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CASES IN ITALIAN COURTS

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1. *Catanzaro Juvenile Court, 27 September 2004* 779
 After having ascertained that Italian courts have jurisdiction and that Italian law applies pursuant to, respectively, Article 40(1) *litt. a* and Article 38 of the Law of 31 May 1995 No 218, an adoption under special circumstances of a Byelorussian child by an Italian citizen can be declared pursuant to Article 44 *litt. d* of the Law of 4 May 1983 No 184 with the consent of Byelorussian authorities.
2. *Corte di Cassazione, 8 February 2005 No 2539* 468
 The requirement that the foreign spouse lives with the Italian spouse could be inferred from the system laid down by Legislative Decree of 25 July 1998 No 286 (the Consolidated Law on Immigration) and by Article 28 of its implementing Regulation (Presidential Decree of 31 August 1999 No 394) even prior to the modification of Article 30 of the Consolidated Law by Law of 30 July 2002 No 189, that inserted paragraph 1-*bis*, whereby a residence permit for family reasons granted to a non-EU citizen shall be revoked in case she/he does not live with his/her spouse -. In fact, Article 28 of the Regulation provides for the granting of a residence permit to foreigners whose expulsion is prohibited due to a marriage with an Italian citizen, provided that the requirements set forth by Article 19(2) *litt. c* of the Consolidated Law are met, i.e. only if the foreigner lives with her/his spouse.
3. *Verona Tribunal, 22 February 2005* 367
 The place of delivery of the goods referred to in Article 5(1) *litt. b* of the EC Regulation No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters shall be the place where the goods are actually made available to the consignee, regardless of the place where any carrier entrusted by the consignee receives the delivery of said goods.
4. *Bologna Tribunal, 25 February 2005* 142
 The refusal of the registrar (*ufficiale di stato civile*) to register a judgment of the Rabbinical Court of Jerusalem recognising the validity of a religious Jewish marriage celebrated in Italy between two Israeli citizens concerns the substantial requirements set forth by Article 64 of Law of 31 May 1995 No 218.
 An appeal against the rejection by the registrar (*ufficiale di stato civile*) of an application to register a foreign judgment declaring the validity of a religious Jewish marriage should be brought pursuant to Article 67 of Law No 218/1995.
5. *Corte di Cassazione, 15 April 2005 No 7837* 208
 After having verified that, pursuant to Article 9(1)(4) of the London

Convention of 19 June 1951, the conditions of employment and work applicable to the persons employed by NATO in Italy for local labour are governed by Italian law, the activities of the clinic of Camp Darby, which are managed by the United States of America in Italy, cannot be considered as an *organizzazione di tendenza* for the purposes of the choice (which is allowed by the Law No 108 of 1990) between the reinstatement of an employee and the payment to her/him of an indemnity in case of her/his unlawful dismissal, if no evidence is given that said clinic is managed without profit-making purposes.

6. *Milan Court of Appeal, 16 April 2005* 1053

Pursuant to Article 4(2) of the Code of Civil Procedure – conferring jurisdiction to Italian courts in case the place of performance of an obligation was located in Italy – reference shall be made exclusively to the specific obligation in question, rather than to any obligation arising from the relevant contract.

In a dispute relating to an exclusive dealing contract, the obligation to refrain from taking certain actions – i.e. the obligation to respect an exclusive right – is not relevant for the purposes of the criterion laid down by Article 4(2) of the Code of Civil Procedure, since it cannot be characterised as an activity to be carried out in a certain place as opposed to any other, and cannot therefore be linked to any specific place.

7. *Bolzano Tribunal, Division of Brunico, 21 April 2005* 137

The condition that only citizens of a State who are resident in said State have been involved in a tort – as required by Article 62(2) of Law of 31 May 1995 No 218 for the application of the law of said State – shall be ascertained taking into account all elements of the tort. Accordingly, a person who is a citizen of another State and is not a party to the relevant proceedings, and whose behaviour has not contributed to cause the damages in the case in question, shall not be considered involved in said tort.

The so-called direct action provided for by Italian law may be brought against an Italian insurance company even with respect to road accidents occurred abroad that involved only Italian citizens resident in Italy.

8. *Bologna Court of Appeal, decree 1st June 2005* 142

Pursuant to Article 64 *litt. b* of Law of 31 May 1995 No 218, a judgment of the Rabbinical Court of Jerusalem recognising the validity of a religious Jewish marriage celebrated in Italy between two Israeli citizens cannot be declared enforceable in Italy where another judgment has already been issued in Italy denying said enforceability.

Pursuant to Articles 95 and 96 of Presidential Decree of 3 November 2000 No 396, an appeal against the rejection by the registrar (*ufficiale di stato civile*) of an application to register a foreign judgment declaring the validity of a religious Jewish marriage shall be brought, in first instance, before the Tribunal where the relevant register is located.

9. *Florence Tribunal, 7 July 2005* 144

A New Zealand decision characterising a couple formed by an Italian citizen and a New Zealand citizen as *de facto* partners is not in contrast with public policy and may be recognised in Italy pursuant to Article 65 of Law of 31 May 1995 No 218, since *de facto* couples, whether of the same sex or of different sex, have social relevance and have obtained specific legal recognition.

In light of both Article 2 of the Constitution and Directive 2004/38/EC of

29 June 2004, a residence permit pursuant to Article 30 of Legislative Decree of 25 July 1998 No 286 shall be granted to a foreigner living with an Italian citizen.

10. *Corte di Cassazione, 25 October 2005 No 20668* 210
- The Prefect has no discretionary power when issuing a decree of expulsion of a non-EU citizen since the specific fact which is notified to the person being expelled and is expressly assumed as the basis for the expulsion must have occurred. Accordingly, an expulsion cannot be ordered pursuant to Article 13(2) *litt. a* of Legislative Decree of 25 July 1998 No 286 for avoiding border controls if said controls were made and no obstacle to the entry of the foreigner in Italy was found (however erroneously, as the necessary entry visa was lacking). In this case, the expulsion must be based on the lack of a residence title, pursuant to Article 13(2) *litt. b* of said Legislative Decree.
11. *Corte di Cassazione, 10 November 2005 No 21823* 212
- Law of 3 April 1979 No 95 on the special administration procedure (*amministrazione straordinaria*) for large companies in difficulties does not conflict with the prohibition on aids granted by States laid down by Article 87 of the EC Treaty as a whole, but only with those specific provisions that depart from the ordinary bankruptcy procedure. The 'action paulienne' (*azione revocatoria*) laid down by Article 67 of the Bankruptcy Law is not included among such specific topics, even if it is brought during the special administration procedure aimed at preserving the company's assets (*fase conservativa*).
12. *Corte di Cassazione, 16 November 2005 No 23210* 215
- Article 19(2) *litt. c* of Legislative Decree 25 July 1998 No 286, insofar as it prohibits the expulsion of a non-EU citizen who is married with an Italian citizen, does not apply by way of analogy to a foreigner living with an Italian citizen as husband and wife (*more uxorio*). Furthermore, the requirement for the proceeding authority to translate a copy of the expulsion decree in a language understood by the foreigner can be derogated every time said authority certifies the reasons for which said translation is impossible and it is therefore necessary to translate the expulsion decree in the languages mentioned in Article 13(7) of the Legislative Decree of 25 July 1998 No 286 (French, English and Spanish). Said certification is sufficient to exclude that the expulsion decree is void, nor has the lower court authority to review the determination of the public authority as to the actual possibilities of immediately translating the decree in the language of the person being expelled.
13. *Corte di Cassazione, 16 November 2005 No 23213* 469
- A non-EU citizen against whom an expulsion decree has been issued may challenge a certification of a public official (made by filling out a pre-printed form) stating that said non-EU citizen understands the Italian language, claiming that Article 13(7) of Legislative Decree of 25 July 1998 No 286 (whereby a decree of expulsion shall be notified to the interested person in a language understood by him) has been violated, only by a claim for fraud (*querela di falso*). The provision of erroneous information by municipal officers does not constitute a force majeure event capable – in light of Article 13(2) *litt. b* of said Legislative Decree – of excusing the fact that the foreigner did not request a residence permit within eight days of her/his entry in Italy since said force majeure event can only be represented by a force outside of the foreigner's will to which she/he cannot resist.

14. *Corte di Cassazione, 25 November 2005 No 25026* 469
- The goal of family reunion can justify the issue of a residence permit, but it does not exempt a non-EU citizen from the obligation to file a request for such permit. In fact, pursuant to Article 28(1) of Legislative Decree of 25 July 1998 No 286, the right to preserve family unity is recognised – subject to the fulfilment of the substantive requirements and compliance with the procedural rules set forth by Articles 29 and 30 of said Legislative Decree – only to foreigners who are legally present in the territory of Italy, a category that does not cover any person against whom an expulsion order has been issued.
15. *Corte di Cassazione, 25 November 2005 No 25027* 216
- Based on Article 13-*bis* (4) of Legislative Decree 25 July 1998 No 286, introduced by Article 4 of Legislative Decree 13 April 1999 No 113, a decision of the tribunal issued upon appeal against an order of expulsion of a non-EU citizen issued by the prefect cannot be appealed to the court of appeal, but only to the *Corte di Cassazione*. A further requirement for the application of Article 30(1) *litt. b* of Legislative Decree 25 July 1998 No 286 – which provides for the granting of a residence permit for family reasons to a foreigner legally resident in Italy for at least one year and married an Italian citizen in Italy – and of Article 30(1-*bis*) – whereby the residence permit is immediately revoked if the spouses have not actually lived together after the marriage – consists of the establishment of the residence of the spouses in Italy. Actually, if the spouses had established their residence abroad, the residence permit would be completely useless, and a special regime for its granting differing from the general regime applicable to foreigners that are willing to reside in Italy based on other grounds would not be justified.
16. *Corte di Cassazione, 25 November 2005 No 25028* 370
- Absent a systematic regulation of political asylum implementing the provision set forth by Article 10(3) of the Constitution, it can be inferred from all applicable provisions of law – which have been adopted also for implementing international or EU conventions and rules – that the right of asylum shall not be construed as a right to enter the territory of a State, but rather as a right of a foreigner to have access thereto for the purposes of being admitted to the procedure for the recognition of the status of refugee pursuant to the Geneva Convention of 29 July 1951, as amended by the New York Protocol of 31 January 1967. Accordingly, said right is subject to the condition subsequent of the rejection of the application for the recognition of the status of political refugee pursuant to the procedures set forth by Article 1 of Law Decree of 30 December 1989 No 416, which has been converted into Law of 28 February 1990 No 39, as currently supplemented by Article 32 of Law of 30 July 2002 No 189, as implemented by the regulation on the procedures for the recognition of the status of refugee that has been adopted with Presidential Decree of 16 September 2004 No 303.
17. *Corte di Cassazione (plenary session), order 2 December 2005 No 26228* 218
- In the preliminary reference procedure laid down by Article 234 of the EC Treaty, the Court of Justice has only interpretative authority, while the judicial function continues to be exercised by national courts. Accordingly, the fact that the Council of State did not refer the relevant question to the Court of Justice does not amount to an excess of jurisdiction by said administrative court and no appeal to the *Corte di Cassazione* against such a decision is admissible.

18. *Corte di Cassazione, 2 December 2005 No 26278* 378

Even though the evidence that the requirements for the recognition of the status of refugee pursuant to the Geneva Convention of 29 July 1951 have been satisfied can be evaluated in a manner less strict than usual, the evidentiary value of the declarations made by the interested party in his favour and of the written statements made by a person unrelated to the proceedings, absent any other evidence supporting said written statements, shall be excluded.

The ordinary procedure for the review of an application filed by a person requesting asylum is regulated by Article 1-*quarter* (2) to (5) of Law Decree of 30 December 1989 No 416, which has been converted into Law of 28 February 1990 No 39, in the text added by the Law of 30 July 2002 No 189. Paragraph 4 of the aforesaid Article provides that the territorial Commission, when deciding upon an application for asylum, shall evaluate, for the purposes of granting a residence permit for humanitarian reasons pursuant to Article 5(6) of Legislative Decree of 25 July 1998 No 286, the consequences of the repatriation in light of the international conventions to which Italy is a party and, particularly, in light of Article 3 of the European Convention on Human Rights, prohibiting torture and inhuman or degrading treatment or punishment. The aforesaid provision, given its general nature, shall apply also to the simplified procedure regulated by Article 1-*bis* (2) *litt.* a and b of Law Decree No 416 of 1989.

For both the recognition of the status of refugee and the granting of the right of asylum, an application shall be filed with the local head of police administration (*questore*), who shall prepare the file and deliver it to the territorial Commission for the decision. In fact, the contents of the right of asylum are neither different from nor broader than those of the right to obtain a residence permit for the duration of the proceedings concerning the recognition of the status of refugee and the granting of said permit in case of positive outcome.

The prohibition of rejection or expulsion laid down by Article 19(1) of Legislative Decree of 25 July 1998 No 286 does not *per se* confer to the beneficiary any title to reside in Italy, but only gives the right not to be returned to a condition implying serious personal risks. This situation can possibly lead to the granting of a residence permit for humanitarian reasons.

19. *Modena Tribunal, Division of Carpi, 9 December 2005* 387

Pursuant to Article 11 of Law of 31 May 1995 No 218, if the defendant does not appear, the lack of jurisdiction shall be ascertained by the court on its own motion.

For the purposes of determining the governing law of an unperformed obligation in a dispute relating to an international sale in order to apply Article 5(1) of the Brussels Convention of 27 September 1968, reference shall be made to the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations.

Pursuant to Article 3(2) of Law No 218 of 1995 – which refers to Article 5(1) of the 1968 Brussels Convention – Italian courts have jurisdiction over a dispute relating to an international sale between an Italian company and a Nigerian company if the seller – i.e. the party that is to effect the characteristic performance within the meaning of Article 4 of the Rome Convention of 19 June 1980 – has its place of business in Italy pursuant to Article 57 of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, which applies to the case at instance in accordance with its Article 1 *litt.* b.

Pursuant to Article 7(2) of the 1980 Vienna Convention, issues not

expressly settled by the Convention, such as an earnest money clause (*caparra confirmatoria*), shall be settled in conformity with the general principles on which the Convention is based or, in the absence of such principles, in conformity with the law applicable by virtue of choice-of-laws rules.

20. *Reggio Emilia Tribunal, 12 December 2005* 218
 Pursuant to Article 5(1) *litt. b* of EC Regulation No 44/2001, Italian courts have jurisdiction if the place of delivery of the goods being the object of an international sale is located in Italy. The determination of the place of delivery in accordance with applicable international provisions is irrelevant.
21. *Corte di Cassazione, 21 December 2005 No 28308* 782
 Article 13(8) of Legislative Decree of 25 July 1998 No 286 – whereby the appeal against an expulsion decree can be brought before the court in whose district the authority issuing said decree has its seat – does not make any distinction nor introduce any exception with respect to the grounds on which the relevant expulsion decision was founded. As a consequence, even an expulsion decision adopted pursuant to Article 14(5-*ter*) of said Legislative Decree against a foreigner who remains in the Italian territory without justified reason in breach of a previous expulsion order is subject to judicial review.
22. *Corte di Cassazione, 27 December 2005 No 28775* 783
 Even if the existence of a risk of persecution – which justifies the prohibition of expulsion pursuant to Article 19(1) of Legislative Decree of 25 July 1998 No 286 – does not need to be proved in a precise and rigorous manner, said risk cannot be considered to exist in all cases where a widespread violation of civil rights or a violent conflict between different ethnic groups, political factions or religious confessions is occurring in the country that the foreigner has left (even if said violation or conflict is well-known to exist). On the contrary, it is necessary that the foreigner has a well-founded fear of being persecuted due to her/his opinions or specific personal situation.
23. *Corte di Cassazione, 30 December 2005 No 28884* 784
 The expulsion is completely null and void where a mere copy (unstamped or informal) of the expulsion decree which is not signed by the Prefect and lacks any certification of conformity to the original is served to the person being expelled, and a duly authenticated copy is not even delivered to her/him thereafter.
24. *Padua Tribunal, Division of Este, 10 January 2006* 147
 Pursuant to Article 5(1) *litt. b* of EC Regulation No 44/2001, the courts for the place in a Member State where the goods were delivered or should have been delivered under a contract for the sale of goods have jurisdiction over disputes related to said contract.
 The notion of sale of goods, which is referred to in Article 5(1) *litt. b* of EC Regulation No 44/2001, shall be interpreted in light of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods.
 The notion of place of delivery of the goods, which is referred to in Article 5(1) *litt. b* of EC Regulation No 44/2001, shall be interpreted, in the absence of an agreement between the parties, in light of the 1980 Vienna Convention.
 Italian courts do not have jurisdiction over a dispute related to an

international sale contract if the place of delivery of the good is located in England and the seller has carried out activities for assembling the good there.

25. *Corte di Cassazione, 11 January 2006 No 396* 220

An extraordinary appeal to the *Corte di Cassazione* pursuant to Article 111 of the Constitution against a decree whereby the court of appeal has ruled on a request for authorisation to enter or temporarily stay in Italy filed by a non-EU citizen based on serious reasons related to the psychological and physical development of a relative child pursuant to Article 31(3) of Legislative Decree of 25 July 1998 No 286 is admissible.

26. *Corte di Cassazione, 31 January 2006 No 2128* 155

The notion of 'fact' referred to in Article 25(2) of the Preliminary Provisions to the Civil Code includes wrongful conducts as well as the harmful events arising there from.

With reference to tortious liability, a distinction shall be made between damages representing further consequences of a single harm (which have fully arisen since the beginning) and harmful effects that, as they arise separately from and in addition to the initial effect, constitute themselves a damage and may be claimed through an independent action for damages.

In the case of an air plane accident in Cuba, the harmful event is represented by the death of Italian citizens occurred in Cuba, but the additional damages caused by said event to their relatives necessarily occurred where they are resident, i.e. in Italy.

27. *Corte di Cassazione, 7 February 2006 No 2529* 470

The Geneva Convention of 19 May 1956 on the International Carriage of Goods applies only if the parties have expressed their will to that effect.

28. *Corte di Cassazione, 8 February 2006 No 2755* 471

The activities carried out by the institutions of the Sovereign Military Order of Malta within the ambit of the national health care program are regulated at the international level by the exchange of diplomatic notes of 11 January 1960 and by the agreement of 23 July 1981. Accordingly, the ACISMOM (Association of Italian Knights of the Sovereign Military Order of Malta), which actually manages such activities, is considered equivalent to the Italian public health administration. In fact, even though it does not belong to the Italian public administration or to the private health sector, said Association is considered equivalent to a public body.

29. *Milan Court of Appeal, 11 February 2006* 1062

A German judgment that substantially does not describe the grounds on which it is founded can be recognised in Italy pursuant to Article 27 of the Brussels Convention of 27 September 1968, provided that the *audi alteram partem* rule and the fundamental principles aimed at guaranteeing the right of defence have been complied with. In fact, the requirement whereby judicial decisions must expose the reasoning followed by the court, as laid down by Article 111 of the Constitution, is relevant only within the domestic legal system.

The fact that a German judgment has been served without a translation into Italian does not prevent its recognition if it can be presumed that the served party understands the language in which said decision has been drafted.

Finally, the fact that a term of seven days from service of a German judgment concerning a dispute between parties operating in both States is granted in order to appeal against it in Germany does not prevent its

- recognition, since it is possible under the German legal system to file a defence beyond said term if justified reasons exist.
30. *Corte di Cassazione, 13 February 2006 No 3019* 785
 Article 19(2) *litt. c* of Legislative Decree of 25 July 1998 No 286 does not allow for any distinction among the different types of family ties, and applies for the protection of the family of Italian citizens, even if it consists of a child. Accordingly, the expulsion of a non-EU citizen who is a parent of an Italian child and lives with her/him is prohibited.
31. *Constitutional Court, 16 February 2006 No 61* 473
 Even though the New York Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women is in force, the question of constitutional legitimacy of Articles 143-*bis*, 236, 237(2), 262 and 299(3) of the Civil Code and of Articles 33 and 34 of Presidential Decree of 3 November 2000 No 396 on the Regulation of the Civil Status (*ordinamento dello stato civile*), for violation of Articles 2, 3 and 29(2) of the Constitution, is not admissible since a declaration of illegitimacy of said provisions would require changes of the law that are beyond the authority of the Constitutional Court.
32. *Venice Tribunal, 20 February 2006* 713
 Italian courts do not have jurisdiction in relation to a claim for payment of a receivable arising under a contract for work and materials (*contratto di prestazione d'opera*) if, pursuant to Article 5 No 1 of the EC Regulation No 44 of 2001, the place of performance of the payment obligation – as identified in accordance with the law governing the contract pursuant to Article 4 of the 1980 Rome Convention (i.e., in the case at instance, French law) – is located at the domicile of the debtor.
33. *Corte di Cassazione, 21 February 2006 No 3717* 474
 Article IX of the London Convention of 19 June 1951 regarding the status of armed forces provides that the conditions of employment and work of local workers are governed by the law of the receiving State. Therefore, since the US Navy Exchange is an organisation of the Department of Navy of the United States – to which said Convention applies – it is not necessary to ascertain the contents of US law in a dispute brought against said organisation by an Italian employee.
34. *Corte di Cassazione, 23 February 2006 No 4040* 157
 Pursuant to Article 25(1) of the Preliminary Provisions to the Civil Code, US law applies to an employment contract entered into between an Italian reporter and a US company in New York, even with respect to subsequent working activities carried out in Italy in favour of an Italian company as a result of labour intermediation.
 Article 1 of the Law of 23 October 1960 No 1369 setting forth the prohibition on acting as an intermediary in employment relationships cannot be considered as an integral part of public policy, since the requirements for complying with international public policy within the meaning of Article 31 of the Preliminary Provisions to the Civil Code do not correspond to the Italian mandatory provisions for the protection of employees.
35. *Mantova Tribunal, order 1st March 2006* 394
 Italian courts have jurisdiction over a request for attachment (*sequestro giudiziario*) of shares acquired by an Italian company but not yet transferred

to it by the Dutch seller following a disputed sale of such shares since such attachment will be enforced in Italy – as required by Article 10 of Law of 31 May 2005 No 218 – through registration in the shareholders' ledger.

36. *Milan Tribunal, 10 March 2006* 476

After having determined that Italian courts have jurisdiction pursuant to Article 2 of the Brussels Convention of 27 September 1968, the criteria set forth by the Code of Civil Procedure shall apply in order to identify the proper venue.

37. *Brindisi Tribunal, Fasano Division, 13 March 2006* 439

Article 12(3) of EC Regulation No 2201 of 2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and on Matters of Parental Responsibility provides that the courts of a Member State shall have jurisdiction in relation to parental responsibility if the child has a substantial connection with that Member State and its jurisdiction has been accepted. Accordingly, Greek courts have jurisdiction to authorise a Greek citizen to accept in the name and on behalf of his minor daughter (a Greek/Italian citizen residing in Greece) an inheritance that she received from her mother by way of a *mortis causa* succession and that relates to assets located in Italy. Only after such authorization may the Italian judge receive a formal acceptance of inheritance with benefit of inventory (*accettazione con beneficio di inventario*) pursuant to Articles 9 and 50 *lit.* a and c of Law 31 May 1995 No 218.

38. *Corte di Cassazione, 18 March 2006 No 6078* 162

Pursuant to Article 36(4) of Law of 4 May 1983 No 184 (as amended by the Law of 31 December 1998 No 476), an adoption declared by a foreign authority upon the application of Italian citizens, who provide evidence that they have stayed continuously in the relevant foreign State and have been resident there for at least two years, shall be recognised in Italy provided that it complies with the principles laid down by the Hague Convention of 29 May 1996 on the Protection of Children and Co-operation in respect of Intercountry Adoption.

Article 36(4) of Law No 184 of 1983 requires a stay period of at least two years.

Article 29-*bis* of Law No 184 of 1983 extends to international adoptions the principle whereby the adoption conferring the status of legitimate child (*adozione legittimante*) is possible only for married couples (Article 6 of said Law).

A Romanian decision that declared an adoption conferring the status of legitimate child (*adozione legittimante*) in favour of an Italian/Romanian citizen who had not stayed in Romania for at least two years cannot be recognised in Italy.

39. *Corte di Cassazione, 18 March 2006 No 6079* 166

Article 36 of Law of 4 May 1983 No 184 on recognition of adoption decisions issued in States that are not bound by multilateral or bilateral conventions entered into with Italy constitutes a specific provision (*norma speciale*) *vis-à-vis* Article 64 of Law of 31 May 1995 No 218, as it results also from Article 41(2) of the latter.

A decision of the juvenile court on the recognition of a foreign adoption decision – even if named 'decree' - is a judgment from a substantive point of view, and can therefore be challenged pursuant to Article 339 of the Code of Civil Procedure.

40. *Corte di Cassazione, 18 March 2006 No 6081* 170
- When assessing whether any grounds exists that could prevent it from ordering the return of a child wrongfully removed to his State of residence, a court cannot give relevance to the mere psychological trauma or moral suffering of the child that would arise from the separation from the parent who has removed him, if said circumstances do not represent 'a grave risk that his or her return would expose the child to psychological harm or an intolerable situation', which is required under Article 13 *litt. b* of the Hague Convention of 25 October 1980 on International Child Abduction in order to prohibit the return of the child.
- The prospects of being granted a request for exclusive rights of custody over the child made by the person who has removed him is not relevant, since, pursuant to Article 16 of the 1980 Hague Convention, the courts of the Contracting State to which the child has been removed shall not decide on the merits of the rights of custody until it has been determined that the requirements laid down by the Convention for the return of the child have been satisfied.
41. *Corte di Cassazione, 20 March 2006 n. 6110* 477
- Where a vehicle registered and insured in Italy causes a car accident abroad prior to the entry into force of Law 19 February 1992 No 142, implementing EC Directive 90/232, and of Law 31 May 1995 No 218, the damaged party cannot prevail him/herself of the direct action against the insurer set forth by Article 18 of Law 24 December 1969 No 990, unless the parties to the insurance contract had so agreed, at least implicitly.
42. *Corte di Cassazione (plenary session), order 21 March 2006 No 6217* 177
- Pursuant to Article 5(1) of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over a dispute related to the payment of a broker's commission if the creditor is domiciled in Italy, since, pursuant to Article 1182(3) of the Civil Code, a receivable arising from a contract shall be paid at the domicile of the creditor.
- Article 6 of the 1968 Brussels Convention provides that, in case of plurality of defendants, a defendant domiciled in a Member State may be sued in the courts of another State where one of the other defendants is domiciled. For this reason, this provision does not apply in proceedings where none of the defendants is domiciled within the district of an Italian court.
43. *Corte di Cassazione (plenary session), order 24 March 2006 No 6585* 786
- Under Article 3(1) of Law of 31 May 1995 No 218, only the domicile or residence in Italy of the defendant is relevant as general criterion for jurisdiction. Accordingly, a distinction between Italian defendants and foreign defendants can no longer be made.
44. *Corte di Cassazione (plenary session), order 28 March 2006 No 7035* 181
- Pursuant to Article 24 of EC Regulation No 44/2001, the prorogation of jurisdiction by way of tacit acceptance is excluded where the defendant contests the jurisdiction upon entering an appearance and alleges its defence on the merits or makes counterclaims only as alternative pleadings.
- Pursuant to Article 23(1) of EC Regulation No 44/2001, an agreement conferring exclusive jurisdiction to a court excludes that the special jurisdiction criteria laid down by Article 6 of said EC Regulation may apply between the parties.

45. *Corte di Cassazione (plenary session), 28 March 2006 No 7040* 391
 Article 6(2) of the Brussels Convention of 27 September 1968 – whereby a guarantor may be sued in the court seised of the main proceedings – applies exclusively to the so-called ‘typical guarantees’ (*garanzie proprie*).
46. *Corte di Cassazione, 28 March 2006 No 7089* 184
 The filing with a notary public or a district notarial archive of a deed executed abroad before enforcing it in Italy pursuant to Articles 61 and 106(4) of Law of 16 February 1913 No 89 (Notarial Law) is required in order to ensure that the legality of the deed is verified and where its production is necessary to enforce it *vis-à-vis* third parties. However, in case of granting of powers to be exercised before judicial authorities, only the courts have authority to assess whether it is contrary to public policy.
 The notary public may accept the filing of a deed executed in the United Kingdom only if it is legalised in accordance with Article 68 of Royal Decree of 10 September 1914 No 1326 and apostilled as required by the Hague Convention of 5 October 1961 and the Brussels Convention of 25 May 1987 in order to certify the authenticity of the signature, the capacity in which the person signing the deed has acted and the identity of the seal or stamp borne by the deed.
47. *Corte di Cassazione, 29 March 2006 No 7250* 787
 The principle whereby, if a party invokes the application of a foreign law to her/his benefit, she/he shall identify such law and provide the court with all relevant documentation in order to enable it to form its opinion as to the application of the different law provisions invoked by said party shall continue to apply to the proceedings initiated before the Law of 31 May 1995 No 218 entered into force.
48. *Corte di Cassazione, 4 April 2006 No 7864* 186
 Article 5 of the Hague Convention of 25 October 1980 on International Child Abduction draws a distinction between, and provides for a different protection of, the right of custody and the right of access.
 A decree of the juvenile court ordering the return of a child abroad to the parent enjoying only the right of access is illegitimate.
49. *Corte di Cassazione, 7 April 2006 No 8242* 1112
 The service of documents by mail at the address of the served party in Argentina shall be considered as non-existent since Argentina has objected to the transmission of documents through the postal service, availing itself of the possibility granted by Article 10 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.
50. *Trieste Tribunal, 7 April 2006* 1113
 Even though Article 12 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition directly allows the registration of a deed of transfer of immovable assets to a trustee, this result shall be assessed on a case-by-case basis in order to verify that the principles of the Italian legal system are complied with. However, said control is not possible if the instrument creating the trust is not filed in the proceedings.
51. *Corte di Cassazione, 21 April 2006 No 9360* 1114
 Pursuant to Article 19(2) of the Brussels Convention of 23 April 1970 on

Travel Contracts, the travel intermediary who does not specify in the travel documents that she/he is acting as an intermediary shall be deemed to be a travel organiser and shall assume *vis-à-vis* the traveller the same liabilities as a travel organizer.

52. *Mantova Tribunal, order 21 April 2006* 393
- Italian courts lack jurisdiction over a request for attachment (*sequestro giudiziario*) of shares acquired by an Italian company but not yet transferred to it by the Dutch seller following a disputed sale of such shares. In fact, since the attachment of the shares shall be executed on the share certificate – by the judicial receiver (*ufficiale giudiziario*) directly taking possession of said certificate – rather than through registration in the shareholders' ledger, the attachment cannot be enforced in Italy as required by Article 10 of the Law of 31 May 2005 No 218.
- Pursuant to Article 5(1) *litt. a* of EC Regulation No 44/2001, Italian courts lack jurisdiction on the merits of a dispute concerning a sale of shares – which is relevant for the purposes of the related interim proceedings pursuant to Article 10 of the Law of 31 May 2005 No 218 – if the delivery of the share certificates has to be made at the domicile of the seller in the Netherlands according to the applicable law.
53. *Corte di Cassazione, 28 April 2006 No 9865* 189
- Even though the Hague Convention of 25 October 1980 on International Child Abduction is aimed at ensuring the effective respect, in all Contracting States, of both the right of custody and the right of access conferred by the authorities of the competent State (Article 1 *litt. b* of said Convention), the protection for these two types of rights differs with respect to both requirements and procedures.
- The applicant who in his first pleading – submitted through the Central Authority or directly to the competent judicial authority – seeks protection for his rights of access, is not entitled to apply during the proceedings for the restoration of the rights of custody of the child, as this would imply an inadmissible change of the cause of action in violation of the *audi alteram partem* principle *vis-à-vis* the other parent.
54. *Corte di Cassazione (plenary session), 4 May 2006 No 10219* 1115
- Pursuant to Article 4(2) of Law of 31 May 1995 No 218, the jurisdiction of Italian courts cannot be derogated in case of labour disputes – unless this is allowed under the applicable collective bargaining agreements – since rights are involved that may not be disposed of.
55. *Corte di Cassazione (plenary session), 4 May 2006 No 10223* 194
- For the purposes of determining the place of performance of the obligation in question within the meaning of Article 5(1) of the Brussels Convention of 27 September 1968 in case of distribution contracts – based on the private international law of the requested court – the supply of the goods upon which the subsequent distribution activities are dependent shall be considered as the characteristic performance.
- Pursuant to Article 31 of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, Italian courts do not have jurisdiction over a dispute related to a distribution contract whereby a foreign undertaking has granted to an Italian undertaking an exclusive right with respect to goods that are manufactured abroad and shall be delivered abroad by the seller to the carrier for their transportation.

56. *Corte di Cassazione, 5 May 2006 No 10374* 399

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction clearly distinguishes between the right of custody and the right of access, and establishes a different protection thereof. In fact, said Convention provides for the prompt return of a child to the State of its habitual residence exclusively where it has been wrongfully removed or retained, which may occur only in case of breach of custody rights, whereas, if the parent having custody of the child elects to change her/his residence, the characterisation of said change of residence as lawful prevents the other parent from requesting the prompt return of the child. The latter parent can in fact only urge the Central Authority, pursuant to Article 21 of said Convention, to take all steps to remove, as far as possible, all obstacles to the exercise of her/his access rights, or apply to the court competent for the legal separation or divorce in order to obtain a reassessment of the conditions for the custody of the child, in light of the new circumstance that the residence of the child has been changed.

57. *Corte di Cassazione (criminal), 10 May 2006 No 15996* 718

The obligation to provide legal aid in criminal matters – which is set forth by Article 1 of the European Convention signed in Strasbourg on 20 April 1959 – is not limited to certain activities but has an open-ended scope, subject to the exceptions expressly provided, among which the pre-judgment attachment of assets (*sequestro conservativo di beni*) is not listed. In fact, said measure complies with the objectives of the aforesaid Convention since it is aimed at preventing the disposal of assets to the detriment of third party claims during the course of the proceedings.

58. *Corte di Cassazione (plenary session), order 12 May 2006 No 11001* 198

An Italian judgment that has ascertained the lack of international *lis pendens* pursuant to Article 11(3) of EC Regulation of 29 May 2000 No 1347 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility for Children of both Spouses, and has thereafter declared the jurisdiction of Italian courts pursuant to Article 2(1) *lit. b* of said EC Regulation can be challenged to the higher court. Neither the special proceedings for a ruling on venue (*regolamento di competenza*) nor the special proceedings for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) may be brought against such judgment.

59. *Corte di Cassazione (plenary session), 15 May 2006 No 11093* 201

Pursuant to Article 5(1) of the Brussels Convention of 27 September 1968, Italian courts do not have jurisdiction over a dispute between an Italian company and its French commercial agent where the actual cause of action concerns the termination of the contract of agency for breach thereof by the agent due to activities carried out by the latter in France.

60. *Trento Court of Appeal, Bolzano Division, 15 May 2006* 137

In a traffic accident occurred abroad between two citizens of a State who are resident in said State, a third injured party whose behaviour has not contributed to cause the damages in the case in question shall not be considered involved in said tort. Accordingly, the law of common residence and nationality of the parties involved shall apply pursuant to Article 62(2) of Law of 31 May 1995 No 218.

61. *Corte di Cassazione, 16 May 2006 No 11362* 1116
 For the purposes of applying the longer three-year period of limitation for an action for damages – established by Article 32 of the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road – the default of the carrier cannot be presumed, but shall be ascertained on a case-by-case basis.
62. *Corte di Cassazione, 18 May 2006 No 11744* 404
 The procedure for the declaration of enforceability of a foreign judgment ordering maintenance payments is governed by the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations rather than by Article 64 of Law of 31 May 2005 No 218. In fact, Article 2 of Law No 218 of 1995 expressly states that the provisions of said Law do not affect the application of international conventions in force in Italy.
 Article 6 of the Hague Convention of 2 October 1973 – whereby a decision rendered by default can be recognised or enforced if the defendant has had sufficient time to defend the proceedings – links said time to the service of the document instituting of the proceedings, with the aim of ensuring that the defendant has the opportunity to prepare his defence in time for the hearing scheduled for his appearance, regardless of any further defence activities that may be allowed in the various States parties to the Convention.
63. *Corte di Cassazione, 30 May 2006 No 12873* 1117
 The mere violation of a foreign procedural rule – which does not result in the impossibility to exercise the rights of defence during the arbitral proceedings – represents a flaw of said arbitral proceedings to be raised in the foreign legal system through the means of appeal contemplated by it. Said violation does not constitute grounds for refusing the recognition and enforcement of the foreign arbitral award pursuant to Article 840(3)(2) of the Code of Civil Procedure.
64. *Council of State (VI session), 31 May 2006 No 3321* 204
 The principles of the EC Treaty on free movement of persons, services and capitals imply that a ship registered in a Member State may certainly be registered in another Member State, provided that it satisfies the requirements (above all the safety requirements) provided for by the second State for national motorships.
 Since Italian law allows to maintain the registration of national ships that have been built since more than twenty years, it also allows the registration in the international register provided for by Article 1 of the Law Decree No 457 of 1997 (which has been converted into law by the Law No 30 of 1998) of ships that have been built since more than twenty years and are coming from other Member States of the European Union.
65. *Corte di Cassazione, 6 June 2006 No 13253* 407
 The Brussels Convention of 25 August 1924 on the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Protocols signed in Brussels on 23 February 1968 and on 21 December 1979, does not apply to a contract for the multimodal transport of goods by sea and land, even if said contract is characterised by the fact that the transport by sea is definitely prevailing, absent any agreement between the parties to extend the scope of its application. Accordingly, the principle of combination of different types of contracts shall apply, so that the contractual relationship shall remain subject to the provisions of said Convention from the time of loading until the time of

unloading, whereas before then and thereafter it shall be subject to the provisions applicable to transports by land, since it shall be so characterised at any such time.

66. *Corte di Cassazione, 16 June 2006 No 13955* 412

An appeal pursuant to Article 111 of the Constitution against a decree declaring the enforcement of a foreign judgment pursuant to Article 67 of Law of 31 May 2005 No 218 issued by a court of appeal upon proceedings conducted *in camera*, is admissible and founded due to the violation of the *audi alteram partem* principle.

67. *Corte di Cassazione (plenary session), 21 June 2006 No 14287* 414

Italian courts are competent to hear a dispute concerning libel by press brought by an Italian company against a newspaper having its seat in Germany and its relevant journalist domiciled in Italy. In fact, the link referred to in Article 6(1) of the Brussels Convention of 27 September 1968 exists in the case at instance since the relevant claims have the same cause of action (so-called *connessione propria per identità di titolo*), represented by the participation of the defendants to the same tort, i.e. the libel in question. The existence of said link excludes that a fictitious joinder of parties occurs, aimed at removing the foreign defendants from the jurisdiction of their State. Furthermore, Italian courts have jurisdiction also pursuant to Article 5(3) of said Convention, since the company that is victim of the tort may bring the action for damages against the publisher also before the courts of the State where the newspaper is distributed, even though only with respect the damages suffered in said State.

68. *Council of State (IV session), 22 June 2006 No 3948* 1118

Article 6 of the European Convention for the Protection of Human Rights does not apply to a dispute relating to the procedure for the promotion of a diplomat to plenipotentiary minister. In fact – in light of the public nature of the powers exercised by her/him and of the discretion of the public administration in selecting the officials to be promoted – it shall be excluded that said dispute is mainly civil and economic in nature, as it is required in order for said provision to apply according to the interpretation of the Court of Strasbourg.

69. *Corte di Cassazione, 28 June 2006 No 14993* 720

The decision of a Court of Appeal declaring an Argentine judgment enforceable in Italy pursuant to the Convention of 9 December 1987 on Judicial Assistance and Recognition of Judgments in Civil Matters between Italy and Argentine while modifying the currency in which the payment ordered by the foreign judgment shall be made (in the case at instance, from pesos to US dollars) shall be quashed since it exceeds the limits of a recognition of a foreign judgment and conflicts with the ruling set forth therein.

70. *Corte di Cassazione, 6 July 2006 No 15411* 420

The fact that the term for appealing against a decision authorising the enforcement of a foreign judgment pursuant to Article 36 of the Lugano Convention of 16 September 1988 is pending does not prevent the applicant who has obtained a favourable decision from withdrawing the documents submitted with the request, since Article 638 of the Code of Civil Procedure relating to the enforcement of summary judgments (*provvedimenti ingiuntivi*) does not apply.

The burden to file all the documents proving that, according to the law of the State of origin, the judgment is enforceable and has been served – as

established by Article 47(1) of the 1988 Lugano Convention – shall be considered satisfied if a certificate of the clerk of the court that has issued the relevant judgment is filed, which attests that said judgment has become *res iudicata*.

Pursuant to Article 27(2) of the 1988 Lugano Convention, the fact that the defendant in default of appearance is duly served with the document which instituted the proceedings ‘in sufficient time’ to enable him to arrange for his defence shall be the object of a discretionary assessment, to be made based on all circumstances that characterise the case at instance, regardless of the procedural rules of the relevant legal systems. In other words, the minimum terms for appearance provided for by said legal systems shall not be binding for the purposes of said assessment.

71. *Corte di Cassazione (plenary session), order 10 July 2006 No 15620* 1120
72. *Corte di Cassazione (plenary session), order 10 July 2006 No 15626* 1120
73. *Corte di Cassazione (plenary session), order 10 July 2006 No 15628* 1120

Italian courts are not competent to rule on the reinstatement of an employee of a foreign State, whether she/he is Italian or foreigner. However, they are competent to hear the requests of said employee that are exclusively economic in nature, such as those concerning additional remuneration or unpaid social security charges. In fact, the immunity of foreign States from the Italian jurisdiction with respect to labour disputes shall no longer be assessed on the basis of the functions actually carried out by the employee in the case in question, but rather on the basis of the effect that the requested decision would have on the sovereign powers of the foreign State.

74. *Corte di Cassazione (plenary session), order 11 July 2006 No 15666* 723

Pursuant to Article 3(1) of Law of 31 May 1995 No 218, Italian courts have jurisdiction over the proceedings concerning the ascertainment of a credit and the order to pay the relevant amount, brought by an Italian citizen against another Italian citizen resident in Italy, even if said claim is subject to an attachment ordered by a Swiss court.

75. *Rome Court of Appeal, decree 13 July 2006* 426

The conditions for the validity of a marriage between Italian nationals celebrated abroad shall be verified pursuant to Articles 27 and 28 of Law of 31 May 1995 No 218 since the registration of the marriage has merely a declaratory (and not a constituent) nature.

The automatic registration of marriages celebrated abroad in the registers of births, marriages and deaths (*registri dello stato civile*) may not be founded upon Articles 65 and 66 of Law No 218 of 1995.

Neither the resolutions of the European Parliament nor Article 9 of the Charter of Nice on Fundamental Rights require the Member States to introduce in their respective legal systems substantive rules on same-sex marriages.

A same-sex marriage celebrated between two Italian citizens in the Netherlands cannot be registered in the Italian registers of births, marriages and deaths (*registri dello stato civile*) since it does not satisfy one of the essential requirements of a marriage, i.e. the diversity of sex between the spouses.

76. *Corte di Cassazione (plenary session), order 19 July 2006 No 16461* 726

The principle whereby the ruling contained in a judgment that has become *res iudicata* is enforceable in all proceedings relating to the same legal

relationship (so-called *efficacia panprocessuale del giudicato*) does not apply with respect to the question of jurisdiction over a foreigner (or a foreign State), since the ascertainment of jurisdiction involves the application of rules that may change over time. Accordingly, the ruling on jurisdiction over a foreign State, which has become *res iudicata* as part of a judgment declaring that the sale of real estate is not enforceable and ordering to the foreign State that has occupied the same to release it, cannot be enforced in the subsequent and different proceedings relating to the same contractual relationship, but concerning claims that are different from those constituting the object of the first proceedings.

A claim brought by an Italian company for damages arising from the fact that certain real estate, which has been transferred to a foreign State pursuant to a sale that has been declared unenforceable, is still registered in the name of said company whereas possession thereof has been acquired by said foreign State, concerns a factual situation that does not imply any assessment in relation to the exercise of sovereign powers. Accordingly, said claim does not involve any issue concerning the immunity from jurisdiction.

77. *Corte di Cassazione, 25 July 2006 No 16978* 432

As far as the enforceability of foreign divorce judgments is concerned, Article 64 *litt.* b and d of Law of 31 May 1995 No 218 requires to ascertain whether the document which instituted the proceedings and the decision have been served in accordance with the relevant foreign law, and the fundamental rights of defence have therefore been respected.

The fact that the document instituting the proceedings and the foreign judgment have been served to the defendant in the foreign proceedings (through a registered letter with return receipt) at a place different from her residence does not violate Article 64 *litt.* b and d of Law No 218 of 1995, provided that the aforesaid documents have been received by persons who are linked to her by family ties.

A foreign judgment declaring the dissolution of a marriage between two Italian citizens lacking a previous decision on legal separation between the spouses does not violate public policy within the meaning of Article 64 *litt.* g of Law No 218 of 1995.

The fact that a foreign divorce decree has ruled that both spouses have the joint custody of the child, without pre-determining the rules that the spouses shall observe with respect thereto, does not violate public policy within the meaning of Article 64 *litt.* g of Law No 218 of 1995.

78. *Corte di Cassazione (criminal), 27 July 2006 No 26269* 731

Pursuant to its Article 40, Law of 22 April 2005 No 69, implementing EC Framework Decision No 2002/584 on the European arrest warrant, does not apply to requests for extradition issued by foreign judicial authorities before its entry into force – which occurred on 14 May 2005 – even if said requests relate to crimes that have been committed after 7 August 2002 and therefore fall, in principle, within the scope of application of said Law. The rules on extradition previously in force shall therefore continue to apply with respect to the aforesaid crimes.

79. *Brindisi Tribunal, decree 1 August 2006* 438

Article 12(3) of EC Regulation No 2201 of 2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and on Matters of Parental Responsibility provides that the courts of a Member State shall have jurisdiction in relation to parental responsibility if the child has a

substantial connection with that Member State and their jurisdiction has been accepted.

Italian courts have jurisdiction to authorise a Greek citizen – who has accepted said jurisdiction – to accept, with benefit of inventory, in the name and on behalf of his minor daughter (a Greek/Italian citizen residing in Greece) an inheritance that has been received by the latter from her mother by way of a *mortis causa* succession and that relates to assets located in Italy.

80. *Corte di Cassazione, 4 August 2006 No 17706* 732
 Italian law applies to a Paulian action (*azione revocatoria fallimentare*) concerning an international sale and purchase contract that has been brought by the trustee in bankruptcy of an Italian company against a German company, since said action is grounded in, and originates from, the related bankruptcy proceedings, as an expression of the principle of concurrence of the creditors. Accordingly, said action shall be governed by the applicable bankruptcy regulation (which sets forth its requirements and effects), whereas the law governing the contract under dispute is wholly irrelevant.
81. *Turin Juvenile Court, decree 17 August 2006* 737
 Informal foster care (*affidamento provvisorio non formale*) of a Byelorussian child – which has been requested in Italy by the spouses with whom the child temporary stayed during a vacation period within a program agreed upon between an Italian public body and the government of the Byelorussian Republic – can be ordered as a provisional and urgent measure if the competent Italian court obtains objective evidence of mistreatments and abuses committed at the institution where the child usually lives in its State of origin. This justifies that it remains in Italy beyond the date scheduled for its return, until the necessary investigations are carried out and appropriate measures are adopted to ensure the protection of the child.
82. *Milan Court of Appeal, decree 19 August 2006* 739
 Pursuant to Article 42, first paragraph of EC Council Regulation No 2201/2003 of 27 November 2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, a judgment given by the courts of a Member State (France) ordering the return of a child to another Member State (Italy) is automatically recognised and enforceable in the second State without the need for a declaration of enforceability, if the judgment has been certified in the Member State of origin.
 The Italian legal system does not provide for the possibility to confirm an out-of-court agreement between the natural parents of a child on the conditions for its return. Accordingly, said agreement can be automatically enforced in Italy only if it is incorporated in a judgment on the return of the child given in another Member State pursuant to Article 42(1) of EC Regulation No 2201/2003.
83. *Rovereto Tribunal, 24 August 2006* 741
 The expression 'place of delivery of the goods' contained in Article 5(1) *lit.* b of EC Regulation No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters shall be interpreted as an independent EU law rather than in accordance with national laws or the 1980 Vienna Convention on Contracts for the International Sale of Goods. Based on a literal interpretation, said place is the place where the goods are actually made available to the consignee.

In order to be considered valid pursuant to Article 23 of the EC Regulation No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, a forum selection clause contained in the general terms and conditions of sale written at the bottom of an order confirmation shall be accepted by the other party rather than simply brought to its knowledge, absent evidence of any usage to the contrary.

84. *Genoa Juvenile Court, 25 August 2006* 754

Italian courts do not have jurisdiction with respect to a request for foster care of a Byelorussian child, which has been filed in Italy by the spouses with whom the child temporary stayed during a vacation period within a program agreed upon with the government of the Byelorussian Republic, if said spouses have already initiated the proceedings for its adoption in Byelorussia, and no mistreatments or abuses made against the child in said State have been ascertained.

85. *Council of State (VI session), 7 September 2006 No 5180* 442

The granting of the Italian citizenship through naturalisation pursuant to Article 9(1) *litt. e* of Law of 5 February 1992 No 91 is subject not only to the fulfilment of the applicable requirements, but also to an assessment as to the advisability of said granting from a political/administrative perspective, considering the national public interest.

86. *Verona Tribunal, 9 September 2006* 755

If a judgment of first instance has excluded that certain criteria conferring jurisdiction to foreign courts apply and has in any case declared the lack of jurisdiction of Italian courts based on different criteria, the defendant who won the case has, pursuant to Article 346 of the Code of Civil Procedure, the burden of re-alleging before the appellate court the criteria conferring jurisdiction to foreign courts whose applicability has been excluded by said judgment (i.e., in the case at instance, the unenforceability of a clause ousting the jurisdiction of Italian courts). In case of failure to do so, the findings of the lower court with respect thereto become *res iudicata*.

The Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road shall apply for the purposes of a ruling on jurisdiction in a case relating to the carriage of goods by road for reward between Contracting States. In fact, said Convention prevails over EC Regulation No 44/2001 and the provisions of the Law of 31 May 1995 No 218 in light of, *inter alia*, the reference to said Convention contained in the terms and conditions of contract written at the bottom of the consignment note (Article 6 *litt. k*).

Pursuant to Article 31 of the 1956 Geneva Convention, Italian courts have jurisdiction if the place where the carrier receives the goods for the purposes of the carriage is located in Italy.

87. *Corte di Cassazione (plenary session), order 27 September 2006 No 20887* 759

EC Regulation No 44/2001 applies to all disputes initiated after 1 March 2002, i.e. the date on which it entered into force.

Pursuant to Article 23 of the EC Regulation No 44/2001, a clause conferring jurisdiction to French courts – contained in the general terms and conditions of contract printed on the back of an invoice for the payment of the goods transferred under a sale and purchase contract that has been sent by a French seller to an Italian buyer – is not valid if said contract has been executed solely by one of the parties and does not contain any express reference to the

aforsaid general terms and conditions. In fact, the payment for the goods made by the buyer cannot be considered as an implicit acceptance of the prorogation of jurisdiction, and evidence has not been given that this corresponds to a form which accords with an existing usage in the particular international trade or commerce where the parties operate.

Italian courts lack jurisdiction over a dispute relating to the payment of the consideration under a sale and purchase contract if the goods have been delivered by the French seller to a carrier partly in France and partly in Belgium for the purposes of their delivery in Italy, since in case of sale and purchase contracts involving the carriage of the goods, the place of delivery – which is referred to in Article 5(1) *lit. b* of EC Regulation No 44/2001 as the sole jurisdiction criterion applicable to said contracts – shall be the place of delivery to the first carrier, in accordance with Article 31 of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods.

88. *Parma Tribunal, order 10 October 2006* 766

In accordance with the principle of 'subjective scission', the service abroad of an appeal brief and an *ex parte* decree ordering a pre-judgment attachment (*sequestro conservativo*) shall be considered completed within the mandatory term determined for said purpose by the competent court if the serving party has carried out all activities pertaining to it within said term. As a consequence, the receipt of the aforesaid documents by the served party after the expiration of said term due to a delay arising from the activities to be carried out by the competent offices – which, as such, do not fall within the control of the serving party – may not determine the unenforceability of the concerned interim measure but can only cause the granting of a new term for re-serving said documents and the scheduling of a new appearance hearing.

The fact that the aforesaid mandatory term has not been indicated in the model for service abroad pursuant to the Hague Convention of 15 November 1965 may not be invoked against the serving party since it is an action belonging to a phase of the procedure for the service abroad of documents which is not under its control.

Pursuant to Article 4(2) of Law of 31 May 1995 No 218, the jurisdiction of Italian courts with respect to interim measures – as determined in accordance with Article 10 of said Law – is not derogated if the requirement whereby the agreement derogating from jurisdiction shall be proved in writing is not met and a tacit derogation (which shall result from the conclusive conduct of both parties) has not occurred.

A foreign judgment opening insolvency proceedings does not prevent the creditors from bringing individual enforcement proceedings – including interim measures representing a form of early enforcement, such as a pre-judgment attachment (*sequestro conservativo*) – in Italy pursuant to Article 51 of Law on Bankruptcy if the conditions for the automatic recognition of said judgment as laid down by Article 64 of the Law No 218 of 1995 have not been met, in particular since said judgment has not yet become *res iudicata* in accordance with the applicable foreign law.

89. *Corte di Cassazione, 19 October 2006 No 22406* 769

In proceedings initiated before Law of 31 May 1995 No. 218 entered into force in accordance with its Article 72, Article 17 of the Preliminary Provisions to the Civil Code rather than Article 25 of said Law No 218 shall apply in order to identify the person having authority to represent a company incorporated in Switzerland in dealings with third parties and in legal proceedings

(*rappresentanza sostanziale e processuale*), that leads to the application of Swiss law.

Pursuant to Article 72 of Law No 218 of 1995, its Article 14 does not apply to proceedings initiated before said Law entered into force. Accordingly, the principle whereby, if a party invokes the application of a foreign law to her/his benefit (arguing that it is different from Italian law), she/he shall provide the court with the relevant documentation shall continue to apply to the aforesaid proceedings. Therefore, if said documentation is not provided, the foreign law can be applied only if the court has direct knowledge of it or based on the elements resulting from the papers of the case, even with the cooperation of the parties.

90. *Corte di Cassazione (plenary session), 23 October 2006 No 2266* 1064

No question of jurisdiction of Italian courts may arise in relation to a request for enforcement of a foreign judgment pursuant to Article 67 of the Law of 31 May 1995 No 218. On the contrary, only questions of venue (*competenza territoriale*) and of mandatory competence by virtue of the subject matter of the proceedings (*competenza funzionale*) may be relevant.

For the purposes of the procedure laid down by said Article 67, the scope of the judicial review is only that of ascertaining that the requirements for the recognition of the foreign decision, as laid down by Article 64, are met, and that the necessary procedural requirements (*presupposti processuali*) and conditions for bringing the action (*condizioni dell'azione*), e.g. the parties having standing, are also satisfied. Italian courts cannot issue a new ruling on the substance of the dispute that has been brought before the foreign court.

For the purposes of applying Article 67 of the Law No 218, Italian courts do not have the authority to verify, even incidentally, whether there is a possibility to proceed with the enforcement, in light of the existence or non-existence in Italy of assets that may be subject to the enforcement proceedings.

91. *Corte di Cassazione, 9 November 2006 No 23937* 1070

The provisions of an EC Directive that has not been implemented are directly enforceable in the legal system of any Member State – assuming that they are unconditional and sufficiently precise, and that the relevant Member State is in default since the term granted to implement the Directive has expired – only with respect to the relations between the authorities of the defaulting State and private individuals (so-called vertical effect), but not also with respect to the relations among private individuals (so-called horizontal effect). In order for a private entity to be treated as a State for this purpose, it is necessary not only that it is a body which has been made responsible for providing a service of public interest pursuant to a measure of a public authority, under the control of the latter, but also that for that purpose it has been granted powers beyond those which result from the normal rules applicable in relations between individuals.

92. *Genoa Tribunal, 14 November 2006* 1075

Pursuant to Articles 2 and 60 of EC Regulation No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a claim concerning the termination of a sale and purchase contract for breach, which has been brought by the buyer against the seller, a company having its seat in Italy.

Pursuant to Articles 15(1) *litt. a* and 16 of EC Regulation No 44/2001, as interpreted in light of the general system of said Regulation and of its goal to ensure adequate protection to consumers, Italian courts – being the courts of the State where the consumer is domiciled – have jurisdiction over a claim concerning the termination of a leasing contract realising the effect of a

disposal (*leasing traslativo*) for breach, which has been brought against a company having its seat in France. In fact, said contract can be compared to a sale on instalments credit terms (*vendita a rate*), as it is aimed at financing the purchase of a movable asset for a purpose that is completely outside of the trade or profession of the buyer. Under the above circumstances, a clause conferring jurisdiction to French courts that is included in the general terms and conditions signed by the plaintiff and referred to in the contract is unenforceable pursuant to Article 17 of the EC Regulation No 44/2001.

Italian courts lack jurisdiction over an action concerning the termination of a sale and purchase contract for breach, which has been brought against a company having its seat in France, either pursuant to Article 2 of the EC Regulation No 44/2001 or pursuant to the following Article 5(1) in case the obligation to deliver the movable asset being sold shall be performed in Spain. In this respect, the provision laid down by Article 6 of said Regulation is wholly irrelevant if none of the defendants is domiciled within the district of the court seised. Similarly, the provisions laid down by Articles 15 and 16 are also wholly irrelevant where the sale and purchase contract has been entered into between parties who have acted in pursuance of their commercial or professional activities.

Pursuant to Article 15(1) *lit. a* of EC Regulation No 44/2001, Italian courts lack jurisdiction over a claim concerning the termination of a sale and purchase contract for breach, which has been brought by the persons who are entitled to sue in place of the leasing company that has directly purchased the relevant asset from the selling company having its seat in France, since in the present case said contract cannot be qualified as a contract for sale of goods on instalment credit terms.

A claim for the termination for breach of a sale and purchase contract that has been entered into by a plurality of parties is inadmissible if any of said parties does not participate to the relevant proceedings due to lack of jurisdiction, since this a case where joinder of parties is mandatory.

93. *Corte di Cassazione (plenary session), 29 November 2006 No 25275* 1083
 Pursuant to Article 3 of the Law of 31 May 1995 No 218, Italian courts have jurisdiction if the defendant, being an Italian citizen or a foreigner, has her/his place of business and interests in Italy within the meaning of Article 43 of the Civil Code.
94. *Florence Court of Appeal, decree 6 December 2006* 1088
 Pursuant to Articles 28 and 29 of the Legislative Decree of 25 July 1998 No 286, a residence permit for family reunion cannot be granted to a New Zealand citizen who has been declared the *de facto* partner of an Italian citizen by a New Zealand decision, since a 'constitutionally oriented' interpretation of the aforesaid provisions (aimed at considering said foreigner as a relative) is not admissible. Neither is the recognition of the aforesaid status of *de facto* partner pursuant to Article 65 of the Law of 31 May 1995 No 218 admissible since it is contrary to public policy.
95. *Corte di Cassazione (plenary session), 20 December 2006 No 27182* 1091
 A dispute where a party requests a Swiss bank to perform a bank account contract to which the former has become a party as universal heir does not fall under the matters relating to successions within the meaning of Article 50 of the Law of 31 May 1995 No 218, since the position of universal heir represents the title to sue rather than the object of the relevant proceedings.

96. *Corte di Cassazione (plenary session), 20 December 2006 No 27188* 1093
 A decision of an Italian court that – amending a previous judgment issued by it – replaces a parent with the other as the person having the custody of a child does not authorise the parent to whom custody has been subsequently granted to abduct and remove the child from the State where the child resides before having applied for and obtained from the courts of said State a declaration of enforceability of the aforesaid decision pursuant to Article 28 of the EC Regulation No 2201/2003 of 27 November 2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility.
97. *Corte di Cassazione, 28 December 2006 No 27592* 443
 Pursuant to Article 35(2) of Law of 31 May 1995 No 218, the capacity of a person to acknowledge the paternity of a child is governed by her/his national law.
 The right of a child to have her/his status formally acknowledged is an essential element of her/his personal identity, which is protected by Articles 7 and 8 of the Convention on the Rights of the Child and by Article 2 of the Constitution.
 Egyptian law – which does not contemplate the acknowledgement of a natural child by her/his father – cannot be applied since it conflicts with public policy within the meaning of Article 16 of the Law No 218 of 1995.
98. *Corte di Cassazione, 28 December 2006 No 27593* 1097
 For the purposes of obtaining an order for the prompt return of a child pursuant to Articles 8 and 12 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, it shall be preliminary ascertained that the conditions exist whereby the removal or retention of said child is to be considered wrongful within the meaning of Article 3 of said Convention, and, therefore, that said removal or retention has occurred in breach of rights of custody attributed under the law of the State of habitual residence of the child, that were actually exercised, either jointly or exclusively, at the time of its abduction.
99. *Corte di Cassazione (plenary session), 3 January 2007 No 6* 1102
 The requirement that an oral agreement be evidenced in writing, which is provided for by Article 17 of the Brussels Convention of 27 September 1968 in order to validly confer jurisdiction to the courts of a Member State in civil and commercial matters, shall be considered satisfied even if the written evidence originates from the party who relies on said agreement, provided that the other party did not timely raise any objection.
100. *Corte di Cassazione (plenary session), 3 January 2007 No 7* 1105
 The place of delivery of the goods under an international sale and purchase contract involving carriage pursuant to Article 31 of the Vienna Convention of 11 April 1980 is the place where the goods are transmitted to the carrier, unless the parties have derogated from the above, specifically agreeing that the delivery shall occur in a different place in order for the seller to be discharged from its obligation. However, the above must not be confused with the indication of the final destination of the goods in the documents of carriage. Accordingly, if the goods have been delivered to the first carrier in Italy, Italian courts have jurisdiction pursuant to Article 5(1) of the Brussels Convention of 27 September 1968. The solution would not be different under Article 5(1) *lit.* b of EC Regulation No 44/2001 of 22 December 2000.

101. *Naples Tribunal, 4 January 2007* 451
- Pursuant to Article 5(3) of the Brussels Convention of 27 September 1968 – as referred to by Article 3(2) of Law of 31 May 1995 No 218 – Italian courts lack jurisdiction over a claim for damages brought by an Italian citizen against a hospital located in the United States following surgery (more specifically a kidney transplant) whose harmful consequences (more specifically an HIV infection) have become apparent in Italy. In fact, in such a case there is no space-time separation between the place of conduct and the place of injury, since only the discovery of the damages – which have likely been caused by an infection that arose during surgery – has occurred in Italy.
102. *Corte di Cassazione, 19 January 2007 No. 1183* 777
- If the criteria followed for the determination of damages are not indicated in a judgment of the State of Alabama of which recognition (*delibazione*) is sought in Italy, Italian courts may conclude that the order to pay said damages has punitive nature and purposes, thereby considering excessive or disproportionate the amount awarded.
- The fact that, in the Italian legal system, no compensation for damages may have a punitive or sanctioning purpose implies that the awarding of punitive damages is contrary to public policy, and justifies the refusal to recognise the relevant foreign decision.
103. *Corte di Cassazione, 24 January 2007 No 1609* 1108
- After Article 19(1) of the Preliminary Provisions to the Civil Code has been declared constitutionally illegitimate, the economic relationship between spouses of different nationalities (to which Article 30 of the Law of 31 May 1995 No 218 would not apply) are governed, by analogy, pursuant to Article 18 of the Preliminary Provisions to the Civil Code on the personal relationship between spouses, insofar as it refers to the criterion of the last common nationality of the spouses.
104. *Council of State (VI session), 25 January 2007 No 269* 457
- For the purposes of applying the EC Regulation No 1346/2000 of 29 May 2000 on Insolvency Proceedings to the special administration procedure (*procedura di amministrazione straordinaria*) in its particular form laid down by Law Decree of 23 December 2003 No 347, the Minister of Productive Activities (now Minister of the Economic Development) falls within the definition of ‘court’ as set forth by Article 2 *litt. d* of said Regulation when issuing the ministerial decree referred to in Article 3(3) of said Law Decree, which constitutes a ‘judgment in relation to the opening of insolvency proceedings’ within the meaning of Article 2 *litt. e* of said Regulation.
- A ministerial decree opening a special administration procedure (*procedura di amministrazione straordinaria*) pursuant to the Law Decree No 347 of 2003 against a company that has been incorporated and has its registered office in another Member State is illegitimate, if it has been issued without previously verifying that jurisdiction exists in accordance with the provisions of EC Regulation No 1346 of 2000.
- If a company carries out its business activities in the territory of another Member State, where it has its registered office, the fact that its management decisions are or may be controlled by a parent company established in Italy is not sufficient to overcome the presumption laid down by Article 3(1) of EC Regulation No 1346 of 2000, whereby the centre of the main interests of a company shall be located, in the absence of proof to the contrary, in the Member State of its registered office.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 21, 22.

Brussels Convention of 1968: 3, 4, 15.

Community Law: 2, 5, 7, 11, 14, 20.

Community proceedings: 16, 17.

Consumer protection: 9.

Contracts: 18.

Co-operation in criminal matters: 16, 19.

EC Regulation No 44/2001: 6, 12.

EU Citizenship: 10.

Freedom of establishment: 1, 8.

Freedom of movement of persons: 13.

Freedom to provide services: 14.

Treaties and general international rules: 18.

1. *Court of Justice, 13 December 2005, case C-446/03* 511

As Community law now stands, when specific conditions are met, Articles 43 EC and 48 EC preclude provisions of a Member State which prevent a resident parent company from deducting from its taxable profits losses incurred in another Member State by a subsidiary established in that Member State although they allow it to deduct losses incurred by a resident subsidiary.

Member States are free to adopt or to maintain in force rules having the specific purpose of precluding from a tax benefit wholly artificial arrangements whose purpose is to circumvent or escape national tax law.

2. *Court of Justice, 27 June 2006, case C-540/03* 253

The final subparagraph of Articles 4(1), Article 4(6) and Article 8 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification cannot be regarded, either in itself or in that it expressly or impliedly authorises the Member States to act in such a way, as being contrary to the fundamental right to respect for family life, the obligation to have regard to the best interests of children or the principle of non-discrimination on grounds of age, that constitute general principles of Community law as resulting from the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, from those international instruments for the protection of human rights binding all the Member States and from the Charter of Fundamental Rights of the European Union.

3. *Court of Justice, 13 July 2006, case C-4/03* 224

Article 16(4) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as last amended by the 1996 Accession Convention, is to be interpreted as meaning that the rule of exclusive jurisdiction laid down therein concerns all proceedings relating to

the registration or validity of a patent, irrespective of whether the issue is raised by way of an action or a plea in objection.

4. *Court of Justice, 13 July 2006, case C-539/03* 229
- Article 6(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1996 Accession Convention, must be interpreted as meaning that it does not apply in European patent infringement proceedings involving a number of companies established in various Member States in respect of acts committed in one or more of those States even where those companies, which belong to the same group, may have acted in an identical or similar manner in accordance with a common policy elaborated by one of them.
5. *Court of Justice, 13 July 2006, joined cases C-295/04 to 298/04* 1138
- Article 81 EC must be interpreted as meaning that any individual can rely on the invalidity of an agreement or practice prohibited under that article and, where there is a causal relationship between the latter and the harm suffered, claim compensation for that harm. In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the detailed rules governing the exercise of that right, including those on the application of the concept of 'causal relationship', provided that the principles of equivalence and effectiveness are observed.
- In the absence of Community rules governing that field, it is for the domestic legal system of each Member State to set the criteria for determining the extent of the damages for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed. Therefore, if it is possible to award exemplary or punitive damages in domestic actions similar to actions founded on the Community competition rules, it must also be possible to award such damages in actions founded on Community rules. However, Community law does not prevent national courts from taking steps to ensure that the protection of the rights guaranteed by Community law does not entail an unjust enrichment of those who enjoy them.
6. *Court of Justice, 13 July 2006, case C-103/05* 236
- Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State even when that action is regarded under a national provision as inadmissible from the time it is brought in relation to the first defendant.
7. *Court of Justice, 7 September 2006, case C-81/05* 479
- Since the general principle of equality and non-discrimination is a principle of Community law, Member States are bound by the Court's interpretation of that principle, even when the national rules at issue are, according to the constitutional case-law of the Member State concerned, consistent with an equivalent fundamental right recognised by the national legal system.
- The national court must disapply a national rule in breach of the principle of equality as recognised in the Community legal order, regardless of whether or not the national court has been granted competence under national law to do so.
8. *Court of Justice, 12 September 2006, case C-196/04* 242
- Nationals of a Member State cannot attempt, under cover of the rights

created by the Treaty, improperly to circumvent their national legislation, nor can they improperly or fraudulently take advantage of provisions of Community law; However, the fact that a Community national, whether a natural or a legal person, sought to profit from tax advantages in force in a Member State other than his State of residence cannot in itself deprive him of the right to rely on the provisions of the Treaty.

The fact that the company was established in a Member State for the purpose of benefiting from more favourable legislation does not in itself suffice to constitute abuse of freedom of establishment. Therefore the fact that a person decided to establish a company within the *International Financial Services Center* (IFSC) for the avowed purpose of benefiting from the favourable tax regime which that establishment enjoys does not in itself constitute abuse and thus does not preclude reliance on Articles 43 EC and 48 EC.

Articles 43 EC and 48 EC preclude the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, where those profits are subject in that State to a lower level of taxation than that applicable in the first State, unless such inclusion relates only to wholly artificial arrangements intended to escape the national tax normally payable. Accordingly, such a tax measure must not be applied where it is proven, on the basis of objective factors which are ascertainable by third parties, that despite the existence of tax motives that controlled company is actually established in the host Member State and carries on genuine economic activities there.

9. *Court of Justice, 26 October 2006, case C-168/05* 487
 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court seized of an action for annulment of an arbitration award must determine whether the arbitration agreement is void and annul that award where that agreement contains an unfair term, even though the consumer has not pleaded that invalidity in the course of the arbitration proceedings, but only in that of the action for annulment of that award.
10. *Court of Justice, 26 October 2006, case C-192/05* 517
 Article 18 EC precludes national legislation under which the grant of a benefit for civilian war victims is refused solely on the ground that the person concerned, who holds the nationality of the relevant Member State, was resident, not in the territory of that Member State, but in the territory of another Member State at the time when the application was submitted.
11. *Court of Justice, 26 October 2006, case C-302/05* 492
 Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payments in commercial transactions does not affect the enforceability of retention of title clauses against third parties, that are still governed exclusively by the national legal orders of the Member States. Article 11, third paragraph of Italian Legislative Decree No 231 of 9 October 2002, is not contrary to Article 4(1) of such Directive by providing that a retention of title clause must be confirmed on individual invoices for successive supplies bearing a specific date that is prior to any attachment procedure and is duly entered in the accounting records in order for it to be enforceable against third party creditors of the buyer.
12. *Court of Justice, 14 December 2006, case C-283/05* 497
 Article 34(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and

commercial matters is to be interpreted as meaning that it is 'possible' for a defendant to bring proceedings to challenge a default judgment against him only if he was in fact acquainted with its contents, because it was served on him in sufficient time to enable him to arrange for his defence before the courts of the State in which the judgment was given.

13. *Court of Justice, 9 January 2007, case C-1/05* 504
 Community law does not require Member States to make the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State.
14. *Court of Justice, 11 January 2007, case C-208/05* 522
 It is for the national court, to the full extent of its discretion under national law, to interpret and apply domestic law in conformity with the requirements of Community law and, where such an application is not possible, to apply Community law in its entirety in respect of those provisions of the EC Treaty conferring on individuals rights which are judicially enforceable and which the national courts must protect.
15. *Court of Justice, 15 February 2007, case C-292/05* 788
 On a proper construction of the first sentence of the first paragraph of Article 1 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978, 1982 and 1989 Accession Conventions, 'civil matters' within the meaning of that provision does not cover a legal action brought by natural persons in a Contracting State against another Contracting State for compensation in respect of the loss or damage suffered by the successors of the victims of acts perpetrated by armed forces in the course of warfare in the territory of the first State.
16. *Court of Justice, 27 February 2007, case C-354/04 P* 796
 The non inclusion of a judicial remedy allowing for an order for damages before the Court of Justice within the framework of Title VI of the EU Treaty, as provided under Articles 235 and 288, second paragraph, of the EC Treaty, does not prejudice the right of individuals to effective judicial protection set under Article 6(2) EU, since the institutions are anyway subject to review of the conformity of their acts with the treaties and the general principles of law, just like the Member States when they implement the law of the Union.
 The Court of Justice has jurisdiction to give preliminary rulings by virtue of Article 35(1) EU and to review the legality of framework decisions and decisions in actions brought by the EC Commission or by a Member State by virtue of Article 35(6) EU, even with regard to provisions of a common position adopted by the Council under Article 34 (2) *lit.* a, whenever such provisions are intended to produce legal effects in relation to third parties.
17. *Court of Justice, 22 March 2007, case C-15/06 P* 803
 The Regione Siciliana lacks standing to bring an action for annulment of a Commission Decision relating to the cancellation of the aid granted to the Italian Republic by the European Regional Development Fund as infrastructure investment in Sicily, since it is not directly concerned by such a decision within the meaning of the fourth paragraph of Article 230 EC.

18. *Court of Justice, 29 March 2007, case C-111/05* 809

With regard to a complex operation related to the supply and laying of a fibre-optic cable linking two Member States and sited in part outside the territory of the Community, under Article 8(1) *lit.* a of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax, as amended by Council Directive 2002/93/EC of 3 December 2002, the place of supply is deemed to be in the territory of each of those Member States, in succession, pro rata according to the length of cable in its territory.

It is for each of the Member States to determine the extent and limits of its own territory, in accordance with the rules of international public law. Therefore, pursuant to the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, the supply and laying of a fibre-optic cable linking two Member States is not subject to VAT for that part of the transaction which is carried out in the exclusive economic zone, on the continental shelf and at sea.

19. *Court of Justice, 3 May 2007, case C-303/05* 1125

In so far as it lists and defines, in general terms, the different types of legal instruments which may be used in the 'pursuit of the objectives of the Union' set out in Title VI of the EU Treaty, Article 34(2) EU cannot be construed as meaning that the approximation of the laws and regulations of the Member States by the adoption of a framework decision under Article 34(2) *lit.* b EU cannot relate to areas other than those mentioned in Article 31(1) *lit.* e EU and, in particular, the matter of the European arrest warrant.

Article 2(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as far as it dispenses with verification of double criminality in respect of the offences listed therein, does not breach Article 6(2) EU and, more specifically, the principle of legality of criminal offences and penalties and the principle of equality and non-discrimination.

20. *Court of Justice, 7 June 2007, joined cases C-222/05 to 225/05* 1144

The principle of effectiveness does not impose a duty on national courts to raise a plea based on a Community provision of their own motion, irrespective of the importance of that provision to the Community legal order, where the parties are given a genuine opportunity to raise a plea based on Community law before a national court.

21. *Court of Justice, 7 June 2007, case C-80/06* 1134

An individual cannot rely, in the context of legal proceedings against another individual concerning contractual liability, on the infringement by the latter of a Commission decision which is binding only upon the Member States to whom the decision is addressed.

22. *Court of Justice, 14 June 2007, case C-422/05* 1149

Although the Member States are not obliged to adopt measures to transpose a directive before the end of the period prescribed for transposition, it follows from the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC and from that directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed by that directive.

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