the document instituting proceedings has been served by public notice under national law, provided that the court seised of the matter has first satisfied itself that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant.

EU law must be interpreted as precluding certification as a European Enforcement Order, within the meaning of Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims, of a judgment by default issued against a defendant whose address is unknown.

Article 3(1) and (2) of Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market does not apply to a situation where the place of establishment of the information society services provider is unknown, since application of that provision is subject to identification of the Member State in whose territory the service provider in question is actually established.

29. *Court of Justice, 19 April 2012 case C-213/10* ..... 796

Article 1(1) of 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 an action brought against a third party by an applicant acting on the basis of an assignment of claims which has been granted by a liquidator appointed in insolvency proceedings and the subject-matter of which is the right to have a transaction set aside that the liquidator derives from the national law applicable to those

proceedings is covered by the concept of civil and commercial matters within the meaning of that provision.

30. *Court of Justice, 19 April 2012 case C-523/10* ..... 961

Article 5(3) of 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 an action relating to infringement of a trade mark registered in a Member State because of the use, by an advertiser, of a keyword identical to that trade mark on a search engine website operating under a country-specific top-level domain of another Member State may be brought before either the courts of the Member State in which the trade mark is registered or the courts of the Member State of the place of establishment of the advertiser.

31. *Court of Justice, 24 April 2012 case C-571/10* ..... 970

The reference made by Article 6(3) TEU to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, does not require the national court, in case of conflict between a provision of national law and that convention, to apply the provisions of that Convention directly, disapplying the provision of domestic law incompatible with the convention.

32. *Court of Justice, 26 April 2012 case C-472/10* ..... 971

It is for the national court, ruling on an action for an injunction, brought in the public interest and on behalf of consumers by a body appointed by national law, to assess, with regard to Article 3(1) and (3) of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, the unfair nature of a term included in the general business conditions of consumer contracts by which a seller or supplier provides for a unilateral amendment of fees connected with the service to be provided, without setting out clearly the method of fixing those fees or specifying a valid reason for that amendment. As part of this assessment, the national court must determine, *inter alia*, whether, in light of all the terms appearing in the general business conditions of consumer contracts which include the contested term, and in the light of the national legislation setting out rights and obligations which could supplement those provided by the general business conditions at issue, the reasons for, or the method of, the amendment of the fees connected with the service to be provided are set out in plain, intelligible language and, as the case may be, whether consumers have a right to terminate the contract.

Article 6(1) of Directive 93/13, read in conjunction with Article 7(1) and (2) thereof, must be interpreted as meaning that it does not preclude the declaration of invalidity of an unfair term included in the standard terms of consumer contracts in an action for an injunction, provided for in Article 7 of that directive, brought against a seller or supplier in the public interest, and on behalf of consumers, by a body appointed by national legislation from producing, in accordance with that legislation, effects with regard to all consumers who concluded with the seller or supplier concerned a contract to which the same general business conditions apply, including with regard to those consumers who were not party to the injunction proceedings.

Where the unfair nature of a term in the general business conditions has been acknowledged in such proceedings, national courts are required, of their own motion, and also with regard to the future, to draw all the consequences which are provided by national law in order to ensure that consumers who have

concluded a contract with the seller or supplier to which those general business conditions apply will not be bound by that term.

33. *Court of Justice, 26 April 2012 case C-92/12 PPU* ..... 965

A judgment of a court of a Member State which orders the placement of child in a secure institution providing therapeutic and educational care situated in another Member State and which entails that, for her own protection, the child is deprived of her liberty for a specified period, falls within the material scope of Regulation No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

The consent referred to in Article 56(2) of Regulation No 2201/2003 must be given, prior to the making of the judgment on placement of a child, by a competent authority, governed by public law. The fact that the institution where the child is to be placed gives its consent is not sufficient. Where a court of a Member State which issued the judgment on placement is uncertain whether a consent was validly given in the requested Member State, because it was not possible to identify with certainty the competent authority in the latter State, an irregularity may be corrected in order to ensure that the requirement of consent imposed by Article 56 of the Regulation No 2201/2003 has been fully complied with.

Regulation No 2201/2003 must be interpreted as meaning that a judgment of a court of a Member State which orders the compulsory placement of a child in a secure care institution situated in another Member State must, before its enforcement in the requested Member State, be declared to be enforceable in that Member State. In order not to deprive that Regulation of its effectiveness, the decision of the court of the requested Member State on the application for a declaration of enforceability must be made with particular expedition and appeals brought against such a decision of the court of the requested Member State must not have a suspensive effect.

Where a consent to placement under Article 56(2) of Regulation No 2201/2003 has been given for a specified period of time, that consent does not apply to orders which are intended to extend the duration of the placement. In such circumstances, an application for a new consent must be made. A judgment on placement made in a Member State, declared to be enforceable in another Member State, can be enforced in that other Member State only for the period stated in the judgment on placement.

34. *Court of Justice, 21 June 2012 case C-514/10* ..... 962

Article 66(2) of 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, for that regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.

35. *Court of Justice, 5 July 2012 case C-527/10* ..... 960

Article 5(1) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that that provision is applicable even to insolvency proceedings opened before the accession of the Republic of Hungary to the European Union where, on 1 May 2004, the debtor's

assets on which the right *in rem* concerned was based were situated in that State, which is for the referring court to ascertain.

36. *Court of Justice, 12 July 2012 case C-378/10* ..... 969

Articles 49 and 54 TFEU must be interpreted as precluding national legislation which enables companies established under national law to convert, but does not allow, in a general manner, companies governed by the law of another Member State to convert to companies governed by national law by incorporating such a company.

Articles 49 and 54 TFEU must be interpreted, in the context of cross-border company conversions, as meaning that the host Member State is entitled to determine the national law applicable to such operations and thus to apply the provisions of its national law on the conversion of national companies governing the incorporation and functioning of companies, such as the requirements relating to the drawing-up of lists of assets and liabilities and property inventories. However, the principles of equivalence and effectiveness, respectively, preclude the host Member State from refusing, in relation to cross-border conversions, to record the company which has applied to convert as the ‘predecessor in law’, if such a record is made of the predecessor company in the commercial register for domestic conversions, and refusing to take due account, when examining a company’s application for registration, of documents obtained from the authorities of the Member State of origin.

37. *Court of Justice, 12 July 2012 case C-616/10* ..... 963

Article 6(1) of 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 situation where two or more companies established in different Member States, in proceedings pending before a court of one of those Member States, are each separately accused of committing an infringement of the same national part of a European patent which is in force in yet another Member State by virtue of their performance of reserved actions with regard to the same product, is capable of leading to ‘irreconcilable judgments’ resulting from separate proceedings as referred to in that provision. It is for the referring court to assess whether such a risk exists, taking into account all the relevant information in the file.

Article 22(4) of Regulation No 44/2001 must be interpreted as not precluding, in circumstances such as those at issue in the main proceedings, the application of Article 31 of that Regulation.

38. *Court of Justice, 25 October 2012 case C-133/11* ..... 964

Article 5 No 1 of 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 an action for a negative declaration seeking to establish the absence of liability in tort, delict, or quasi-delict falls within the scope of that provision.

#### DOCUMENTS

- New Italian civil procedure rules on the enforcement and challenge to recognition of foreign judgments and non-contentious decisions (Legislative Decree 1 September 2011 No 150) ..... 245

Agreement between Italy and Chile on judicial cooperation in criminal matters (Rome, 27 February 2002) .....	245
Amendments to Legislative Decree 6 February 2007 No 30 on the right of EU citizens and their family members to move and reside freely within the territory of the Member States (Law Decree 23 June 2001 No 89 and Legislative Decree 1 September 2011 No 150) .....	250
Amendments to the implementing, coordinating and provisional rules of the Italian Code of Criminal Procedure (Law Decree 23 June 2001 No 89) .....	256
Amendments to the Consolidated Act on immigration and the status of foreigners implementing Directive 2008/115/EC (Law Decree 23 June 2011 No 89 and Legislative Decree 1 September 2011 No 150) .....	257
Amendments to Legislative Decree 28 January 2008 No 25 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Legislative Decree 1 September 2011 No 150) .....	271
Amendments to Italian rules on criminal jurisdiction of the lower courts ( <i>giudice di pace</i> ) relating to the entry and illegal stay of foreign citizens in Italy (Legislative Decree 1 September 2011 No 150) .....	273
Circular note of the Ministry of Internal Affairs No 22 of 3 August 2011 on the annotation of matrimonial agreements on deeds made abroad and registered in Italian civil registries .....	273
Amendments to immigration and asylum provisions (Law Decree 6 December 2001 No 201) .....	484
Regulation on integration agreements between foreigners and Italy, pursuant to Article 4- <i>bis</i> (2) of the immigration and asylum provisions (Presidential Decree 14 September 2011 No 179) .....	487
Commission Regulation (EU) No 156/2012 of 22 February 2012 amending Annexes I to IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters .....	494
Circular note of the Ministry of Internal Affairs No 25 of 13 October 2011 on the annotation in public registries of marriages celebrated abroad .....	499
Amendments to immigration and asylum provisions (Law Decree 9 February 2012 No 5; Law 28 June 2012 No 92) .....	805
Amendments to the implementing rules of the immigration and asylum provisions (Law Decree 9 February 2012 No 5) .....	808
Provisions on the institution of specialized courts for disputes concerning undertakings (Law Decree 24 January 2012 No 1) .....	810
Transfer to the Prefect of the power to grant Italian citizenship upon marriage (Instructions of the Ministry of Internal Affairs 7 March 2012) .....	812
Circular note of the Ministry of Justice of 2 May 2012 on recognition and enforcement of foreign decisions in criminal matters .....	814
Amendments to immigration and asylum provisions implementing Directives 2009/50/EC and 2009/52/EC (Legislative Decree 28 June 2012 No 108; Legislative Decree 16 July 2012 No 109) .....	973

Italian implementation of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals Legislative Decree 16 July 2012 No 109) .....	980
Circular note of the Ministry of Internal Affairs of 26 October 2012 on same-sex couples and stay permits .....	984

#### CURRENT EVENTS AND RECENT DEVELOPMENTS

<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from December 2011 to February 2012) – Contracting Parties of the Hague Conventions in force – The law implementing EU rules in Italy for 2010 – EU directive on consumers rights – Circular note on the service of judicial documents – Circular note on the granting of Italian citizenship upon marriage and on the time limits for the procedures – EU Commission communication on ADR for consumer disputes – EU Commission communication on cooperation in the Area of Justice and Home Affairs within the Eastern Partnership – EU Council conclusions on the European judicial training – Corrigendum to the regulation 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 Belarus, Burma-Myanmar, Iran, Libya, Congo, Democratic Republic of Korea, Guinea, Syria and Sudan – Accession of the EU to the Protocol to the Athens Convention relating to the Carriage of Passengers by Sea – On stay permits for third-country nationals – New Italian provisions on the status of foreign citizens .....	276
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from 1 March to 15 May 2012) – ICJ's ruling in the case concerning the jurisdictional immunities of the State – Directive 2011/99/EU on the European protection order – Amendments to the EU code on visas – Amendments to the rules applicable to proceedings before the EU courts – New provisions concerning restrictive measures in relation to Belarus, Burma-Myanmar, Ivory Coast, Iran, Liberia, Syria and Zimbabwe .....	501
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from 16 May to 29 September 2012) – EU Parliament resolution on the Rome II regulation calling for action in the area of claims for violations of privacy and rights relating to personality – Amendments to the Italian provisions on status concerning the rules on family names – New provisions concerning restrictive measures in relation to Iran, Syria, Burma-Myanmar, Ivory Coast, Guinea-Bissau, Somalia and Belarus – Amendments to the consolidated law on financial intermediation .....	816
<i>Legislative, judicial and international practice.</i> International treaties coming into force in Italy (according to the Official Journal from October to November 2012) – New annexes to regulation (EC) No 1896/2006 creating a European order for payment procedure – New provisions concerning restrictive measures in relation to Iran, Syria, Somalia, Eritrea, Guinea-Bissau, Moldova and Belarus – New rules of procedure for the European Court of Justice – Practice directions to parties on judicial proceedings before the EU Civil Service Tribunal and instructions to the Registrar of the EU Civil Service Tribunal – Determination of programmed entries of non-EU nationals in Italy for 2012 – The ECHR ruling	

on international child abduction in the <i>M.R. and L.R v. Estonia</i> case – A website on the law for the couples in EU Member States .....	986
<i>Notices</i> . 21 <sup>th</sup> Meeting of the European Group for Private International Law (Brussels, 16-18 September 2011) .....	822
<i>Notices</i> . The 2013 courses of the Hague Academy of International Law – Italian Society of International Law award for young researchers – Riccardo Monaco Award .....	993

BOOK REVIEWS

(See *Italian Index*)