INDEX

ARTICLES

S. Bariatti, Characterisation and Interpretation in EC Private International Law: First Remarks 361

S.M. Carbone, International and Private International Instruments Concerning Compensation for Oil Pollution Damage to the Marine Environment 623

M. Frigo, Some Remarks on the Application of EC Provisions on the Service Abroad of Judicial Acts 5

L. Fumagalli, The European Enforcement Order for Uncontested Claims under EC Regulation No 805/2004 23

C. Honorati, The Communitarisation of Criminal Law Protection and the Principle of Legality in the EC 941

E. Jayme, Private International Law in the EC System and Recent Developments Concerning Relations with Third States 353

P. Kindler, Basic Features of a Future EC Regulation on the Law Applicable to Companies 657

A. Malatesta, The Law Applicable to Traffic Accidents under the Draft "Rome II" Regulation 47

F. Munari, The Construction of Implicit Private International Law Principles in EC Law 913

B. Nascimbene, "Structural" Violation, "Serious" Violation and the Interpretation of the European Convention of Human Rights 645

F. Salerno, The Amendments Introduced by the Protocol No 14 to the Procedure before the European Court of Human Rights 377

REVIEWS

M.R. Mauro, New Issues Concerning Arbitration between States and Foreign Investors in the Recent Practice of ICSID Tribunals 67

SHORTER ARTICLES, NOTES AND COMMENTS

P. Bertoli, The Role of the EC Court and the Interpretation of the Future "Rome I" Regulation 999

A. Bonfanti, Trends of International Trade Law in the Work carried out by UNCITRAL from the XXXVI to the XXXVIII Session 399

P. Buizza, The Protection of Goodwill in the European Convention of Human Rights 1021

R. Cafari Panico, Recent Decisions of the Italian Constitutional Court concerning the International and EC Relations of the Regions 109

E. Chiaretto, The Recognition of Professional Qualifications in the European Union 689

A. Leandro, The Exception of Voluntary Assignment in the Proposed Rome I Regulation 675

F. Marongiu Buonaiuti, A Recent Order of the Italian Corte di Cassazione on International Lis Alibi Pendens and Admissibility of the Preliminary Ruling on Jurisdiction 119

G. Pizzolante, Consumers' Contracts in the Proposed EC Regulation on the Law Applicable to Contractual Obligations 987

E. Savarese, The Stay of the Enforcement of ICSID Arbitral Awards Pending Annulment Proceedings 717

CASES IN ITALIAN COURTS

Adoption: 36, 49, 68.

Civil proceedings: 27, 40, 43, 50, 54, 62, 69, 72.

Contracts: 12, 17, 23, 26, 33, 48, 59, 69, 70.

Companies: 55, 75.

Criminal proceedings: 25, 57, 61.

Divorce: 58.

EC Regulation No 1346/2000: 31, 46, 72.

EC Regulation No 44/2001: 28, 29, 45, 51, 76.

European Community Law: 20.

Extradition: 38.

Foreigner: 1, 2, 4, 5, 6, 7, 8, 10, 11, 13, 15, 19, 22, 34, 35, 37, 39, 41.

Foreign judgments and administrative acts: 9, 16, 30, 43, 53, 54, 58, 64.

Foreign law: 26, 68.

International abduction of children: 14.

Jurisdiction: 18, 21, 24, 28, 29, 31, 32, 40, 42, 44, 45, 46, 47, 51, 56, 58, 63, 65, 66, 67, 69, 71, 74, 75, 76, 78.

Marriage: 53, 58.

Matrimonial property: 77.

Nationality: 52, 53.

Proxi: 76.

Public policy: 30, 54, 70.

Relations between parents and children: 37.

Status and legal capacity of natural persons: 50.

Treaties and general international rules: 3, 12, 13, 14, 15, 17, 18, 21, 23, 25, 26, 27, 29, 30, 32, 33, 35, 36, 37, 38, 42, 43, 47, 48, 56, 60, 63, 65, 66, 67, 68, 70, 71.

Trusts: 60.

1. *Corte di Cassazione, 13 April 2004 No 6993* 492

The requirement laid down by Article 13, seventh paragraph of the Legislative Decree of 25 July 1998 No 286, whereby the decree of expulsion of a non-EU citizen shall be notified to the latter together with a translation in a language understood by him, is satisfied by a translation of said decree in the official language of the State of which the person being expelled is a citizen. The fact that said person is unable to understand said language is wholly irrelevant. The amnesty request (*istanza di sanatoria*) made through a "declaration of emersion" (*dichiarazione di emersione*) prior to the issue of the expulsion decree makes the latter illegitimate pursuant to Article 2, first paragraph of the Law Decree of 9 September 2002 No 195, which has been converted into Law of 9 October 2002 No 222, whereby measures of removal from the territory of the State cannot be adopted against "emerging" workers, unless they are considered dangerous to national security. On the contrary, if said request is made after the issuance of the expulsion decree, the latter may be revoked with retroactive effect as a consequence of the acceptance of the amnesty request, pursuant to Article 2, second paragraph of said Law Decree.

2. *Corte di Cassazione, 20 April 2004 No 7473* 494

Based on Article 739 of the Code of Civil Procedure, which is referred to by Article 30, sixth paragraph of the Legislative Decree of 25 July 1998 No 286, an appeal against a decree of the Tribunal ruling on an appeal against the refusal to grant a residence permit for family reasons to a non-EU citizen may be brought before the Court of Appeal. The requirement that the spouses live together for the purpose of granting a residence permit for family reasons following a marriage between a non-EU citizen and an Italian citizen arises not only from the entire system laid down by the Legislative Decree of 25 July 1998 No 286 and of the need to avoid sham and instrumental marriages, but also from Article 28 of the Presidential Decree of 31 August 1999 No 394 (Regulation implementing the Consolidated Law on Immigration) whereby, if the expulsion is prohibited, the residence permit is granted to a foreigner meeting the requirements laid down by Article 19, *litt.* c of the Legislative Decree of 25 July 1998 No 286, i.e. to a foreigner living with her/his spouse being an Italian citizen.

3. *Corte di Cassazione, 22 April 2004 No 7668* 495

The burden of proving the date of entry into the national territory, for the

purpose of verifying whether the eight-day term within which a non-EU citizen may apply for a residence permit pursuant to Articles 5, second paragraph and 13, second paragraph of the Legislative Decree of 25 July 1998 No 286 is expired, lies with the foreigner who is found in Italy without said permit. Proof of the date of entry is obtained through stamping the entry visa on the passport at the time of crossing the Italian border. The fact that the foreigner has already obtained an entry visa from another State in the Schengen area cannot exempt said foreigner from complying with the aforesaid requirement, which is laid down by Article 7, second paragraph of the Presidential Decree of 31 August 1999 No 394. In fact, the right of access of said foreigner based on the uniform visa referred to in Article 13, second paragraph of the Law of 30 September 1993 No 388, which gives effect to the Convention Implementing the Schengen Agreement of 19 June 1990, is not related to the issue concerning the mere registration of the date of her/his entry in Italy.

4. *Corte di Cassazione, 3 June 2004 No 10568* 496

Pursuant to Article 13, second paragraph, *litt.* b of the Legislative Decree of 25 July 1998 No 286, the occurrence of a force majeure event prevents the expulsion of a non-EU citizen in case of failure by the latter to request a residence permit within the relevant mandatory term. Said force majeure event occurs in case the request is not filed due to a force outside of the foreigner's will that irresistibly affects his ability to act, by excluding it altogether. The fact that the foreigner has been imprisoned and that he has been misled by prison authorities to believe that it would have been possible to delay the filing of the request for the residence permit does not constitute a force majeure event.

5. *Venice Court of Appeal, 9 June 2004* 195

The enforceability of a domestic provision of law, such as Article 16 of the Preliminary Provisions to the Civil Code, which allows for a differentiated treatment of a EU citizen with respect to the enjoyment of civil rights, must be denied, since it conflicts with the fundamental principle of non-discrimination among all citizens of the Member States within the legal space of the European Union.

6. *Corte di Cassazione, 10 June 2004 No 10983* 497

The order of the local head of police administration (*questore*) to leave the Italian territory is an administrative act and, as such, is not subject to the provision laid down by Article 111 of the Constitution, as amended by Article 1, seventh paragraph of the Constitutional Law of 23 January 1999 No 2, whereby it is always admissible to appeal before the *Corte di Cassazione* against any judgement or measure concerning personal freedom that is issued by ordinary or special jurisdictional bodies. On the contrary, said order can be confirmed by an *in camera* decree issued by the Tribunal, which may be appealed before the *Corte di Cassazione* pursuant to Article 14, sixth paragraph of the Legislative Decree of 25 July 1998 No 286.

7. *Corte di Cassazione, 25 June 2004 No 11862* 498

It is admissible to appeal before the *Corte di Cassazione* pursuant to Article 111 of the Constitution against a decision adopted by the Tribunal at the conclusion of *in camera* proceedings relating to the appeal by a non-EU citizen pursuant to Article 30, sixth paragraph of the Legislative Decree of 25 July 1998 No 286 against the refusal to grant a clearance for family reunion and a residence permit for family reasons, since said proceedings concern the alleged

breach of a legal right (*diritto soggettivo*). The decree issued by the Tribunal acting as a solo judge upon appeal by said non-EU citizen can be challenged before the Court of Appeal. The special criterion for the determination of venue laid down by Article 30, sixth paragraph of said Legislative Decree, whereby said appeal shall be lodged before the *pretore* (now the Tribunal acting as a solo judge) for the place where the appellant resides, is aimed at favouring access to courts by the needier party and prevails over the State forum (*foro erariale*) laid down by Article 6 of the Royal Decree of 30 October 1933 No 1611. The inference of the Court of Appeal whereby a situation of dependency – which is contemplated by Article 29, first paragraph, *litt.* c of the Legislative Decree of 25 July 1998 No 286 as a requirement for family reunion – exists in a case where cash transfers for the benefit of the parent that the applicant has requested to rejoin have been made by a person different from said applicant, does not constitute a violation of law or a lack of reasoning that may be alleged before the *Corte di Cassazione*.

8. *Corte di Cassazione, 7 July 2004 No 12428* 500

The judicial review of the decrees of expulsion of non-EU citizens issued by the Prefects, which is contemplated by Article 13 of the Legislative Decree of 25 July 1998 No 286, also applies, in the same form, to decisions of the Prefects on the applications for the revocation of the expulsion decrees as well as to decisions withdrawing the revocation of the expulsion decrees. The provision laid down by Article 13, eighth paragraph of said Legislative Decree, whereby the expulsion decrees issued by the Prefects shall be appealed within five days from their notification also applies to the aforesaid decisions. Pursuant to Article 13, ninth paragraph of said Legislative Decree, the Tribunal acting as a solo judge for the place where the authority that has issued one of the aforesaid decisions has its seat is competent, and shall decide *in camera*. In case of appeal against decisions relating to the expulsion which have been issued by different Prefects, Article 28 of the Code of Civil Procedure – whereby the venue cannot be derogated in case of *in camera* proceedings – applies, while, as a consequence, Article 33 of the Code of Civil Procedure – whereby related actions can be brought before the same court in derogation from the general criteria for venue – does not apply. The question of constitutional legitimacy of Article 33 of the Code of Civil Procedure and of Article 13, ninth paragraph of the Legislative Decree of 25 July 1998 No 286 is manifestly unfounded. The fact that the decision being challenged lacks any indication as to the authority before which it can be appealed and the term for lodging said appeal prevents the expiration (*decadenza*) of the right to appeal.

9. *Rome Tribunal, 22 September 2004* 151

For the purposes of the recognition of a foreign divorce judgment, Article 65 of the Law of 31 May 1995 No 218 does not derogate from the provisions of Article 64 of said Law based on the subject matter of the decision in question. In fact, Article 65 applies to decisions other than judgments, whereas Article 64 applies to the latter without any distinction.

Pursuant to Article 64 of the Law of 31 May 1995 No 218, a divorce judgment rendered by a court of the United States in a case involving two Italian citizens who were, on a voluntary basis, permanent residents of the United States at the time the relevant petition was filed may be recognised in Italy, notwithstanding the fact that said Italian citizens formally still had their registered residence (*residenza anagrafica*) in Italy.

If a divorce judgment rendered by a foreign court has become final and has

been registered in the Italian registers of births, marriages and deaths (*registri di stato civile*), a request filed with an Italian court in judicial separation proceedings that were initiated before the foreign divorce proceedings (and which hence have become barred), which is aimed at ascertaining that the other spouse was at fault, is inadmissible. In fact, said Italian court must rule, based on the interest of the child, only on the modalities for the exercise of the right of access by the parent who does not have custody of the child and who has again become a resident of Italy, and on the assignment of the family residence located in Italy.

10. *Corte di Cassazione, 24 November 2004 No 22206* 503

The fact that a non-EU citizen remains in Italian territory illegally within the meaning of Article 13, second paragraph, *litt.* b of the Legislative Decree of 25 July 1998 No 286 automatically implies the issue of a decree of expulsion of said non-EU citizen. Said non-EU citizen cannot allege as an excuse the fact that he was ignorant of the existence of the eight-day term for requesting the residence permit. The fact that his family is in Italy is not sufficient for considering lawful the stay of a foreigner in Italian territory, since Article 28, first paragraph of said Legislative Decree grants the right to preserve family unity only to foreigners who are legally present in Italian territory.

11. *Corte di Cassazione, 5 January 2005 No 209* 505

As far as visas for family reunion are concerned, the local police administration (*Questura*) is competent to release the relevant clearance pursuant to Article 6, second paragraph of the Presidential Decree of 31 August 1999 No 394, after having verified that the conditions set forth in the first paragraph of said Article are met. On the contrary, the Consulate is competent to verify, based on said clearance and for the purpose of issuing the visa, that the requirements in terms of kinship, marriage, minor age, or inability to work and cohabitation set forth by said Article 6, second paragraph are met. The additional economic conditions which shall characterise the relationship between the beneficiary of the entry visa and the applicant – in particular, Article 29, first paragraph, *litt.* c of the Legislative Decree of 25 July 1998 No 286 refers to "dependent parents" – shall be considered included among the requirements that the Consulate is competent to verify.

12. *Corte di Cassazione, 13 January 2005 No 574* 153

The Ottawa Convention of 28 May 1988 on International Financial Leasing, implemented in Italy by Law of 14 July 1993 No 259, does not apply *per se* to leasing transactions that do not involve foreign elements. However, for the purposes of resolving issues concerning the regulation of a purely domestic leasing transaction, the provisions set forth by Articles 13 *et seq.* of said Convention can be taken into consideration in order to verify, from a systematic point of view, the soundness of any interpretative solution whereby domestic provisions regulating other types of contracts are applied to said transaction.

Article 13 of the 1988 Ottawa Convention does not lead to an outcome significantly different from that resulting from the joint application of Articles 1526 and 1384 of the Civil Code.

13. *Corte di Cassazione, 2 February 2005 No 2091* 802

Based on the provisions of the Geneva Convention of 28 July 1951, and in accordance with Articles 10 and 19, first paragraph of the Legislative Decree of

25 July 1998 No 286 concerning the prohibition against the rejection of foreigners and with Article 1 of the Law Decree of 30 December 1989 No 416 (which was converted into law by the Law of 28 February 1990 No 39) concerning the procedure for the recognition of the status of refugee and its consequences, said status cannot be granted to all non-EU citizens who leave a State in which a serious and widespread violation of civil rights is well-known to occur, but only to those who have a well-founded fear of being personally persecuted by reason of their own opinions or condition.

14. *Corte di Cassazione, 2 February 2005 No 2093* 425

The thirty-day time limit for ruling upon the return of a child who has been wrongfully removed – which, pursuant to Article 7 of the Law of 15 January 1994 No 64, runs from the date on which the application for the return of the child has been received – is not mandatory.

Pursuant to Articles 3 and 4 of the Hague Convention of 25 October 1980 on International Child Abduction, the return of a child must be ordered if the removal has occurred in breach of the rights of custody set forth by the law of the State in which the child was habitually resident. The identification of said State represents a question of fact.

15. *Corte di Cassazione, 4 February 2005 No 2358* 803

Article 28, first paragraph, *litt.* b of the Presidential Decree of 31 August 1999 No 394 provides for the issue of residence permits for family reasons to non-EU citizens who cannot be expelled pursuant to the law only if they live with the relatives with whom they request to be rejoined. Said provision is clearly in conflict with the Legislative Decree of 25 July 1998 No 286, which protects the best interests of the child, with priority also over the public policy underlying the regulation of the entry and stay of non-EU citizens in Italy. This results from Article 28, third paragraph of said Legislative Decree, whereby the best interests of the child shall be taken into consideration with priority in all administrative and jurisdictional proceedings concerning children and aimed at enforcing the right to family unity. Accordingly, if a foreign parent requests a residence permit to regain family unity with a child who is an Italian citizen and with whom he does not reside, the lack of cohabitation or living together with the child does not prevent the issuance of the residence permit, save where the parent has lost parental authority over the child.

16. *Corte di Cassazione, 4 February 2005 No 2359* 197

The recognition (*delibazione*) of a foreign judgment ordering maintenance payments in favour of a minor is not subject to review on the merits by virtue of Articles 4 *et seq.* of the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations and Articles 5 *et seq.* of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, both of which are in force in Italy.

17. *Corte di Cassazione, 14 February 2005 No 2898* 198

The Brussels Convention of 25 August 1924 on the Unification of Certain Rules of Law relating to Bills of Lading applies only to contracts to be performed exclusively through carriage by sea. Multimodal transport of goods by sea and land, even where transport by sea is definitely prevailing, remains subject to the provisions of the Civil Code, even with respect to the liability regime.

18. *Corte di Cassazione, 17 February 2005 No 3192* 158

Pursuant to Article 21 of the Brussels Convention of 27 September 1968, if

a court of a Contracting State has ruled on the legitimacy of a dismissal for disciplinary reasons, the decision of said court prevents Italian courts from hearing a case concerning any disciplinary aspects of said dismissal.

19. *Constitutional Court, 18 February 2005 No 78* 507

Article 33, seventh paragraph, *litt.* c of the Law of 30 July 2002 No 189 concerning amendments to the regulations on immigration and asylum and Article 1, eighth paragraph, *litt.* c of the Law Decree of 9 September 2002 No 195 containing urgent provisions on the legalisation of unlawful employment of non-EU citizens, which has been converted with amendments into the Law of 9 October 2002 No 222, are constitutionally illegitimate with reference to Article 3 of the Constitution, insofar as they require that the application for legalisation filed by a non-EU worker be automatically rejected in the event that a complaint has been filed against said worker for one of the crimes in relation to which Articles 380 and 381 of the Code of Criminal Procedure require or allow the arrest of a person caught in the act of the crime.

20. *Corte di Cassazione, 2 March 2005 No 4466* 199

Italian judicial and administrative authorities are prohibited from applying any domestic provisions of law that the EC Court of Justice has declared incompatible with Community law, since the judgments of the Court, as with any other source of Community law, are directly enforceable and prevail over national law.

21. *Corte di Cassazione (plenary session), order 7 March 2005 No 4807* 161

Pursuant to Article 3, first paragraph of the Law of 31 May 2005 No 218, only the objective circumstance that the defendant is domiciled or resident in Italy is relevant as a general criterion to determine the jurisdiction of Italian courts. Contrary to the provision set forth by the repealed Article 4 of the Code of Civil Procedure, it is no longer possible to distinguish between Italian defendants and foreign defendants.

A petition filed by a defendant resident in Italy for special proceedings for a preliminary ruling on jurisdiction pursuant to the combined provision of Article 3, first paragraph and Article 11, first part of the Law of 31 May 2005 No 218 – which reserves the right to raise the lack of jurisdiction to the defendant who has entered an appearance and has not accepted, expressly or tacitly, the jurisdiction of Italian courts pursuant to Article 4, first paragraph of said Law – is inadmissible.

If a civil action has been brought in Italy in the relevant criminal proceedings by (foreign) plaintiffs resident in an EC Member State against (Italian) defendants resident in Italy, the latter cannot initiate special proceedings for a preliminary ruling on jurisdiction. Furthermore, there is no international *lis pendens* relevant for the purposes of Articles 21 and 22 of the Brussels Convention of 27 September 1968 with respect to two actions (one being between the same parties and involving the same cause of action and the other being a related action) that have been previously brought before civil courts in such other Member State.

22. *Corte di Cassazione, 21 March 2005 No 6077* 805

During the period in which the Law Decree of 30 December 1989 No 416 (which was converted into law by the Law of 28 February 1990 No 39) was in force, a non-EU citizen applying for the recognition of the status of refugee was required to request and obtain from the local head of police administration

(*questore*), pursuant to Article 1, fifth paragraph of said Law Decree, a temporary residence permit, pending the conclusion of the relevant procedure. A written statement of said non-EU citizen containing a mere declaration of personal and family conditions, in which he/she does not allege to have a well-founded fear of being persecuted in his/her State of origin due to Ris her opinions, faith, religion or race, is not suitable for this purpose.

23. *Corte di Cassazione, 7 April 2005 No 7258* 201

Article 32 of the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road must be interpreted so that the one-year period of limitation provided for bringing a claim for damages has the nature of statute of limitation (*prescrizione*) rather than of forfeiture (*decadenza*).

24. *Corte di Cassazione (plenary session), 15 April 2005 No 7791* 806

Italian courts do not have jurisdiction over an international organisation in a case where they must issue a judgment ordering the payment by said organisation of an amount due under an employment contract, if for the purpose of said judgment it is necessary to characterise said contract as a contract of indefinite duration as opposed to a fixed-term contract.

25. *Corte di Cassazione, 15 April 2005 No 7923* 1092

Notwithstanding the binding nature of the provisions laid down by the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, a person who has been subject to criminal proceedings and to related orders limiting his personal freedom, as an interim measure or following a sentence, is not entitled to damages merely because said proceedings were concluded with a final decision of acquittal.

26. *Corte di Cassazione, 21 April 2005 No 8360* 739

An appeal before the *Corte di Cassazione* for violation of Egyptian law – which has been chosen by the parties as the governing law of an insurance contract pursuant to Article 25, first paragraph of the Preliminary Provisions to the Civil Code – is admissible, as in all instances where a foreign law regulates, or contributes to the regulation of, the case in question by virtue of a reference made to it by the law or the parties. Therefore the interpretation of Egyptian law, which is preliminary to the verification of the alleged violation, falls – similarly to the interpretation of domestic law – within the institutional competence of the *Corte di Cassazione*, in the exercise of its function of ensuring the exact compliance with, and the uniform interpretation of, the law.

Article 24 of the Geneva Convention of 19 September 1949 on Road Traffic allows the Contracting States to, alternatively, consider sufficient the national driving permit issued by another State or require, in appropriate cases, that the driver admitted to its territory carry an international driving permit.

The State of Egypt grants to foreigners admitted to its territory the right to drive motor vehicles based only on a driving permit issued by the State of origin, as an alternative to an international driving permit.

27. *Corte di Cassazione, order 26 April 2005 No 8933* 744

Even though the Brussels Convention of 25 May 1987 has abolished the need for the legalisation of public deeds among the Contracting States, a power of attorney *ad litem* issued in France without a certification of the identity of the signatory is invalid, since this is a fundamental requirement of said power of attorney under Italian law.

28. *Venice Court of Appeal, 26 April 2005* 746

Article 19 of the EC Regulation No 44/2001 provides that, in case of disputes brought against an employer domiciled in a Member State, the courts of said Member State or the courts of the Member State where the employee habitually carries out or did carry out his work have jurisdiction.

According to the case law of the EC Court of Justice, if an employee carries out his work in more than one State, the place where the work is carried out is considered to be that where the employee organises and plans his working time.

Italian courts have jurisdiction over a labour dispute if the employee, even if frequently travelling abroad, has a minimum supporting base in Italy for his work.

29. *Corte di Cassazione (plenary session), order 3 May 2005 No 9106* 429

The EC Regulation No 44/2001 of 22 December 2000 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters (Brussels I), rather than the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road (CMR), applies to a dispute arising from a contract of carriage by road terminated by the mutual consent of the parties and relating to the amount that one of the parties owes to the other in order to compensate it for costs sustained.

By virtue of the combined provision of Article 5 No 1 of the EC Regulation No 44/2001, Article 57 of the Law of 31 May 1995 No 218 and Article 4 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations, Italian courts have jurisdiction over a dispute concerning a cash payment due under a contract of carriage terminated by mutual consent of the parties. In fact, under Italian law – which applies in the present case as the law of the country where the party which is to effect the performance characteristic of the contract resides – a cash amount shall be paid at the place where the creditor is domiciled on the due date.

30. *Milan Court of Appeal, 14 May 2005* 164

For the purposes of an appeal against the enforcement in Italy of a Swiss judgment, Article 27 No 3 of the Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters cannot be applied if a dispute between the same parties is merely pending before Italian courts, and a domestic judgment potentially conflicting with the foreign judgment is therefore still lacking.

Article 27 No 2 of the 1988 Lugano Convention cannot be invoked to prevent the enforcement of a Swiss judgment given in default of appearance if the defendant was served with the document which instituted the proceedings in accordance with Article 5 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, pursuant to which the translation of said document into the official language of the State addressed is not required, unless agreed otherwise between the Contracting States.

The determination that a person who has stipulated a forum selection clause in favour of Swiss courts in the name and on behalf of a company lacks the authority to represent said company (*potere di rappresentanza organico*) constitutes a judgment on the merits of the case. Such a determination is precluded to the Italian court before which the enforcement of a Swiss judgment is sought pursuant to Article 29 of the 1988 Lugano Convention.

The fact that the proceedings held abroad in default of appearance consisted of a single hearing does not by itself represent sufficient grounds for refusing to enforce a foreign judgment in Italy pursuant to Article 27 No 1 of the aforesaid Convention, if it is not accompanied by further allegations proving the existence of a conflict with Italian public policy.

31. *Corte di Cassazione (plenary session), order 20 May 2005 No 10606* 432

Pursuant to Article 3, first paragraph of the EC Regulation No 1346/2000, Italian courts have jurisdiction to open the main insolvency proceedings against a company that – even if it has transferred its registered office to another Member State – has its centre of main interests in Italy, since the transfer abroad of the registered office has not been followed by the carrying out of actual business activities in the new office or by the transfer of the centre of the directional, administrative and organisational activities of the company.

32. *Corte di Cassazione, order 26 May 2005 No 11183* 435

Pursuant to Article 28 of the Warsaw Convention of 12 October 1929 on International Carriage by Air, an action for damages must be brought, at the option of the plaintiff, either before the court where the carrier is domiciled, or has its principal place of business, or has an establishment by which the contract has been made or before the court where the place of destination is located. Said Article sets forth a provision concerning jurisdiction and not venue, which shall be determined in accordance with the rules of the State where the plaintiff decides to bring the action.

33. *Corte di Cassazione, 27 May 2005 No 11282* 808

The Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road applies, in the absence of a consignment note, if the parties have expressed their will to that effect, even through an oral agreement. The existence of said oral agreement can be proved by any means.

34. *Corte di Cassazione, 27 May 2005 No 11323* 809

Based on Article 5, second paragraph of the Legislative Decree of 25 July 1998 No 286, the term of eight working days for a non-EU citizen to request a residence permit runs from the date of his entry in the territory of the State. This is a specific and precise event, to be inferred from the stamp on the passport for persons coming from non-Schengen States, and from other type of documentation for persons coming from States of the Schengen area. The running of said term shall be calculated on a continuous basis, without adding any other period spent by said non-EU citizen on the national territory.

35. *Constitutional Court, 8 June 2005 No 224* 811

The question of constitutional legitimacy of Article 29, first paragraph, *litt.* c of the Legislative Decree of 28 July 1998 No 286, as amended by Article 23 of the Law of 30 July 2002 No 189, insofar as it limits the right to family reunion of a non-EU citizen regularly residing with dependent parents to cases where the latter do not have other children in the State of origin or from which they come or the other children cannot maintain their parents who are older than sixty-five years for proven, serious health reasons, raised with reference to Articles 2, 3 and 29 of the Constitution, is unfounded. With reference to the alleged conflict of the aforesaid provision with Article 8 of the European Convention on Human Rights concerning the right to respect for family life, Article 10, second

paragraph of the Constitution cannot be invoked, since it oversteps the schemes of international treaty law.

36. *Corte di Cassazione, 9 June 2005 No 12168* 813

No violation of Article 12 of the New York Convention of 20 November 1989 on the Rights of the Child – whereby the child must be heard – occurs if, during the proceedings concerning the appeal against the declaration of adoptability pursuant to the Law of 4 May 1983 No 184, the Court, based on its prudent judgement, does not deem appropriate to hear the child.

37. *Corte di Cassazione, 9 June 2005 No 12169* 438

Article 29, first paragraph, *litt.* b of the Legislative Decree of 25 July 1998 No 286, whereby a non-EU citizen may apply for family reunion with respect to dependent children, provides that the person applying for reunion shall be the one who maintains and shall maintain the child she has requested to rejoin. In fact, pursuant to Article 29, third paragraph, *lits.* a and b of said Legislative Decree, the person applying for reunion shall prove the availability of adequate lodging and sufficient income. The fact that the parental authority over the children is attributed to the other parent is not relevant for denying a non-EU citizen the right to rejoin her minor children, in case they are maintained exclusively by her, whereas the other parent (whose consent is required pursuant to said Article 29, first paragraph, *litt.* b, for the purpose of ensuring that in any case parental authority may be exercised in Italy by the parent applying for reunion) does not contribute to their maintenance. Said provision comports with Article 18 of the New York Convention of 20 December 1989 on the Rights of the Child – whereby the States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child – which, in turn, is consistent with Article 30 of the Constitution.

The fact that under the national law of the child – which applies pursuant to Article 36 of the Law of 31 May 1995 No 218 – the parental authority belongs exclusively to the father does not prevent him from allowing his children to live with their mother. In such a case, the actual exercise of parental authority is delegated to the latter.

38. *Corte di Cassazione (criminal), 10 June 2005 No 22182* 814

Pursuant to the European Convention on Extradition signed in Strasbourg on 17 March 1978 and its Additional Protocol, the requested State may refuse the extradition if it believes that the proceedings *in absentia* leading to the judgment against the person claimed did not satisfy the minimum rights of defence provided for by Article 6, third paragraph of the European Convention on Human Rights.

39. *Catania Tribunal, 13 June 2005* 815

It is self-evident that the condition of reciprocity laid down by Article 16 of the Preliminary Provisions to the Civil Code may apply only with respect to civil rights other than those recognised to every person by the Constitution. In fact, the aforesaid provision cannot prevail over those of the Constitution, both due to the time of its enactment and, in any case and definitely, for reasons related to the hierarchy of the sources of law.

40. *Corte di Cassazione (plenary session), order 15 June 2005 No 12792* 443

In a case where an objection is raised that an action has previously been initiated abroad between the same parties, the Italian proceedings are not

suspended pursuant to Article 7 of the Law of 31 May 1995 No 218, and a judgement is issued as a result of the foreign action which becomes *res iudicata*, special proceedings for a ruling on jurisdiction are inadmissible, since the effects produced in the Italian legal system by the automatic recognition of the foreign judgement might bar a ruling on jurisdiction.

41. *Corte di Cassazione, 18 June 2005 No 13166* 1095

Based on Article 32 of the Legislative Decree of 25 July 1998 No 286, children who are non-EU citizens and hold a residence permit for family reasons cannot, once they have reached their majority, obtain the renewal of said permit, unless – while they were under age – a permanent residence card has been issued to their parents pursuant to Article 9 of said Legislative Decree. In fact, they can only obtain a new residence permit for the reasons laid down in said Article 32, i.e. for study, access to work, employment or self-employment or reasons of health or medical treatment. The fact that, after they have reached their majority, a residence card for an indefinite period of time has been issued to their parents is irrelevant.

42. *Corte di Cassazione, 20 June 2005 No 13175* 1045

A decision that Italy lacks jurisdiction in relation to a dispute concerning a dismissal brought by an Italian employee against a foreign State that was his employer does not generate an obligation of Italy to indemnify said employee for the damages suffered by him, since said decision has been rendered by applying a customary rule on immunity from jurisdiction which is referred to by Article 10 of the Constitution as well as by the Vienna Convention of 24 April 1963 on Consular Relations, and is aimed at preserving international relations. The question of constitutional legitimacy of the law implementing the 1963 Vienna Convention, insofar as it does not provide a subsidiary protection by the State to the benefit of the Italian citizen in the aforesaid case, is manifestly unfounded, since the provisions in question satisfy requirements of, *inter alia*, constitutional relevance.

43. *Corte di Cassazione, 30 June 2005 No 14031* 752

An extraordinary appeal before the *Corte di Cassazione* pursuant to Article 111 of the Constitution is admissible, in general, against a decree of the Juvenile Court ordering the registration of a foreign adoption decision in the registers of births, marriages and deaths (*registri dello stato civile*) upon completion of the procedure laid down by the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption and by the Law of 31 December 1998 No 476.

An appeal before the *Corte di Cassazione* against a decree of the Juvenile Court ordering the registration of a foreign adoption decision in the registers of births, marriages and deaths (*registri dello stato civile*) is not admissible for lack of standing to initiate the action (*interesse ad agire*) pursuant to Article 100 of the Code of Civil Procedure, if it is lodged by the same couple that has applied for said decree.

44. *Corte di Cassazione (plenary session), order 6 July 2005 No 14196* 169

Article 3, second paragraph, last sentence of the Law of 31 May 2005 No 218 makes reference to the domestic provisions on venue (*competenza territoriale*) with respect to matters outside of the scope of application of the Brussels Convention of 27 September 1968, among which bankruptcy matters are included. By virtue of the aforesaid provision, Italian courts have jurisdiction pursuant to Article 24 of the bankruptcy law over a petition to extend the

bankruptcy procedure, in accordance with Article 147 of the Bankruptcy Law, to a corporation which is the sole shareholder with unlimited liability of an Italian company, even where the former is a foreign corporation. For this purpose, there is no need to make any reference to other provisions and criteria set forth by said Law No 218, and particularly to the provision on the law applicable to corporations laid down by Article 25.

45. *Corte di Cassazione (plenary session), order 6 July 2005 No 14208* 447

Notwithstanding the fact that Article 37, second paragraph of the Code of Civil Procedure has been repealed, special proceedings for a preliminary ruling on jurisdiction are admissible, since the reference made by Article 41 of the Code of Civil Procedure to said Article 37 shall now be construed as a reference to Article 11 of the Law of 31 May 1995 No 218 on the reform of Italian private international law.

Pursuant to Article 5 No 1 of the EC Regulation No 44/2001 of 22 December 2000, Italian courts have jurisdiction in relation to a contract for the distribution of certain goods, regardless of whether a CIF term has been stipulated, if the parties have agreed that the delivery of said goods shall occur in Italy and the agreement conferring jurisdiction to other courts is not valid pursuant to Article 23 of the EC Regulation 44/2001, as it was not signed by both parties.

46. *Milan Tribunal, 6 July 2005* 450

Pursuant to Article 3, first paragraph of the EC Regulation No 1346/2000, Italian courts do not have jurisdiction to open the main insolvency proceedings against a company having its registered office in another Member State, if proof has not been given that the centre of the company's main interests, i.e. the main centre where the company's will is formed and the company's interests are concentrated, is located in Italy.

47. *Corte di Cassazione (plenary session), order 13 July 2005 No 14695* 755

Special proceedings for a preliminary ruling on jurisdiction aimed at enforcing a clause providing for foreign arbitration are inadmissible, since this is not a question of jurisdiction but rather a question of merits concerning the validity of said clause.

Jurisdiction has been validly conferred to Italian courts implicitly pursuant to Article 18 of the Brussels Convention of 27 September 1968 in case the defendant enters an appearance alleging defences on the merits, including the objection that the action cannot proceed due to the foreign arbitration, and objects the lack of jurisdiction only in the reply brief.

48. *Corte di Cassazione, 15 July 2005 No 15024* 1096

Pursuant to Article 25 of the Warsaw Convention of 12 October 1929 on International Carriage by Air, as amended by the Hague Protocol of 28 September 1955, the reckless conduct of the carrier and its knowledge that damage may result from its acts or omissions – which circumstances exclude the application of the limits of liability for damages occurred to the carried goods specified in Article 22 of said Convention – constitute a case of so-called wilful negligence (*colpa con previsione*).

49. *Constitutional Court, order 29 July 2005 No 347* 147

The question of constitutional legitimacy of Articles 29-*bis*, 31, second paragraph, 35, first paragraph, 36, first and second paragraphs and 44 of the Law of 4 May 1983 No 184 (Right of the child to a family) for violation of

Articles 2, 3 and 30 of the Constitution is manifestly unfounded. In fact, said question is based on an erroneous interpretation of the law, which does not preclude the international adoption of children under special circumstances, such as in the present case the adoption of an abandoned child by a single person. On the contrary, said adoption must be considered admissible in the same situations in which a domestic adoption conferring the status of legitimacy (*adozione nazionale legittimante*) is allowed.

50. *Corte di Cassazione, 29 July 2005 No 15946* 1097

The legal capacity to exercise rights (*capacità di agire*) of a trustee in bankruptcy is regulated by the law governing the entire insolvency proceedings, since it must be characterised as a special capacity to exercise rights (*capacità di agire speciale*) within the meaning of Article 23 of the Law of 31 May 1995 No 218.

51. *Milan Tribunal, 4 August 2005* 759

Pursuant to Article 19 of the EC Regulation No 44/2001, an employer domiciled in a Member State can be sued in another Member State before the court of the place where the employee habitually carries out his work.

Italian courts have jurisdiction if the employee habitually carries out his work in Italy. The fact that the employment contract contemplates frequent, but incidental, business trips abroad is wholly irrelevant.

52. *Council of State (VI Session), 11 August 2005 No 4334* 174

The application of the grounds preventing the acquisition of Italian citizenship through marriage (Article 6 of the Law of 5 February 1992 No 91) different from those pertaining to the safety of the Republic and relating to the existence of criminal convictions depends only upon the determination of their existence. As a consequence, the denial or granting of Italian citizenship in these cases is not discretionary in nature.

Ordinary (rather than administrative) courts have jurisdiction to verify the requirements set forth as compulsory by Article 6 of the Law No 91 of 1992, other than those requirements pertaining to the safety of the Republic.

53. *Milan Court of Appeal, 31 August 2005* 176

Pursuant to Article 17 of the Preliminary Provisions to the Civil Code, the substantive requirements for a marriage are governed by the national law of the future spouses.

Pursuant to Articles 17 and 18 of the Preliminary Provisions to the Civil Code and Article 115 of the Civil Code, a woman holding both U.S. and Italian citizenship (which has been acquired through a previous marriage with an Italian citizen) is always subject to the mandatory provisions of the Italian Civil Code, even in respect of a marriage celebrated abroad, by virtue of the fact that the Italian citizenship prevails.

According to the provisions that were in force prior to the enactment of the Law of 31 May 1995 No 218, the recognition of foreign judgments required a specific proceeding (*giudizio di delibazione*) before the Court of Appeal pursuant to Articles 796 and 797 of the Code of Civil Procedure.

Pursuant to Article 86 of the Civil Code, a marriage between a U.S.-Italian citizen and an Italian citizen celebrated abroad before 1995 is null and void for lack of freedom from previous marriages (*libertà di stato*) if the foreign judgment concerning the dissolution of the first marriage has not been enforced in Italy. A decision by a U.S. court whereby the second husband is estopped from raising the nullity of the second marriage is wholly irrelevant.

54. *Milan Court of Appeal, 1 September 2005* 452

In the event where an application for the resumption of the proceedings (*comparsa di riassunzione*) meets all requirements applicable to an autonomous statement of claim, it can validly initiate – in accordance with the general principle of preservation of defective acts set out by Article 159, third paragraph of the Code of Civil Procedure – proceedings for the recognition of a foreign judgement under Article 67 of the Law of 31 May 1995 No 218.

The expression "proceedings initiated after the date on which it entered into force", which is set out in Article 72 of the Law No 218 of 1995, shall be construed as referring to the proceedings for the recognition of foreign judgements rather than to the proceedings within which said judgements have been issued.

Pursuant to Article 64, *litt.* a of the Law No 218 of 1995, a foreign divorce decree between two Italian nationals which has been issued by the courts of the State in which the plaintiff is resident may be recognised in Italy.

A foreign divorce decree issued after the court has ascertained that married life is irremediably compromised does not conflict with public policy.

55. *Corte di Cassazione, order 9 September 2005 No 17983* 762

The transfer of the registered office of a company from Italy to a foreign State is unenforceable, pursuant to Article 25 of the Law of 31 May 1995 No 218, if it has not been implemented in compliance with the laws of both States.

56. *Corte di Cassazione (plenary session), order 13 September 2005 No 18122* 763

In light of, *inter alia*, Article 2 of the Convention of 28 November 1951 between Italy and the United Kingdom of Great Britain and Northern Ireland, Italian courts have jurisdiction over a dispute brought by an Italian employee against the British Council for unlawful dismissal, if said employee was hired as part of the administrative personnel with a "local" employment contract, which expressly refers to Italian law, and particularly to the provisions on dismissal.

57. *Corte di Cassazione (criminal), 14 September 2005 No 33642* 186

Article 17, fourth paragraph of the Law of 22 April 2005 No 69, implementing the EC Framework Decision No 2002/584 on the European arrest warrant, provides that, for the purposes of a decision on surrender of a requested person to a foreign authority, it shall be verified whether serious incriminating evidence exists against said person. The aforesaid provision shall be interpreted such that the Italian judicial authority is required to verify that reasons are given in relation to the interim measure based on which the arrest warrant has been issued and the alleged precautionary needs underlying said interim measure, as well as in relation to the evidence on which the warrant is based; but this does not mean that said authority may carry out a new, weighty evaluation of said evidence.

The additional information that, pursuant to Article 16 of said Law, the Court of Appeal of the Member State of execution may request from the authority that has issued the European arrest warrant, shall be only that already available to the latter. In fact, said provision cannot be interpreted to permit a request that the foreign authority take new evidence not acquired or not yet acquired, since this would be incompatible with the principle of sovereignty of each State and also with the time necessary to take evidence.

The possible prejudice that the requested person may suffer for religious, ethnic or political reasons from the State issuing the warrant prevents surrender

of the requested person pursuant to Article 18, first paragraph, *litt.* a of the Law No 69 of 2005 only if it results from objective circumstances.

58. *Pordenone Tribunal, 14 September 2005* 181

Pursuant to Article 3 of the Law of 31 May 1995 No 218, Italian courts have jurisdiction over an action for legal separation (which has been subsequently converted into a divorce action) between two Moroccan citizens resident in Italy.

The fact that the foreign judgment of which recognition is sought is not filed with the court prevents any decision as to its recognition pursuant to Article 64 of the Law No 218 of 1995.

The fact that a marriage celebrated abroad between foreign citizens has not been registered does not prevent the adoption of a divorce decision in Italy.

Pursuant to Article 31 of the Law No 218 of 1995, the legal separation and the divorce of two Moroccan citizens are governed by their national law.

59. *Florence Tribunal, 23 September 2005* 766

A sale of goods with the issuance of an irrevocable letter of credit for the payment of the purchase price is regulated not only by Article 1530 of the Civil Code, but also by the uniform customs and practice for documentary credits of the International Chamber of Commerce, if they are expressly referred to in the letter accompanying the relevant letter of credit.

60. *Trieste Tribunal, decree 23 September 2005* 458

Pursuant to Article 12 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition, a transfer of real estate to a trustee can be directly registered in the land registers of the special cadastral system (*sistema tavolare*).

The so-called domestic trust is, in principle, admissible, although subject to the court's scrutiny which, even if inspired by the principle of favouring its validity, shall be aimed at verifying on a case-by-case basis the legitimacy of said trust with reference to the mandatory provisions and the compulsory principles of the Italian legal system.

61. *Corte di Cassazione (criminal), 26 September 2005 No 34355* 770

For the purposes of applying EC Framework Decision No 2002/584, which has been implemented in Italy by the Law of 22 April 2005 No 69, the investigation on the existence of serious incriminating evidence, which represents a mandatory requirement for the issue of an European arrest warrant, shall be carried out by the issuing judicial authority, whereas the requested authority shall only verify its existence, by ascertaining that the warrant, in light of its contents or of the information collected during the relevant investigation or proceedings, is based on evidence whereby the issuing authority seriously believes that the person to be surrendered has committed the relevant crime.

62. *Corte di Cassazione, 28 September 2005 No 18944* 774

A company incorporated under the laws of a foreign State, where it has transferred its registered office from Italy, may bring an action before Italian courts to challenge a judgment declaring the bankruptcy of the original Italian company, since, according to Article 2437 of the Civil Code and Article 25 of the Law of 31 May 1995 No 218, the transfer of the registered office abroad does not affect the "legal continuity" of the company that has implemented it,

especially where this effect is also provided for by the applicable law in the place where the new registered office is located.

63. *Corte di Cassazione (plenary session), 18 October 2005 No 20106* 776

Italian courts do not have jurisdiction over a dispute between the government of the United States of America and an employee relating to the dismissal of the latter, who is a U.S. citizen and was resident in the United States at the time on which she was hired as a "civilian component", since based on this formal element she belongs to the category of "civilian components" within the meaning of Articles I and IX of the London Convention of 19 June 1951 between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces. The fact that said formal element does not reflect the real situation, since said employee has also always been an Italian citizen resident in Italy, is irrelevant.

64. *Corte di Cassazione, 21 October 2005 No 20464* 781

Pursuant to Article 66 of the Law of 31 May 1995 No 218, a foreign decision approving a separation agreement (*separazione consensuale*), which cannot *per se* become final, can be automatically recognised in Italy.

Following the recognition of a foreign decision approving a separation agreement, an action for judicial separation in Italy is inadmissible.

65. *Milan Court of Appeal, 24 October 2005* 1050

Italian courts have jurisdiction over a dispute concerning the payment of the purchase price owed by a buyer, having its seat in France, to a seller, having its seat in Italy, since, by virtue of the combined provision of Article 5 No 1 of the Brussels Convention of 27 September 1968 and Article 57 of the Vienna Convention of 11 April 1980, said purchase price must be paid in Italy at the seat of the seller, unless otherwise agreed.

66. *Corte di Cassazione (plenary session), 28 October 2005 No 20995* 468

Under the Convention Setting Up a European University Institute signed in Florence on 19 April 1972, the attached Protocol on Privileges and Immunities as well as the Headquarters Agreement between said Institute and the Italian government dated 10 July 1975, said Institute not only has been recognised as a subject of international law, but also benefits from immunity from the jurisdiction of the host State with respect to the employment relationships with its staff. Said immunity is not in conflict with Article 24 of the Constitution, since the right to appeal to a special Commission and the possible subsequent intervention of the EC Court of Justice are provided for.

67. *Corte di Cassazione (plenary session), 28 October 2005 No 20998* 785

Article 6 No 1 of the Brussels Convention of 27 September 1968, which applies if there are multiple defendants, concerns only actions that are related due to their object or cause of action within the meaning of Article 33 of the Code of Civil Procedure (*cumulo soggettivo*), and applies only if the actions brought by the same plaintiff against different defendants are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments.

Article 6 No 2 of the 1968 Brussels Convention applies only to the so-called "typical guarantees" (*garanzie proprie*), i.e. those where the main claim and the guarantee claim have the same cause of action, or where an objective link exists

between the causes of action of the two claims, or where the event alleged in the two claims as the basis for liability is the same.

Pursuant to Article 4 No 3 of the Code of Civil Procedure, Italian courts do not have jurisdiction if the seller, which has been sued by the purchaser in connection with a warranty of quality invokes, in turn, said warranty against the foreign seller in order to be indemnified by the latter, since this is an "atypical guarantee" (*garanzia impropria*).

68. *Corte di Cassazione, 4 November 2005 No 21395* 791

The *kafalah*, which is provided for by Moroccan law and, as such, is recognised, *inter alia*, by the United Nations Convention of 20 November 1989 on the Rights of the Child (Article 20), attributes to the guardians (*affidatari*) a right/duty of custody of the child, but not a right of guardianship (*tutela*) or the legal representation of the child.

According to an interpretation of foreign law complying with the criteria laid down by Article 15 of the Law of 31 May 1995 No 218, the tutorship of an abandoned Moroccan child belongs to Moroccan authorities (i.e. respectively, the *wali* and the Moroccan consul abroad).

Pursuant to Article 17 of the Law of 4 May 1983 No 184 on adoption, an appeal against the decree declaring the adoptability of a Moroccan child, brought by two Italian spouses who are entitled to the custody (*kafalah*) of said child based on a decision of the Tribunal of Rabat, is not admissible.

The question of constitutional legitimacy of Article 17 of the Law No 184 of 1983, insofar as it grants the right to appeal against the decree of adoptability of a child only to persons other than the guardians, raised with reference to Articles 24, first paragraph, 30, second paragraph, 31, second paragraph and 10, second paragraph of the Constitution, is manifestly unfounded.

69. *Torino Tribunal, 21 November 2005* 475

The inclusion of an arbitration clause in a financing agreement functionally linked to an escrow agreement which contains a forum selection clause in favour of Italian courts does not exclude the jurisdiction of said courts over disputes relating to the performance of said escrow agreement. An arbitral award issued in relation to the financing agreement does not have binding effect within the proceedings related to the ancillary escrow agreement, given that the two agreements have autonomous consideration (*causa*). On the contrary, the effects of a decree issued by the Republic of Cuba and invoked as a force majeure event in light of the provisions of the escrow agreement, as well as the consequences to the escrow agreement arising from events related to the financing agreement, must be ascertained in the context of said proceedings. The fact that the arbitral award – which has been declared enforceable, and is no longer subject to appeal on the merits, in Italy – has been appealed before the Paris Court of Appeal does not require the suspension of the proceedings relating to the performance of the escrow agreement.

In the presence of a contractual provision which expressly regulates force majeure events in a manner equivalent to that contemplated by Italian law – which has been chosen by the parties as the governing law of the agreement – a governmental decree addressed exclusively to two companies controlled by the State and aimed at releasing said companies from their obligations does not constitute a *factum principis* amounting to a force majeure event. In fact, the requirements of generality of the measure and absence of any relationship between the relevant event and the legal sphere of the debtor are lacking.

70. *Corte di Cassazione, 7 December 2005 No 26976* 1053

Pursuant to Article 6, No 2, *litt.* a of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations – which also applies to an employment contract concluded through labour intermediation – a contract of employment is governed by the law of the country where the employee habitually carries out his work.

A foreign law that does not grant to employees any specific protection in case of labour-only contracting does not conflict with public policy within the meaning of Article 16 of the 1980 Rome Convention.

71. *Corte di Cassazione, order 13 December 2005 No 27403* 1059

The expression "place where the harmful event occurred" laid down in Article 5 No 3 of the Brussels Convention of 27 September 1968 shall be interpreted in the sense that it does not refer to the place where the damaged person claims to have suffered economic prejudice as a consequence of initial damages occurred, and suffered by it, in another State.

Pursuant to Article 6 No 3 of the 1968 Brussels Convention, Italian courts do not have jurisdiction over a dispute arising from a counter-claim that is based on facts different from those on which the original claim is based.

72. *Pistoia Tribunal, 14 December 2005* 1064

Pursuant to Article 3, first paragraph of the EC Regulation No 1346/2000 of 29 May 2000, Italian courts have jurisdiction to open the main insolvency proceedings against a company that has transferred its registered office to another Member State, if said transfer has not been followed by the actual carrying out of business activities or the transfer to the new registered office of the directional, administrative and organisational activities of the company. The insolvency proceedings opened in the Member State where the new registered office is located shall therefore be characterised as secondary insolvency proceedings, and therefore the liquidator (*curatore*) shall be required to act pursuant to Article 23 of the EC Regulation No 1346/2000.

Since, pursuant to Article 12 of the Law of 31 May 1995 No 218, civil proceedings held in Italy are governed by Italian law, the language of said proceedings shall be Italian, without prejudice to the possibility for the court to appoint a translator for the review of documents in a foreign language pursuant to Articles 122 and 123 of the Code of Civil Procedure.

73. *Lazio Regional Administrative Tribunal (Session I ter), 12 January 2006 No 288* 1069

The fact that a foreigner maintains the social, religious and cultural traditions of his country of origin cannot constitute grounds for refusing to grant him Italian citizenship through naturalisation pursuant to Article 9, first paragraph, *litt.* f of the Law of 5 February 1992 No 91.

74. *Corte di Cassazione (plenary session), 6 February 2006 No 2448* 1071

The fact that the lack of jurisdiction has not been objected to in the course of the proceedings for interim relief pursuant to Article 700 of the Code of Civil Procedure, but only subsequently in the related appeal, does not entail a tacit acceptance of jurisdiction in the following proceedings on the merits pursuant to Article 4, first paragraph of the Law of 31 May 1995 No 218, since – as it results from Article 669-*quarter* of the Code of Civil Procedure – jurisdiction over proceedings for interim relief is distinct from jurisdiction over the proceedings on the merits.

75. *Corte di Cassazione (plenary session), order 16 February 2006 No 3368* 1074

Pursuant to Article 9 of the bankruptcy law, which is referred to by Article 3, second paragraph, last part of the Law of 31 May 1995 No 218, Italian courts have jurisdiction in relation to a bankruptcy petition filed against a company incorporated in Italy that – after a crisis of its business activities became apparent – transferred its registered office abroad, if said transfer was not followed by a transfer of the business activities actually carried out by the company or of the centre of its directional and administrative activities.

If the transfer of the registered office represents a mere formality, and therefore it must be excluded that it has been carried out in accordance with the laws of the interested States, Italian courts shall apply the law of the place where the incorporation procedure of a company has been completed pursuant to Article 25, first paragraph of the Law of 31 May 1995 No 218, and not the criterion set forth by the third paragraph of said Article, in order to establish which is actually the real seat of the company. Accordingly, in the present case the court shall apply, for the above purpose, the principles laid down by its legal system.

76. *Corte di Cassazione (plenary session), order 5 May 2006 No 10312* 1076

Pursuant to Article 83 of the Code of Civil Procedure – which is made applicable by Article 12 of the Law of 31 May 1995 No 218 – a power of attorney *ad litem* issued in the United Kingdom in accordance with English law is validly granted even when it has been drafted by a notary during the days following its execution, if the signature of the person granting it has been made in the presence of the notary and the latter has verified the identity of the signatory.

Pursuant to Article 3, first paragraph of the Law No 218 of 1995, Italian courts have jurisdiction with respect to a bank having its seat in Japan, if said bank has a branch in Italy with an attorney-in-fact to whom a general power of attorney has been granted. Any question related to the territorial competence of the courts for the place where said branch is located is irrelevant, since it is inadmissible in the context of special proceedings for a preliminary ruling on jurisdiction. However, the jurisdiction so affirmed cannot be extended in case of plurality of defendants pursuant to Article 6 No 1 of the EC Regulation No 44/2001 of 22 December 2000, since said provision assumes that jurisdiction over one of the defendants is based on the criterion of domicile.

Jurisdiction over a negative declaratory action (*domanda di accertamento negativo*) brought by an Italian company against one of its suppliers having its seat in Turkey, as well as against two banks that have their seat, respectively, in Belgium and Japan and are assignees of an alleged credit arising from the purchase orders issued by said Italian company, is validly conferred on Italian courts if the relevant forum selection clause – which is contained in several purchase orders exchanged between the parties in the past – has been validly accepted by the supplier pursuant to Article 23, second paragraph of the EC Regulation No 44/2001. In fact, it cannot be maintained that the effects of said clause, which is already fully accepted by the parties in their commercial relationship, cease due to the fact that the most recent purchase orders have not been signed. Furthermore, the above prorogation of jurisdiction is also enforceable against the banks to which said credit has been assigned, since the Italian company, which is the assigned debtor, cannot be, in its relationship with said banks, in a position that is different from (and worse than) that it had *vis-à-vis* its supplier, which is the assignor of said credit.

Italian courts have jurisdiction over a claim for damages brought by said

Italian company against the foreign banks in relation to both the damage to its commercial reputation arising from the notices to pay sent by the latter and the use of blatantly falsified documentation, since, pursuant to Article 5 No 3 of the EC Regulation No 44/2001, the harmful event – which is represented, respectively, by the receipt of the notices to pay and the use of said documentation – occurred in both cases in Italy.

77. *Constitutional Court, 4 July 2006 No 254* 1043

Article 19, first paragraph of the Preliminary Provisions to the Civil Code shall be declared constitutionally illegitimate for violation of Articles 3, first paragraph and 29, second paragraph of the Constitution. In fact, said provision – in determining the law governing the economic relationship between spouses of different nationalities – favours the national law of the husband, thereby discriminating the wife for reasons related exclusively to gender.

78. *Genoa Tribunal, 7 August 2006* 1089

Pursuant to Article 4 of the Law of 31 May 1995 No 218, an arbitration clause contained in an agency contract entered into between an Italian company and a foreign company is null and void, since the right to indemnity for the termination of a contract, which is set forth by Article 1751 of the Civil Code, is an inalienable right.

Pursuant to Article 3, second paragraph of the Law No 218 of 1995, which refers to Article 5 No 1 of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over a dispute between a principal and a commercial agent, if the elements for determining the amount due to the agent – which, in accordance with Article 1182, third paragraph of the Civil Code, shall be paid in Italy – are already known. Said jurisdiction then extends from the main claim to the ancillary claim.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 1, 3.

Brussels Convention of 1968: 4, 5, 15, 24.

Community Law: 7, 9, 13, 18.

Community proceedings: 6.

Co-operation in civil matters: 8.

Co-operation in criminal matters: 17.

External Relations: 12.

EC Regulation No 1346/2000: 11, 22.

EC Regulation No 1347/2000: 23.

EC Regulation No 1348/2000: 8, 14.

Freedom of establishment: 10.

Freedom of movement of persons: 20.

Freedom to provide services: 19.

Preliminary ruling on interpretation: 21.

Prohibition of discrimination: 2, 9.

Social policy: 2, 16.

Treaties and general international rules: 3, 12.

1. *Court of Justice, 18 January 2005, case C-257/01* 547

In the quite specific and transitional situation, prior to the evolution of the Schengen *acquis* the Regulations (EC) No 789/2001 and No 790/2001, dated both 24 April 2001, are compatible with EC law while reserving to the Council, and partly to the Member States, the powers to adopt measures implementing and updating the Common Manual and the Common Consular Instructions, relating both to the examination of visa applications and the carrying-out of border checks and surveillance at the external borders.

2. *Court of Justice, 20 January 2005, case C-302/02* 554

The provisions of Title II 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 constitute a complete and uniform system of conflict rules.

In accordance with Article 13(2) *litt.* a and f of Regulation (EEC) No 1408/71, where a prisoner has ceased carrying on all occupational activity in the Member State where he started to serve his sentence and, at his request, was transferred from a prison in that Member State to a prison in his own Member State in order to serve the remaining part of his sentence, it is the legislation of that Member State which, in the area of family benefits, is the applicable legislation.

Disparities in treatment which may follow from differences in national legislation pertaining to family benefits designated as applicable under conflict of law rules such as those contained in Article 13(2) of Regulation (EEC) No 1408/71 are not contrary to the principle of non-discrimination on grounds of nationality enshrined in Article 12 TEC and Article 3 of that same Regulation.

3. *Court of First Instance, 21 September 2005, case T-306/01* 203

Restrictive measures directly affecting individuals or organisations, whether or not established in the Community, can be adopted under Articles 60 and 301 EC, in so far as such measures actually seek to reduce, in part or completely, economic relations with one or more third countries.

The fight against international terrorism to ensure international peace and security cannot be made to refer to one of the objects which Articles 2 and 3 EC expressly entrust to the Community, but rather to one of those specifically considered by Article 2 TEU, viz., the implementation of a common foreign and security policy, so that it must be concluded that Article 308 EC does not constitute a sufficient legal basis for the action of the Community institutions thereon.

In the specific context contemplated by Articles 60 EC and 301 EC, that expressly provide for situations in which action by the Community may be proved to be necessary in order to achieve, not one of the objects of the EC Treaty but rather one of those of the EU Treaty, recourse to the additional legal basis of Article 308 EC is justified for the sake of the requirement of consistency

laid down in Article 3 TEU, when those provisions do not give the Community institutions the power necessary, in the field of economic and financial sanctions, to act for the purpose of attaining the objective pursued by the Union and its Member States under the CFSP.

A Community act the object of which is to freeze the funds of one or more persons expressly named is in fact a regulation if it is addressed in a general and abstract manner to all persons who might actually hold the funds in question.

With regard to the Community the binding effect of the obligations under the Charter of the United Nations and their prevailing character on Community acts is not based on an obligation of general international law as it is for its Member States, being the Community as such not directly bound by the Charter of the United Nations, rather by virtue of the EC Treaty so establishing.

A Community act adopted, where no discretion whatsoever may be exercised, with a view to putting into effect a resolution of the Security Council may therefore fall, in principle, outside the ambit of the Court's judicial review on their lawfulness in the light of Community law, especially in the light of general principles concerning the protection of human rights, since this would imply that the Court is to consider, indirectly, the lawfulness of those resolutions, incompatible with the undertakings of the Member States under the Charter of the United Nations. It is nevertheless possible to carry out an indirect judicial review to determine whether the resolutions of the Security Council have observed the superior rules of international law falling within the ambit of *jus cogens*, in particular, the mandatory provisions concerning the universal protection of human rights, from which neither the Member States nor the bodies of the United Nations may derogate.

The right to an effective judicial remedy, a principle guaranteed by *jus cogens* and recognised by both Article 8 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966, is not absolute. The limitation of the applicants' right of access to a court, as a result of the immunity from jurisdiction enjoyed as a rule, in the domestic legal order of the Member States of the United Nations, by resolutions of the Security Council adopted under Chapter VII of the Charter of the United Nations in accordance with the relevant principles of international law, is inherent in that right.

4. *Court of Justice, 13 October 2005, case C-522/03* 241

Article 27(2) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and the first paragraph of Article IV of the Protocol annexed to that convention, as amended by the 1978, 1982, 1989 and 1996 Accession Conventions, must be interpreted as meaning that, where a relevant international convention is applicable between the State in which the judgment is given and the State in which recognition is sought, the question whether the document instituting the proceedings was duly served must be determined in the light of the provisions of that convention, without prejudice to the use of direct transmission between public officers, where the State in which recognition is sought has not officially objected, in accordance with the second paragraph of Article IV of the Protocol.

5. *Court of Justice, 13 October 2005, case C-73/04* 248

On a proper construction of Article 16(1) *litt.* a of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and

Commercial Matters, as amended by the 1978, 1982, 1989 Accession Conventions, that Article does not apply to a club membership contract which, in return for a membership fee which represents the major part of the total price, allows members to acquire a right to use on a time-share basis immoveable property of a specified type in a specified location and provides for the affiliation of members to a service which enables them to exchange their right of use.

6. *Court of Justice, order 13 October 2005, case C-1/05 SA* 817

In the framework of Article 1 of the Protocol on the Privileges and Immunities of the European Communities, the jurisdiction of the Court with respect to garnishee orders (saisie-arrêt) on the property and assets of the Community is confined to considering whether such measures are likely, in view of the effects which they have under the applicable national law, to interfere with the proper functioning and the independence of the European Communities, while it is for the national court to examine if under the applicable national law the conditions for granting the order are fulfilled, with specific reference to the question of the garnishee's indebtedness to the judgment debtor.

7. *Court of Justice, 20 October 2005, case C-511/03* 560

Community law does not impose any obligation on a Member State to bring an action for annulment under Article 230 EC or an action under Article 232 EC for failure to act for the benefit of one of its citizens. Community law does not, however, in principle, preclude national law from containing such an obligation or providing for liability to be imposed on the Member State for not having acted in such a way.

8. *Court of Justice, 8 November 2005, case C-443/03* 252

The objective pursued by the Treaty of Amsterdam of creating an area of freedom, security and justice, thereby giving the Community a new dimension, and the transfer from the EU Treaty to the EC Treaty of the body of rules enabling measures in the field of judicial cooperation in civil matters testify the will of the Member States to establish such measures firmly in the Community legal order and thus to lay down the principle that they are to be interpreted autonomously with the aim of ensuring the direct applicability of the Regulation's provisions and their uniform application, especially when they have the form of a regulation, rather than that of a directive.

On a proper construction of Article 8(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, it is possible for the sender to remedy that by sending the translation of the document in accordance with the procedure laid down by Regulation No 1348/2000 and as soon as possible.

In order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by Regulation No 1348/2000 as interpreted by the Court, it is incumbent on the national court to apply national procedural law while taking care to ensure the full effectiveness of that Regulation, in compliance with its objective.

9. *Court of Justice, 22 November 2005, case C-144/04* 564

Observance of the general principle of equal treatment or non-

discrimination, in particular in respect of age in the field of labour and occupation, cannot as such be conditional upon the expiry of the period allowed to Member States for the transposition of Council Directive 2000/78/EC of 27 November 2000, intended to lay down a general framework for combating discrimination on the grounds of age. It is the responsibility of the national court hearing a dispute involving the principle of non-discrimination in respect of age to provide the legal protection that individuals, derive from the rules of Community law, also in their mutual relations, and to ensure that those rules are fully effective, setting aside any provision of national law which may conflict with that law.

10. *Court of Justice, 13 December 2005, case C-411/03* 820

The previous existence of EC harmonisation rules cannot be made a condition for the implementation of the freedom of establishment laid down by Articles 43 and 48 EC, of which cross-border mergers between companies established in different Member States constitute a particular method of exercise.

The general rule by which a Member State denies the registration in the commercial register of a merger between a company established in that State and one established in another Member State prevents cross-border mergers even if general interests (such as, for example, protection of the interests of creditors, minority shareholders and employees) are not threatened. In any event, such a national rule goes beyond what is necessary to protect those interests.

Articles 43 and 48 EC preclude registration in the national commercial register of the merger by dissolution without liquidation of one company and transfer of the whole of its assets to another company from being refused in general in a Member State where one of the two companies is established in another Member State, whereas such registration is possible, on compliance with certain conditions, where the two companies participating in the merger are both established in the territory of the first Member State.

11. *Court of Justice, 17 January 2006, case C-1/04* 509

The first sentence of Article 43 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as applying if no judgment opening insolvency proceedings has been delivered before its entry into force on 31 May 2002, even if the request to open proceedings was lodged prior to that date.

Article 3(1) of the Regulation must be interpreted as meaning that the court of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to open insolvency proceedings retains jurisdiction to open those proceedings if the debtor moves the centre of his main interests to the territory of another Member State after lodging the request but before the proceedings are opened.

12. *Court of Justice, opinion 7 February 2006 No 1/03* 514

The conclusion of the new Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters falls entirely within the sphere of exclusive competence of the European Community, since the new Lugano Convention would affect the uniform and consistent application of the Community rules as regards both the jurisdiction of courts and the recognition and enforcement of judgments and the proper functioning of the unified system established by those rules.

13. *Court of Justice, 9 February 2006, joined cases C-23/04 and C-25/04* 842

Articles 31(2) and 32 of Protocol 4 of the European Agreement establishing an association between the European Communities and their Member States and the Republic of Hungary are to be interpreted as meaning that the customs authorities of the State of import are bound to take account of judicial decisions delivered in the State of export on actions brought against the results of verifications of the validity of goods movement certificates conducted by the customs authorities of the State of export, once they have been informed of the existence of those actions and the content of those decisions, regardless of whether the verification of the validity of the movement certificates was carried out at the request of the customs authorities of the State of import.

14. *Court of Justice, 9 February 2006, case C-473/04* 825

Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters must be interpreted as meaning that it does not establish any hierarchy between the method of transmission and service under Articles 4 to 11 thereof and that under Article 14 thereof and, consequently, it is possible to serve a judicial document by one or other or both of those methods.

Where transmission and service are effected by both the methods under Articles 4 to 11 thereof and the method under Article 14 thereof, in order to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of the first service validly effected.

15. *Court of Justice, 16 February 2006, case C-3/05* 830

Article 36 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978, 1982, 1989 Accession Conventions, is to be interpreted as requiring due service of the decision authorising enforcement in accordance with the procedural rules of the Contracting State in which enforcement is sought, and therefore, in cases of failure of, or defective, service of the decision authorising enforcement, the mere fact that the party against whom enforcement is sought has notice of that decision is not sufficient to cause time to run for the purposes of the time-limit fixed in that article.

16. *Court of Justice, 21 February 2006, case C-286/03* 848

A member of the family of a worker employed in a Member State who lives with his family in another Member State may, where he fulfils the other conditions of grant, claim from the competent institution of the worker's place of employment payment of a care allowance, as a sickness benefit in cash as provided for in Article 19 of Council Regulation (EEC) No 1408/71 of 14 June 1971 in matters of social security, in so far as the member of the family is not entitled to a similar benefit under the legislation of the State in whose territory he resides.

17. *Court of Justice, 9 March 2006, case C-436/04* 836

In order to apply the *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985, signed on 19 June 1990 it is required that the Convention was in force in the Contracting States in question at the time of the assessment of the conditions of applicability of the same principle by the court before which the second proceedings were

brought, irrespective of the fact that the Convention was not yet in force in the latter State at the time at which that person was convicted.

Article 54 of the Convention implementing the Schengen Agreement must be interpreted as meaning that the relevant criterion for the purposes of the application of that Article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected; and that punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54, the definitive assessment in that respect being the task of the competent national courts.

18. *Court of Justice, 16 March 2006, case C-234/04* 1099

Considering the importance, both for the Community legal order and the national legal systems, of the principle of *res judicata*, the principle of cooperation arising under Article 10 EC does not require a national court to disapply its internal rules of procedure in order to review and set aside a final judicial decision if that decision should be contrary to Community law.

19. *Court of Justice, 6 April 2006, case C-456/04* 1134

An international "voyage which follows or precedes" the cabotage voyage, as referred to in Article 3(3) of Regulation (EEC) No 3577/92 of the Council of 7 December 1992, applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), means in principle any voyage to or from another State, whether or not the vessel has cargo on board. However, sham voyages without cargo on board carried out to circumvent the rules laid down in Regulation No 3577/92 cannot be permitted.

Such an abuse can be found to exist only if, first, notwithstanding that technically the conditions laid down by Article 3(3) of Regulation No 3577/92 apply, the result of the international voyage in ballast is that the shipowner benefits, for all matters relating to manning, from the application of the law of the flag State, frustrating the aim of Article 3(2) of the Regulation, which is to allow the application of the law of the host State to all matters relating to manning in the case of island cabotage. Second, there must also be objective evidence to show that the essential aim of the international voyage in ballast is to avoid the application of Article 3(2) of the Regulation, in favour of Article 3(3) of the same.

20. *Court of Justice, 27 April 2006, case C-441/02* 1139

The public policy exception is a derogation from the fundamental principle of freedom of movement for persons, which must be interpreted strictly, and whose scope cannot be determined unilaterally by the Member States. Reliance by a national authority on public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to one of the fundamental interests of society.

Reasons of public interest, such as the safeguard of public policy of a Member State, may justify a national measure which is likely to obstruct the exercise of the fundamental freedom of movement only if the measure in question is compatible with fundamental rights, in particular with the right to family life established by Article 8 of the 1950 Rome Convention for the

Protection of Human Rights and Fundamental Freedoms, relevant as general principles of Community Law.

21. *Court of Justice, 27 April 2006, case C-96/04* 1144

The Court of Justice has no jurisdiction under Article 234 EC to answer the preliminary ruling (concerning the compatibility with Article 12 and 18 EC of the German provisions on the conflict of laws on the right to bear a name) referred by a national body that cannot be regarded as exercising a judicial function as it exercises administrative authority without being called on to decide a dispute.

22. *Court of Justice, 2 May 2006, case C-341/04* 1105

Where a debtor is a subsidiary company whose registered office and that of its parent company are situated in two different Member States, the presumption laid down in the second sentence of Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, whereby the centre of main interests of that subsidiary is situated in the Member State where its registered office is situated, can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which location at that registered office is deemed to reflect. That could be so in particular in the case of a company not carrying out any business in the territory of the Member State in which its registered office is situated. By contrast, where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation.

On a proper interpretation of the first subparagraph of Article 16(1) of Regulation No 1346/2000, the main insolvency proceedings opened by a court of a Member State must be recognised by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State.

On a proper interpretation of the first subparagraph of Article 16(1) of the Regulation, a decision to open insolvency proceedings for the purposes of that provision is a decision handed down by a court of a Member State to which application for such a decision has been made, based on the debtor's insolvency and seeking the opening of proceedings referred to in Annex A to the Regulation, where that decision involves the divestment of the debtor and the appointment of a liquidator referred to in Annex C to the Regulation. Such divestment implies that the debtor loses the powers of management that he has over his assets.

On a proper interpretation of Article 26 of the Regulation, a Member State may refuse to recognise insolvency proceedings opened in another Member State where the decision to open the proceedings was taken in flagrant breach of the fundamental right to be heard, which a person concerned by such proceedings enjoys.

23. *Court of First Instance, 17 May 2006, case T-93/04* 1117

The direct recognition in Belgium of a divorce judgment rendered in another Member State in accordance with Article 14 of Regulation (EC) No 1347/2000 of 29 May 2000 on Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters does not imply the ceasing of the effects of a provisional measure set by the Belgian judge, pending divorce proceedings abroad, in respect of a debtor who is requested to pay a certain amount of

money in favour of one of the spouses as a temporary alimentary obligation (*provision alimentaire*), since, to this extent, the service of said judgment to the debtor is required by Belgian civil procedure law.

24. *Court of Justice, 18 May 2006, case C-343/04* 1126

Article 16(1) *litt.* a of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, as amended most recently by the 1996 Accession Convention must be interpreted as meaning that an action which seeks to prevent a nuisance affecting or likely to affect land belonging to the applicant, caused by ionising radiation emanating from a nuclear power station situated on the territory of a neighbouring State to that in which the land is situated, does not fall within the scope of that provision.

CASES IN INTERNATIONAL COURTS

Unidroit Administrative Tribunal, 27 April 2005 267

While the general director of an international organization has some discretional powers, according to the international administrative case law, to decide whether to renew a time-limited employment contract in the interest of the organization, his decision may give rise to compensation for damages when it appears to be arbitrary or affected by abuse or misuse of powers.

CASES IN FOREIGN COURTS

French Cour de Cassation, 14 December 2005 853

The notion of habitual residence under Article 2 of Regulation (EC) No 1347/2000 on Matrimonial Matters and Parental Responsibility, is an autonomous notion of Community law that has to be construed as referring to the place where a person has established the permanent and/or habitual centre of his/her interests with the aim of making it stable and not temporary.

DOCUMENTS

Final Act of the Twentieth Session of the Hague Conference on Private International Law (The Hague, 30 June 2005) 271

Commission Regulation (EC) No 1869/2005 of 16 November 2005 replacing the Annexes to Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European enforcement order for uncontested claims ... 291

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers 299

Implementation of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Legislative Decree 30 May 2005 No 140) 310

Implementation of Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (Legislative Decree 19 August 2005 No 188) 316

Agreement between Italy and Lebanon on the Cooperation in Certain Family Law Matters (Beirut, 15 July 2004) 326

Amendments to Law 4 February 2005 No 11 (Law 25 January 2006 No 29) 568

Provisions for the Protection of Savings and the Regulation of Financial Markets (Law 28 December 2005 No 262) 568

Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies 573

United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 23 November 2005) 583

Amendments to the Provisions of the Code of Civil Procedure Concerning Arbitration Proceedings (Legislative Decree 2 February 2006 No 40) 856

Amendments to Law 5 February 1992 No 91 Concerning the Grant of Italian Nationality to the Citizens of Istria, Fiume, Dalmatia and their Descendents (Law 8 March 2006 No 124) 866

Council Regulation (EC) No 694/2006 of 27 April 2006 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings 867

The Proposal of the Deutscher Rat für Internationales Privatrecht for a Private International Law Regime of Companies at European and National Level 876

Ministerial Notice of 30 June 2006 No 19203 on the Implementation of the Statute for a European Cooperative Society (SCE) 1148

CURRENT EVENTS AND RECENT DEVELOPMENTS

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 (C. SANNA) 1157

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from November to December 2005) – Contracting Parties of the Hague conventions in force – Signature of the agreement between the European Community and Denmark on the Brussels I Regulation – Delegation of powers to the Government for the amendment of provisions on arbitration of the Italian Code of Civil Procedure – New rules on the legal status of foreigners – Implementation of the Directive establishing minimum common rules relating to legal aid for cross-border disputes – On commercial affiliation – Implementation of the Directive concerning the distance marketing of consumer financial services – Adoption of the Italian Consumer Code – Amendments to the Protocol on the Statute of the Court of Justice and to the rules of procedure of the Court of Justice – Adoption of the Italian Code of Private Insurance – The Directive on unfair commercial practices – Commission Decision establishing an expert group on electronic commerce – EC Unified rules on the recognition of professional qualifications – Council Framework Decision to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution – On the possible signature by the European Community of the Hague Convention on the Law applicable to certain rights in respect of securities held with an intermediary –

Statement by the Commission concerning the Directive on the enforcement of intellectual property rights – Opinion of the European Economic and Social Committee on the proposal for a Directive on services in the internal market – Proposal for amendments to Regulation (EC) No 1348/2000 on the service of documents in the Member States – Two resolutions of the Council of Europe's Parliamentary Assembly on forced marriages and child marriages – Answer of the French Minister of Justice on same-sex marriages celebrated in the European Union 329

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from January to February 2006) – The law implementing EC rules in Italy for 2005 – Implementation of EC Directive No 2002/74 on the protection of employees in the event of the insolvency of their employer – Reform of Italian Law on Bankruptcy – Amendments to the Code of Navigation with respect to aeronautic provisions concerning aviation – Provisions on the enforcement of the European Court of Human Rights decisions – Prorogation of the emergency status to contrast immigration of non-EU citizens – Agreement with the Federal Republic of Yugoslavia for the readmission of persons – Agreement with the Russian Federation facilitating the grant of visas – Entry into force of the new accession convention to the 1980 Rome convention – Decision concerning the conclusion of the agreement between the EC and Denmark on EC Regulation No 1348/2000 on the service of documents – New amendment to the Regulation on the introduction of the euro – Minimum standards on procedures for granting and withdrawing the refugee status – Declarations by France and Hungary on their acceptance of the jurisdiction of the Court of Justice to give preliminary rulings on the acts referred to in Article 35 of the EU Treaty Amendments to the Protocol on the ECJ Statute, to the rules of procedure of the Court of First Instance and Decision of the President of the ECJ concerning the Civil Service Tribunal – Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing – Opinion of the European Economic and Social Committee on the proposal for a Directive on mediation – New restrictive measures in relation to Liberia and Uzbekistan – Commission proposal for a Rome I Regulation – Proposal for a Regulation on maintenance obligations and Commission communication on its legislative procedure – Proposal for a Council Decision on the accession of the EC to the Hague Conference on Private International Law – Green Paper on damages actions for breach of the EC antitrust rules – On the exchange of information extracted from the criminal record – Green Paper on conflicts of jurisdiction and the principle of *ne bis in idem* in criminal proceedings – On the distribution of powers between the first and third pillar with reference to criminal law – On the contrast to traffic of human beings – Commission recommendation on collective cross-border management of copyright and related rights for legitimate online music services 592

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from March to June 2006) – Amendments to the Code of Civil Procedure regarding proceedings before the *Corte di Cassazione* – Further amendments and integrations to the Code of Navigation – Determination of entries of new EC Member States nationals in Italy for 2006 – Determination of programmed entries of non-EC nationals in Italy for 2006 – New register of the authorized bodies for international adoptions – Agreement with the Philippine Republic on assisted re-entries and re-admissions – Implementation of EC Directive on the enforcement of intellectual property rights –

The EC Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States – On EC rules on social security on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community – Extension to Denmark of EC rules on asylum – Community Code on the rules governing the movement of persons across borders – On the cooperation of the EU with the International Criminal Tribunal for the former Yugoslavia – Amendments to the Supplementary Rules of the Court of Justice – Further restrictive measures in relation to Liberia, Ivory Coast and Zimbabwe – Prorogation of certain deadlines of EC Directive 2004/39/EC on markets in financial instruments – Opinion of the European Economic and Social Committee on the proposal amending EC Regulation on the service of documents – Opinion of the European Economic and Social Committee on the Green Paper on applicable law and jurisdiction in divorce matters – Opinion of the European Economic and Social Committee on the Green Paper on succession and wills – Opinion of the European Economic and Social Committee on the Green Paper: Mortgage Credit in the EU – Opinion of the European Economic and Social Committee on Commission's five-year plan to implement the Hague Programme – Opinion of the European Economic and Social Committee on the proposals for decisions on fundamental rights and justice implementing the Hague Programme – New Commission communication on the entities qualified to bring injunctions for the protection of consumers' interests – On the proposal for a Directive on payment services – Decisions of the Hong Kong Courts pursuant to the Uncitral Model Law on Arbitration – International arbitration and interim measures in the State of New York – A Belgium communication on some issues of the code of private international law concerning personal status – A communication of the Spanish Minister of Justice on the marriage between same-sex couples – On the possibility for same-sex spouses to conclude donations and to modify the law governing their relations in France 882

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from July to September 2006) – Supplement to the determination of programmed entries of non-EC nationals in Italy for 2006 – Council Decision concerning the conclusion of the Agreement between the EC and Denmark on the "Brussels I" Regulation – Council Common Position on the proposal for a "Rome II" Regulation – Proposal for a Regulation amending the "Bruxelles II-*bis*" Regulation – Towards the adoption of a Directive on services in the internal market – Towards the adoption of a Regulation creating a European order for payment procedure – Guidance on the posting of workers in the framework of the provision of services – Agreement between the International Criminal Court and the EU on cooperation and assistance – On social security for migrant workers – On compensation to crime victims – On the return of cultural objects unlawfully removed from a Member State – Further restrictive measures in relation to Liberia, Sudan, Congo, Birmania-Myanmar and Lebanon – Comments from the Commission to the proposal for a Regulation in matters relating to maintenance obligations – Green Paper on conflict of laws in matters concerning matrimonial property regimes – Commission Communication on the provisions of Title IV of the EC Treaty relating to the jurisdiction of the ECJ – Commission Communications on the implementing of the Hague Programme – Commission Communication on the Convention on the strengthening of maritime labour standards – Proposal for directives on the term of protection of copyright, on rental right and lending right and on certain rights related to copyright in the field of intellectual

property – Two codes of conduct on transfer price for associated enterprises – On the review of the Directive on distance marketing of consumer financial services 1164

Notices. The 2007 courses of the Hague Academy of International Law – IX Award "Giuseppe Barile e Pietro Verri" on international humanitarian law, human rights and refugee law 1179

BOOK REVIEWS

(See Italian Index)

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