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1. *Corte di Cassazione (plenary session), 14 June 2006 No 13689* 1114
 Pursuant to Article 28(1) of the Warsaw Convention of 12 October 1929 for the Unification of Certain Rules Relating to International Carriage by Air, Italian courts do not have jurisdiction over an action for damages brought against an air carrier if the establishment of the carrier by which the contract has been made is not located in Italy, due to the fact that the air tickets have been purchased from a travel agency that was not acting on the basis of a contract with said carrier.
2. *Corte di Cassazione (plenary session), 21 July 2006 No 16751* 229
 Italian courts lack jurisdiction over a claim of an individual to receive directly and personally, as a citizen of a Member State that has adhered to the European System of Central Banks, a proportional part of the income arising from the issuance of the Euro. In fact, Italian courts (both ordinary and administrative) cannot subject to judicial review the manner in which the State performs its sovereign functions, which include any decision on monetary policy.
3. *Corte di Cassazione, 21 July 2006 No 16830* 230
 Only the parent having the care of the child is entitled to initiate proceedings for her/his return, whereas the other parent may request to secure the effective exercise of the rights of access, pursuant to Article 7 of Law 15 January 1994 No 64, which has implemented the Hague Convention of 25 October 1980 on International Child Abduction.
4. *Corte di Cassazione, 26 July 2006 No 17004* 231
 In case of collective redundancy carried out by an employer who does not qualify as an entrepreneur, Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies, as lastly amended by Directive 98/59/EC, does not apply even after the decision of the EC Court of Justice declaring that the limitation set forth by the law implementing it in Italy, whereby it applies only to cases where the employer is also an entrepreneur, does not conform to EC law. In fact, decisions of the Court of Justice are directly applicable and therefore lead to the non-application of the domestic provisions being in conflict with them only if they refer to Community acts that are directly enforceable. This requirement is lacking in the case in question and the violation of Directive 75/129/EEC by the implementing domestic provisions does not amount to a violation of Article 117 of the Constitution, which, far from modifying the relationship between the two sources of law, makes explicit a concept that can already be implicitly inferred from Article 11 of the Constitution, i.e. the duty of both the national and the regional legislature to fulfil Community obligations.
5. *Corte di Cassazione, 22 August 2006 No 18220* 239
 For the purposes of ascertaining the applicability of the prohibition against administrative expulsion, which is provided for by Article 19(2)(c) of Legislative Decree 25 July 1998 No 286 to the benefit of a foreigner living with her/his spouse being an Italian citizen, it shall be excluded that the spouses live together if a condition of legal or factual separation is ascertained which determines the cessation of the material and spiritual relationship on which the common domestic life is based, i.e. of the *consortium vitae*.
6. *Corte di Cassazione, 25 August 2006 No 18552* 240
 Law 3 April 1979 No 95 on the special administration procedure (*amministrazione straordinaria*) for large companies in difficulties does not

conflict with the prohibition of State aids laid down by Article 87 EC Treaty as a whole, but only with respect to those specific aspects that derogate from ordinary bankruptcy procedure. The claw-back claim laid down by Article 67 of the Bankruptcy Law does not fall within such specific aspects, regardless of whether it is brought during the phase aimed at preserving the company's assets (*fase conservativa*) or during the winding-up phase (*fase liquidatoria*) of the special administration procedure.

7. *Council of State, Sixth Division, 25 September 2006 No 5605* 243
- Disputes concerning the recognition of the status of refugee (similarly to those concerning the recognition of the right of asylum) fall within the jurisdiction of ordinary courts, since they concern a specific personal right. In particular, the position of political refugee pursuant to the Geneva Convention of 28 July 1951 constitutes a legal concept falling within the category of status, and therefore of the rights, of persons, with the consequence that all decisions issued by the competent authorities on these matters have merely a declaratory (and not a constituent) nature.
8. *Corte di Cassazione (criminal), 2 October 2006 No 32625* 244
- Pursuant to Articles 698(1) and 705(2) of the Code of Criminal Procedure, extradition cannot be granted if there is reason to believe that the convict will be subjected to punishments that imply a violation of any fundamental right of a person, such as the prohibition of forced or compulsory labour.
9. *Corte di Cassazione (criminal), 10 October 2006 No 33980* 245
- Pursuant to Article 705(2) of the Code of Criminal Procedure, extradition cannot be granted if the crime in respect of which it has been requested is punishable, pursuant to the law of the requesting State, with the death penalty, being irrelevant that said State has given reassurances that said penalty will not be applied to the person being extradited.
10. *Corte di Cassazione, 16 October 2006 No 22125* 247
- In light of the Community case-law interpreting Directive 77/187/EEC, a contract providing for the outsourcing of certain services cannot be considered as implying a transfer of a business as a going concern (*cessione di azienda*), if said services do not constitute a branch of business as a going concern (*ramo di azienda*) pursuant to Article 2112 of the Civil Code, as in force prior to the amendments made by Legislative Decree 2 February 2001 No 18 implementing Directive 98/50/EC. Furthermore, it is not necessary to request a preliminary ruling to the EC Court of Justice, given that EC Directives do not directly regulate the relationships among private individuals and that the domestic laws implementing EC Directives on employment matters can derogate from the provisions of the latter in a sense more favourable to the employees.
11. *Corte di Cassazione (plenary session), order 17 October 2006 No 22247* 547
- Italian courts have jurisdiction to hear a dispute concerning the ownership of certain paintings and furnishings being part of a marital furniture, which has been brought by the wife against her husband, who is a consul of a foreign State. In fact, the immunity of foreign States from jurisdiction is limited to non-commercial State activities, whereas the case in question concerns private law transactions, even if, as alleged, the Consulate is the (sham) owner of said goods.

12. *Lombardy Regional Administrative Tribunal, First Division, 17 October 2006 No 2016* 546
 For the purposes of granting the Italian citizenship, the income of the applicant and of the other members of her/his family shall be taken into account, assuming as a minimum level the one established for the purpose of the exemption from the requirement to participate to the health care expenditure.
13. *Corte di Cassazione (plenary session), 24 October 2006 No 22818* 549
 The defendant in an action for legal separation, who has made remarks only on the question concerning the law to be applied by the court, shall be deemed to have implicitly accepted the jurisdiction of Italian courts pursuant to Article 4 of Law 31 May 1995 No 218, pursuant to which the defendant is barred from challenging the jurisdiction of Italian courts if she/he has not raised the relevant objection in her/his first pleading.
14. *Corte di Cassazione, 3 November 2006 No 23598* 549
 Pursuant to Articles 19 and 30(1-*bis*) of Legislative Decree 25 July 1998 No 286, a foreigner who marries an Italian citizen has the right to stay in Italy – for the purposes of both the issue of the relevant stay permit and the prohibition from expulsion – only insofar as the marriage is accompanied by actual cohabitation, and until said condition continues to exist. The relevant burden of proof is on the foreigner, since cohabitation cannot be presumed based only on the wedlock or on the registers of births, marriages and deaths.
15. *Corte di Cassazione, 13 November 2006 No 24170* 550
 The exclusion of non-EU citizens from access to public employment (subject to the exceptions expressly laid down by the law) cannot be considered constitutionally illegitimate since this question falls outside of the area of fundamental rights and such choice of the legislature is justified by Articles 51, 97 and 98 of the Constitution, even with respect to the legislation for the support of disabled workers.
16. *Corte di Cassazione, 6 December 2006 No 26174* 553
 The service of documents by mail at the address of the served party in Argentina is not admissible, since Argentina has objected to the transmission of documents through the postal service, availing itself of the possibility granted by Article 10 of Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.
17. *Constitutional Court, order 22 December 2006 No 444* 554
 The question of constitutional legitimacy of Article 19(2) of Legislative Decree 25 July 1998 No 286 – raised with reference to Articles 2, 30, 31 and 32 of the Constitution – insofar as it provides that an expulsion decree shall be enforced even against a non-EU citizen having an affective relation with a woman who is pregnant, is manifestly unfounded.
18. *Corte di Cassazione (criminal), 17 January 2007 No 1072* 812
 For the purposes of the definition of terrorism, the express reference to international sources laid down, for integrative purposes, by Article 270-*sexies* of Criminal Code – introduced by Law 31 July 2005 No 155 implementing Framework Decision 2002/475/JHA of the European Union – creates a mechanism, based on a dynamic or formal reference, that ensures the automatic harmonization of the legislations of the States that are part of the

international community in order to organise all means necessary for the common repression of international terrorism. To such definition concurs the UN Convention of 9 December 1999 for the Suppression of the Financing of Terrorism; however, the inclusion of a group among the terrorist groups listed in UN Resolution No 1267/99 is not enough to show its terroristic nature.

19. *Corte di Cassazione, 25 January 2007 No 1656* 820
 Pursuant to Article 29 of Legislative Decree 25 July 1998 No 286, a non-EU citizen can obtain an entry visa for Italy if she/he is less than eighteen years old. For this purpose, the certificate attesting the age of a person requesting an entry visa for Italy – which is issued by the foreign State – has in the Italian legal system the same value as any other evidence. Accordingly, Italian consular authorities are allowed to carry out any verification necessary in order to ascertain the age of said person.
20. *Milan Tribunal, 30 January 2007* 133
 For the purposes of interpreting the notion of ‘territorial waters’ in the Italian legal system, the meaning given to said notion at international level cannot be disregarded. Accordingly, regard shall be given primarily to the Montego Bay Convention of 10 December 1982 on the Law of the Sea (Article 8, first paragraph) and to the Geneva Convention of 29 April 1958 on the Continental Shelf (Article 5, first paragraph), whereby said notion shall be deemed to include not only lakes, rivers and channels, but also ‘waters on the landward side of the baseline of the territorial sea’.
21. *Milan Tribunal, 2 February 2007* 137
 Pursuant to Article 28 of Law 31 May 1995 No 218, the formal validity of a marriage can be determined through the law of the place of celebration or the common national law of the spouses.
 A marriage between a Pakistani citizen resident in Italy and another Pakistani citizen resident in that State that has been celebrated by telephone is valid since said form of celebration is contemplated by the common national law of the spouses.
22. *Corte di Cassazione (criminal, plenary session), 5 February 2007 No 4614* 138
 Insofar as Article 18(e) of Law 22 April 2005 No 69 (which has implemented Framework Decision No 2002/584/JHA on the European arrest warrant) makes the extradition of a person conditional upon the existence in the law of the Member State issuing the warrant of maximum terms for preventive detention, it shall be interpreted in the sense that Italian judicial authorities shall have the duty to verify the actual level of guarantees offered by the requesting State and to assess whether said guarantees can provide a protection similar to that ensured in the Italian legal system by the provision of maximum terms for preventive detention. Accordingly, for the purposes of the extradition, Italian judicial authorities shall verify in each relevant case whether the law of the Member State issuing the arrest warrant (in the present case, Germany), even in the absence of a rule expressly setting forth a term for preventive detention, contains an implicit time limit which can be inferred from other procedural rules whereby a judicial procedure shall be held, mandatorily and at pre-determined intervals, with the aim of ascertaining whether the detention can legitimately continue or, alternatively, shall cease.
23. *Corte di Cassazione (plenary session), 7 February 2007 No 2692* 1071
 Pursuant to Article 3(2), last sentence of Law 31 May 1995 No 218, the

jurisdiction of Italian courts in matters falling outside the scope of application of the Brussels Convention of 27 September 1968 – such as bankruptcy matters – is determined by applying the criteria for the determination of venue laid down by Italian law.

Italian courts have jurisdiction over a claw-back claim (*azione revocatoria fallimentare*) brought by a trustee in bankruptcy against a foreign bank (in this case, a bank having its seat in the Republic of San Marino) if the relevant bankruptcy proceedings have been opened in Italy.

Neither Article 62 of Law No 218 of 1995, which concerns obligations in tort, nor Article 61 of the same Law [which concerns obligations arising by operation of law], applies for the purposes of determining the law governing a claw-back claim brought by a trustee in bankruptcy against a bank of the Republic of San Marino in a case where the relevant bankruptcy proceedings have been opened in Italy. In fact, said action cannot be considered as an action aimed at ascertaining the existence of, and at enforcing, an obligation arising by operation of law. Nor can Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings apply since the bank being sued does not have its seat in a Member State of the European Union.

Italian law, being the law applicable to the related bankruptcy proceedings, applies to the aforesaid action due to the indissoluble link that exists between said action and the bankruptcy proceedings, in light of both the origin of said action and the function that it is aimed at accomplishing.

24. *Corte di Cassazione (plenary session), order 15 February 2007 No 3364* 156

Pursuant to Article 27 of EC Regulation No 44/2001 of 22 December 2000, the court subsequently seized is required to stay proceedings in case of *lis pendens*, subject – as far as the Italian legal system is concerned – to the right to initiate special proceedings for a ruling on venue (*regolamento di competenza*).

For the purposes of the decision to stay proceedings, the court shall consider exclusively the time when each of the courts involved is deemed to have been seized in accordance with Article 30 of said EC Regulation. Therefore, where proceedings are to be initiated through service of documents, the court shall consider the delivery of the document instituting the proceedings to the authority that is competent to serve it, since the verification that said document has actually been served falls within the competence of the court seized through it.

The court subsequently seized cannot give relevance to a clause conferring jurisdiction whereby exclusive jurisdiction is attributed to it, since the procedural consequences of exclusive jurisdiction arising from similar clauses are not the same as those applicable in the cases of exclusive jurisdiction set forth in Article 22 of said EC Regulation with respect to the matters specified therein.

25. *Corte di Cassazione (plenary session), 19 February 2007 No 3718* 820

There is no immunity from jurisdiction – and, consequently, Italian courts have jurisdiction – with respect to a labour dispute brought by an employee of an organisation that does not have international legal personality against said organisation. In fact, the fundamental principle of judicial protection laid down by Article 24 of the Constitution yields to the sovereignty of States, but cannot be overruled by the provisions of a treaty freely entered into by the State, as is the case for a seat agreement. Accordingly, the fact that no internal procedures suitable to guarantee judicial protection before an impartial and independent body have been implemented within said organisation renders ineffective the provision on immunity laid down in the seat agreement.

26. *Corte di Cassazione (plenary session), order 20 February 2007 No 3841* 160
- The principle laid down by Article 122 of the Code of Civil Procedure – whereby the use of the Italian language is mandatory – applies to the acts that shall be characterised as acts of the proceedings in a literal sense, and not to the documents drafted by a party to said proceedings. Accordingly, it is not necessary to appoint a translator for the purpose of understanding a document that has been drafted in a language understood by both the court and the parties.
- Pursuant to Article 23(1) of EC Regulation No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a dispute on contracts concerning transactions on derivative instruments that contain a clause conferring jurisdiction to English courts, since it is possible to maintain that said clause is null and void only if the alleged lack of clarity and accuracy makes it objectively difficult to identify the object of the clause. It shall also be excluded that the fact that any mandatory rules within the meaning of Article 17 of Law 31 May 1995 No 218 (*norme di applicazione necessaria*) may apply to the case in question can have any impact on the different issue of determining criteria conferring jurisdiction.
- Pursuant to Article 23(1) of EC Regulation No 44/2001, in case of an agreement conferring jurisdiction to the courts of a Member State, such jurisdiction shall be exclusive unless the parties have agreed otherwise.
- Since the existence of Italian jurisdiction has to be verified with exclusive reference to the main claim, the fact that a second claim has been lodged, objectively subordinated to another claim in respect of which jurisdiction has been validly conferred to a foreign court, implies that the subordinated claim shall be heard by said court as well.
27. *Corte di Cassazione, 22 February 2007 No 4155* 824
- The holder of a ‘uniform Schengen visa’ has title to enter, but not to stay in, the Italian territory, and is therefore required to obtain a valid residence title in Italy within eight working days from the date of her/his entry. Said date may be ascertained on the basis of both oral and written evidence.
28. *Corte di Cassazione (plenary session), order 28 February 2007 No 4634* 168
- Pursuant to both Article 17 of the Brussels Convention of 27 September 1968 and Article 23 of EC Regulation No 44/2001 of 22 December 2000, a specific acceptance in writing, as per Article 1341 of the Civil Code, of a clause derogating from Italian jurisdiction is not required for the validity of said clause.
- The requirement whereby a clause derogating from jurisdiction shall be in writing – which is laid down by Article 23(a) of EC Regulation No 44/2001 – is satisfied even if the relevant contract has been entered into by tacit acceptance, i.e. through its performance pursuant to Article 1327 of the Civil Code, if during the commercial transactions that had taken place before such contract said clause had been regularly accepted in writing and there are no elements that may lead to presume that the will of any party is contrary to said uninterrupted practice.
29. *Corte di Cassazione (plenary session), 15 March 2007 No 5978* 173
- Article 6(2) of the Brussels Convention of 27 September 1968 applies only to actions on a ‘typical guarantee’ (*garanzia propria*), i.e. to those actions where the main claim and the guarantee claim have the same cause of action, or where an objective link exists between the causes of action of the two claims, or where

the event alleged in the main claim and in the guarantee claim as the basis for liability is the same.

Italian courts do not have jurisdiction over actions on an 'atypical guarantee' (*garanzia impropria*) brought in Italy in the context of proceedings concerning the subrogation of the insurer into the right of the insured against the carrier for the loss of goods in a fire occurred in a railway terminal in Belgium, against the manager of the terminal and by the latter against the owner of the same, since the relevant liabilities arise from the breach of different contractual obligations that are not interdependent.

30. *Rovereto Tribunal, 15 March 2007* 179

English law, which has been chosen by the parties in accordance with Article 3 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations, applies to a licence and distribution contract.

A liquidated damages clause governed by English law – whose provisions shall be ascertained by the court of its own motion, also with the aid of an expert pursuant to Article 14 of Law 31 May 1995 No 218 – allows for a protection similar to that provided for under Article 1384 of the Civil Code on the reduction of liquidated damages (*clausola penale*).

Article 1384 of the Civil Code cannot apply as a mandatory rule of the law of the forum since pursuant to Article 7(2) of the 1980 Rome Convention said mandatory rules shall apply only if the interest protected by them is not protected under the law applicable to the contract.

31. *Mantova Tribunal, order 20 March 2007* 190

Italian courts have jurisdiction in relation to the appointment of a guardian/manager (*amministratore di sostegno*) as per Article 404 *et seq.* of the Civil Code in favour of an Italian citizen resident abroad both pursuant to Article 9 of Law 31 May 1995 No 218, if the proceedings for the appointment of the guardian/manager are non-contentious proceedings (*procedimento di volontaria giurisdizione*) – which is the typical legal frame for such an appointment – and based on the Italian nationality of the interested party – where the decision on such appointment is seen as affecting the inviolable rights of the beneficiary and is therefore issued in a contentious proceeding on the status or legal capacity of natural persons – since Article 3 of said Law concerns the limits of Italian jurisdiction with respect to foreigners.

32. *Turin Tribunal, 27 March 2007* 194

Pursuant to Article 27 of EC Regulation No 44/2001 of 22 December 2000, the parties are the same if the plaintiff in an action brought in Italy is a railway company and another railway company is sued in an action in France pursuant to Article 55(3) of the uniform rules attached to the Convention of 9 May 1980 concerning International Carriage by Rail since this is a case of substitution of parties.

The insurance companies intervening in the proceedings and exercising their right of subrogation into the rights of the plaintiff pursuant to Article 1916 of the Civil Code shall be considered as a single party pursuant to Article 27 of EC Regulation No 44/2001, even if formally they are different parties, since they have identical and indivisible interests.

33. *Corte di Cassazione, 31 March 2007 No 8080* 825

In a case regarding mandatory insurance against liabilities arising from the circulation of motor vehicles, where a direct action against the Italian Central Office (*Ufficio Centrale Italiano*) and a tort liability action against a foreigner are

brought simultaneously, the foreigner shall be served with the summon in accordance with the law. As a consequence, if the document is served exclusively to the Italian Central Office, the service to the foreigner shall be considered as non-existent and it shall be impossible to rule on the action brought against her/him.

34. *Corte di Cassazione (plenary session), order 2 April 2007 No 8095* 826

Article 8(2) of 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as interpreted in light of the principle of protection of the weak party to the insurance contract, shall be construed in the sense that the insured party and the beneficiary of the insurance are in the same position as the party that has entered into the insurance contract. Accordingly, an English insurance company can be validly sued in Italian courts, as the courts where an Italian company, that is the beneficiary of an insurance contract entered into by a company having its seat in Somalia, is domiciled.

Jurisdiction is not validly conferred to English courts pursuant to Article 17 of Brussels Convention by virtue of a clause contained in a model (in this case, the 'Mar 1991') laying down various terms and conditions, if the documents signed by the parties make reference to said model in its entirety, i.e. there is no specific reference to the clause conferring jurisdiction and no evidence is given that a usage of which the parties ought to have been aware exists whereby a prorogation of jurisdiction as per the above is to be considered valid.

35. *Corte di Cassazione (plenary session), 3 April 2007 No 8224* 201

According to Article 5(1) of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over a defendant domiciled in Germany with respect to a claim for the discharge of an obligation to pay the consideration due under a berthing contract if the creditor is domiciled in Italy, since, pursuant to Article 1182, third paragraph of the Civil Code, an obligation to pay a monetary amount shall be discharged at the domicile of the creditor.

36. *Corte di Cassazione, 4 April 2007 No 8481* 204

The removal abroad of a child by the parent having the care of her/his person is not wrongful pursuant to the Hague Convention of 25 October 1980, since the notion of 'rights of custody' contemplated by Article 5 includes the right of the parent having the care of the child to determine the child's place of residence. The parent having the right of access to the child therefore is not entitled to request her/his prompt return pursuant to Article 8 of said Convention.

Within the proceedings for the return of children wrongfully removed regulated by Law 15 January 1994 No 64, which has implemented the 1980 Hague Convention, the Juvenile Court has discretion in determining whether it is appropriate to hear the child and the manner in which she/he shall be heard, provided that it is not necessary to formally summon the child.

When rejecting the application for the return of a child having been removed abroad filed by the parent who does not have the care of the child, the Juvenile Court cannot rule on the manner for the exercise of the rights of access of such parent in the absence of his/her request. In fact, in such a case the relief granted by the Court would go beyond the remedy sought (*vizio di ultrapetizione*).

37. *Corte di Cassazione, 16 April 2007 No 9094* 211

In assessing the occurrence of circumstances that may prevent the return of

a child wrongfully removed according to Article 13(1)(b) of the Hague Convention of 25 October 1980 the Juvenile Court is not subject to a mandatory requirement to hear the child. However, pursuant to Article 6 of the Strasbourg Convention of 25 January 1996 on the Exercise of Children's Rights, the requirement to hear a child having sufficient understanding can be excluded only if that would be manifestly contrary to the best interests of the child, i.e. if it could cause serious prejudice to her/his serenity.

38. *Corte di Cassazione, 2 May 2007 No 10135* 833

The 'serious reasons' related to the psychological and physical development of a foreign child who is in Italy, which allow – pursuant to Article 31(3) of Legislative Decree 25 July 1998 No 286 – the issue of a permit to enter or stay in Italy to a relative of said child even where the expulsion of said relative has been ordered, occur in case of emergencies or fortuitous and exceptional circumstances that create a serious risk for the normal development of the personality of the child, so as to require that a parent is present in the Italian territory to deal with them.

39. *Corte di Cassazione, 4 May 2007 No 10215* 214

A foreign law that does not prohibit summary dismissals can theoretically be considered in conflict with public policy within the meaning of Article 16 of Law 31 May 1995 No 218. However, the competent court shall in any case carry out the relevant verification based on the facts of the case.

International public policy does not necessarily coincide with internal public policy, since otherwise conflict of law rules could operate only if they would lead to the application of foreign substantive provisions whose contents are similar to the provisions of Italian law.

40. *Corte di Cassazione, 9 May 2007 No 10549* 216

The merely negative content of the public policy clause set forth in Article 16 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations is not relevant for the purpose of determining the law governing an international employment contract. Therefore, reference shall be made to another source of law, which can only be found in the principle laid down by Article 16 of Law 31 May 1995 No 218.

Pursuant to Article 14 of Law No 218 of 1995, foreign law shall be ascertained by the court of its own motion.

The law of the State of New York on freedom of withdrawal from employment relationships is contrary to public policy as it provides no protection against unfair dismissal. The consequent application of Italian law implies also the operation of the guarantees provided for by it in case of wrongful dismissal.

41. *Corte di Cassazione (plenary session), order 14 May 2007 No 10941* 221

An order of the Tribunal whereby a summary injunction (*decreto ingiuntivo*) that has been challenged is declared provisionally enforceable does not preclude the filing of an application for a preliminary ruling on jurisdiction.

Pursuant to Article 5(1)(b) of EC Regulation No 44/2001 of 22 December 2000, the place of delivery of the goods shall be determined based on Article 31 of the Vienna Convention on Contracts for the International Sale of Goods, whereby, absent any specific indication, the delivery is deemed to have been made upon handing over of the goods to the first carrier.

42. *Corte di Cassazione, order 15 May 2007 No 11185* 224
- The ascertainment of international *lis pendens* pursuant to Article 7 of Law 31 May 1995 No 218 does not qualify as a question of jurisdiction and cannot therefore constitute the object of a preliminary ruling on jurisdiction. On the contrary, said ascertainment represents a case of necessary suspension of the proceedings, thus making it possible to initiate the mandatory special proceedings for a ruling on venue (*regolamento necessario di competenza*).
- The stay of proceedings pursuant to Article 7 of Law No 218 of 1995 is necessary if a real possibility of conflict between final judgments rendered in the Italian and the foreign proceedings exists and if the two actions in question have the same object and cause of action. The latter circumstance occurs if the relevant claims concern the same legal relationship, even if they do not exactly coincide, in accordance to the interpretation given to the same notion set forth in Article 21 of the Brussels Convention of 27 September 1968.
43. *Corte di Cassazione (plenary session), 24 May 2007 No 12067* 226
- Article 24 of EC Regulation No 44/2001 of 22 December 2000 on tacit prorogation of jurisdiction does not apply in a case where the lack of jurisdiction has been timely raised and the court has ruled on said objection and, therefore, an issue has arisen as to the means for submitting again this issue to the appellate court, so as to avoid that the ruling on jurisdiction becomes *res iudicata*.
- Pursuant to Article 25 of EC Regulation No 44/2001 – as it was already the case under Article 19 of the Brussels Convention of 27 September 1968, as interpreted by the EC Court of Justice in its decision dated 15 November 1983, case 288/1982 (*Duijnstee v Goderbauer*) – a national court shall declare of its own motion that it lacks jurisdiction only if the relevant claim falls among those over which other courts have exclusive jurisdiction, even though the applicable procedural rules limit the investigation of the court – in case of an appeal to the *Corte di Cassazione* – to the evidence alleged by the parties.
- A national court of last instance shall not refer a question of interpretation to the EC Court of Justice if it does not deem that said question is relevant for the purposes of its decision, or if it believes that the matter in question is *acte clair*, which, due to the existence of previous rulings of the Court of Justice or due to the ‘obviousness’ of the relevant interpretation, makes it superfluous (or not mandatory) to request a preliminary ruling.
44. *Corte di Cassazione, 25 May 2007 No 12309* 834
- Pursuant to Article 12 of Law 31 May 1995 No 218, a power of attorney *ad litem* to be used in proceedings to be held in Italy is governed by Italian procedural law even though granted abroad. Under Italian law the formal requirements of such power of attorney, including the form of a notarial deed or document with authenticated signature, are governed by the law applicable to the substance of the case. As a consequence, the formal validity of such power of attorney shall be ascertained in accordance with the law of the place where it has been granted, provided that it is in any case necessary that the typical requirements for the authentication, i.e. that the identity of the signatory is verified and that the signature is made in the presence of a public official, can be verified on the basis of the letter of the power of attorney. Said requirements are not satisfied in case of a mere ‘vu’ certification made by a Swiss notary in a date different from that in which the power of attorney has been signed.
45. *Corte di Cassazione, 5 June 2007 No 13184* 836
- In a case concerning a brokerage contract entered into between two foreign

citizens, whose applicable law shall be identified based on Article 25 of Preliminary Provisions to the Civil Code, the party appealing to the *Corte di Cassazione* and objecting that Italian law, instead of a foreign law, has been applied by the lower court has the burden of specifying which is the different rule or principle of foreign law that is actually applicable.

46. *Corte di Cassazione (plenary session), order 14 June 2007 No 13891* 505

The requirement laid down in Article 23(1)(a) of EC Regulation No 44/2001 of 22 December 2000, pursuant to which an agreement conferring jurisdiction is valid if it is in writing, is not satisfied in case of a forum selection clause contained in a form that is signed by only one of the parties. In fact, it is not sufficient for this purpose that the other party has drafted said form and has thereafter behaved in a way that confirms its adherence to said agreement.

Pursuant to Article 23 of EC Regulation No 44/2001, the tacit acceptance of a clause derogating from Italian jurisdiction by way of a conclusive behaviour – i.e. through the performance of the relevant contract – may occur only if, before the relevant contractual relationship, commercial transactions had taken place in which said clause has been regularly accepted in writing and constantly applied and there are no elements that may lead to presume that the will of any party is contrary to said uninterrupted practice.

The notion of ‘place of delivery’ referred to in Article 5(1)(b) of EC Regulation No 44/2001 shall be interpreted in light of Article 31 of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods. Therefore, Italian courts have jurisdiction over a dispute concerning a sale and purchase contract involving the carriage of goods, if the latter have been handed over to the first carrier in Italy for their subsequent transmission to the buyer.

47. *Corte di Cassazione (plenary session), 14 June 2007 No 13894* 741

Pursuant to Article 17 of the Brussels Convention of 27 September 1968, the validity of a clause conferring jurisdiction is conditional only upon the fulfilment of the formal requirements prescribed for the expression of consent by the parties, and therefore is not subject to any assessment of the content of the underlying legal relationship.

The fact that two contracts – i.e., in this case, an exclusive sale contract and a bailment contract – are linked does not have any effect on jurisdiction.

48. *Corte di Cassazione, 15 June 2007 No 14031* 1116

Given that Article 14 of Law No 218 of 1995 does not apply to proceedings initiated prior to its entry into force, a party invoking in her/his favour the application of foreign law shall specifically identify said foreign law and procure that the court is informed about its contents. Absent any allegation of said party as to the contents of the foreign law, the court is allowed to make reference to the provisions of Italian law if it is unable to ascertain such contents on the basis of the documents of the proceedings or on its own knowledge.

49. *Corte di Cassazione (plenary session), order 20 June 2007 No 14299* 511

Since a clause on freight and loading costs included in a sales contract does not imply an agreement of the parties as to the place of delivery of the goods, such place shall be determined pursuant to Article 5(1)(b) of EC Regulation No 44/2001 of 22 December 2000 with reference to the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, and particularly to Article 31 of said Convention.

50. *Corte di Cassazione (plenary session), order 20 June 2007 No 14300* 511
- All persons who are parties to the pending proceedings on the merits are necessary parties to the special proceedings for a preliminary ruling on jurisdiction, since any question relating to the standing (*legittimazione*) of such parties is irrelevant to said special proceeding.
- Pursuant to Article 5(1)(b) of EC Regulation No 44/2001 of 22 December 2000, absent any agreement of the parties as to the place of delivery of the goods under a sale and purchase contract, reference shall be made directly to the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, and particularly to Article 31 of said Convention, for the purpose of determining said place.
51. *Corte di Cassazione (plenary session), 22 June 2007 No 14570* 516
- Articles 75 and 77 of Code of Civil Procedure and the Vienna Convention of 18 April 1961 on Diplomatic Relations allow the service of a judicial document to a foreign State to be made through service of the same to the ambassador of said State accredited in Italy.
- The presence in Italy of the ambassador of the State sued does not prevent the plaintiff from summoning the foreign State directly, by serving the statement of claim and the relevant judgment directly in such State to the body that represents it, both at the national and international level, in private-law relationships. However, said presence excludes the existence of 'special circumstances or particular needs of celerity' that justify the service of documents pursuant to Article 151 of Code of Civil Procedure.
- Pursuant to Article 142 of Code of Civil Procedure, in case of service of documents to a person who is not resident or domiciled and does not have her/his abode (*dimora*) in Italy, the rule laid down by Article 151 of Code of Civil Procedure applies only as a subsidiary criterion, absent any provision of international conventions or in case said provisions do not apply. The service of documents abroad through fax or registered letter without return receipt must be considered as non-existent (*inesistente*), since the rule laid down by said Article 151 does not permit to overcome the need to comply with the constitutional guarantees concerning the right of defence, the principle of *audi alteram partem* and the requirement that the form of any act be consistent with its purpose.
52. *Corte di Cassazione (criminal), 22 June 2007 No 24785* 1117
- According to the principle of specialty, which is laid down by Article 14(1) of European Convention of 13 December 1957 on Extradition and by Article 712 of the Code of Criminal Procedure, the offer and granting of the extradition are subject to the condition that the person who shall be extradited shall not be proceeded against, sentenced or restricted in her/his personal freedom for any offence committed prior to her/his surrender other than that for which she/he was extradited. The possibility to extend the application of said principle to precautionary measures for the prevention of crimes (*misure di prevenzione*) is still the object of conflicting case-law, which needs to be settled by the plenary session of the *Corte di Cassazione*.
53. *Corte di Cassazione, 27 June 2007 No 14837* 1120
- Under the Brussels Convention of 23 April 1970 on Travel Contracts (CCV) a travel organizer entrusting to a third party the provision of services does not incur in strict liability but in a liability for slight negligence (*colpa lieve*). In order to be relieved from such liability, the travel organizer shall prove that it

has acted diligently in selecting the person to whom the performance of the services has been entrusted. Accordingly, he shall not be held liable for the damages suffered by its clients during the travel, if it is clear from the facts of the case that, even if a different person would have been selected to perform the services, said damages would have nevertheless occurred.

54. *Corte di Cassazione, 2 July 2007 No 14960* 524

In light of the different protection granted by the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction to the right of access and the right of custody, the situation existing before the abduction shall be restored only in case of breach of the latter – regardless of whether they have been granted to only one of the parents or to both parents jointly.

Pursuant to Article 21 of the 1980 Hague Convention, the effective exercise of the rights of access by the parent who does not have the custody of the child shall be secured, with the co-operation of the Central Authority, even by establishing a new relationship between said parent and the child, in light of the different environment to which the child has been moved.

55. *Corte di Cassazione, 19 July 2007 No 16017* 533

The principle of public policy, pursuant to which employees cannot be dismissed without a good reason related to their skills or behaviour or to the needs concerning the operation of the business, is not infringed by the law of the State of New York if it provides in any case for a verification of the employer's decision to dismiss an employee.

The fact that no severance pay (*trattamento di fine rapporto*) is granted to an employee is not contrary to public policy, provided that the overall remuneration of said employee is higher than the remuneration to which she/he would have been entitled pursuant to the national legislation based on which she/he has made her/his payment claim.

The fact that no payment in substitution of the advance notice of dismissal (*indennità sostitutiva del preavviso di licenziamento*) is granted is contrary to public policy since said payment constitutes a guarantee aimed at protecting a fundamental right of the employee.

56. *Corte di Cassazione, 20 July 2007 No 16089* 1121

In proceedings initiated before the entry into force of Law 31 May 1995 No 218, the interested party has the burden of identifying the foreign law that it requests to apply and of submitting the documentation that enables the court to form its opinion on the regulation of the legal relationship in question.

57. *Corte di Cassazione, 20 July 2007 No 16163* 537

In case the Court seized for the enforcement in Italy of certain decisions issued in Germany, as per Article 31 of the Brussels Convention of 27 September 1968, has declared that the requirements for recognition of said decisions provided for by Italian law are satisfied and has thus issued an enforcement decision pursuant to Article 67 of Law 31 May 1995 No 218, the latter may not be challenged pursuant to Article 36 of the said Convention. In fact, the sole remedy available against said decision is the appeal to the *Corte di Cassazione*.

58. *Corte di Cassazione (plenary session), 24 July 2007 No 16296* 1122

Italian courts do not have jurisdiction over a dispute concerning a supply contract (*contratto di somministrazione*) entered into between an Italian entrepreneur and a foreign entrepreneur where the Italian plaintiff seeks a declaration ascertaining that the foreign defendant has no right to exclusivity.

In fact, neither the criterion of the general forum of the defendant, nor the criterion of the place of performance laid down by Article 5(1) of the Brussels Convention of 27 September 1968 applies. Pursuant to Article 12 of Law 31 May 1995 No 218, a power of attorney *ad litem* used in connection with proceedings being held in Italy, even if granted abroad, is governed by Italian procedural law, which, however, in allowing said power of attorney to be granted in the form of notarial deed or document with authenticated signature, refers to the applicable substantive law. As a consequence, in said case the formal validity of such power of attorney shall be ascertained in accordance with the law of the place where it has been granted, provided that said law shall at least contemplate the possibility to make notarial deeds and documents with authenticated signature, and regulate them in a manner not conflicting with the fundamental requirements applicable under the Italian legal system.

59. *Corte di Cassazione, 27 July 2007 No 16753* 745

As far as international child abduction is concerned, the decision of the lower court to collect additional information or to appoint a court expert for the purpose of ascertaining the existence of any circumstance preventing the issue of an order for the return of the child pursuant to Article 13 of the Hague Convention of 25 October 1980 is not subject to review upon appeal to the *Corte di Cassazione*. The lower court is also required to take into account any information provided by the authority of the requesting State.

Even though Italy, at the time of deposit of the instrument of ratification of the Strasbourg Convention of 25 January 1996 on Children Rights, has specified that only four proceedings fall within the scope of application of said Convention – making no reference to proceedings concerning international child abduction – the Convention provisions on the hearing of the child shall be regarded as principles and may therefore affect the opinion of the court even in proceedings not falling within the scope of application of said Convention.

Pursuant to the Hague Convention of 25 October 1980, the decision on the application for the return of a child is unrelated to the merits of the dispute concerning the best placement for said child.

60. *Corte di Cassazione, 1 August 2007 No 16991* 755

An order of final sequestration of the assets of an insolvent debtor – contemplated by Article 12 of the Insolvency Act of the Republic of South Africa – is different from an order of pre-judgment attachment of assets (*sequestro conservativo*) provided for in the Italian legal system as it assumes the insolvency of the debtor and implies that the latter is finally (as opposed to provisionally) deprived of all her/his assets, which are handed over to a trustee in the interest of her/his creditors.

Pursuant to Article 67 of Law 31 May 1995 No 218, in order for a foreign decision to produce its effects in Italy, the Court of Appeal shall ascertain exclusively that the requirements laid down by Article 64 of said Law are satisfied and not also whether the assets subject to enforcement are located in Italy, since the interest to initiate the action (*interesse ad agire*) for the ascertainment of the requirements for recognition of a foreign judgment pursuant to said provision exists in all cases in which at least one of the conditions laid down by Article 67(1) is satisfied, i.e. the foreign judgment is not complied with, its recognition is challenged, or there is a need to enforce said judgment.

61. *Corte di Cassazione, 10 August 2007 No 17648* 760

Article 16 of the Hague Convention of 25 October 1980 on the Civil

Aspects of International Child Abduction prohibits the judicial or administrative authorities of the Contracting State to which the child has been removed or in which she/he has been retained from deciding on the merits of rights of custody after receiving notice of the wrongful removal or retention of the child.

The urgent measures adopted by an Italian court with respect to a child who is in Italy pursuant to Article 9 of Hague Convention of 5 October 1961 on the Protection of Minors, prior to said court becoming aware of the retention of the child, are not illegal.

62. *Council of State, Sixth Division, 3 October 2007 No 5103* 767

The revocation of the Italian citizenship is not allowed since the decree granting nationality confers a status to the relevant person. It is therefore reasonable for the Ministry of Interiors to exercise with caution the power to grant the Italian citizenship to a foreigner married to an Italian citizen, with reference to Article 6(1)(c) of Law 5 February 1992 No 91.

63. *Corte di Cassazione (criminal), 26 October 2007 No 39772* 540

As far as the European arrest warrant is concerned, the list of offences giving rise to surrender of the requested person, listed in the form attached to Council Framework Decision No 2002/584/JHA of 13 June 2002, does not express a specific legal characterisation of the facts of the case. In fact, said list does not include specific crimes but rather categories of offences, according to a descriptive technique that takes into account the need that the subject matter of the relevant criminal proceedings be understood in the context of the relationships among the Member States of the European Union.

64. *Corte di Cassazione, 31 October 2007 No 22962* 769

The separation of a child from the parent who does not have her/his custody and has wrongfully removed said child does not constitute *per se* a grave risk for the purposes of Article 13 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, even if it usually implies moral suffering for the child due to the separation.

65. *Corte di Cassazione (plenary session), 2 November 2007 No 23032* 772

Italian courts have jurisdiction over the re-opening of bankruptcy proceedings pursuant to Article 121 of Bankruptcy Law against a company that, at the time of the original declaration of bankruptcy, had its registered office in Italy, since said re-opening determines the resumption of the original insolvency proceedings, rather than the commencement of new, autonomous proceedings. Accordingly, the criteria for establishing jurisdiction shall be identified with reference to the situation at that initial time, and the fact that the undertaking subject to bankruptcy has transferred its seat abroad and has been cancelled from the Italian Register of Undertakings (*registro delle imprese*) thereafter is irrelevant.

66. *Milan Appellate Court of Assizes, 5 November 2007* 775

Also in light of the United Nations Convention of 9 December 1999 for the Suppression of the Financing of Terrorism and of Framework Decision of the Council of the European Union of 13 June 2002 on Combating Terrorism an act of international terrorism occurs when a military target is hit provided that the circumstances of the case demonstrate that the civil population will undergo serious consequences, thus creating indiscriminate terror among the population.

A crime under Article 270-*bis* of Criminal Code is committed even if the participation of a person to a terrorist group consists of a conduct that is

- instrumental or aimed at providing logistical support to the activities of the terrorist organisation abroad and that unequivocally reveals the inclusion of said person in the organisation, provided that part of said conduct is carried out in Italy.
67. *Corte di Cassazione, 22 November 2007 No 24312* 781
- Article 6(1)(b) of Law 5 February 1991 No 92 on Italian nationality provides that acquisition as a result of a marriage is prohibited where the foreign spouse has been convicted for a crime, other than a reckless crime, in relation to which the law provides for imprisonment for a maximum term of no less than three years.
- The denial of the Italian citizenship pursuant to Article 6(1)(b) of said Law does not apply in case of judgments applying a penalty upon request of the parties pursuant to Article 444 of Code of Criminal Procedure.
- The competent court shall only ascertain whether any of the circumstances preventing the acquisition of Italian nationality pursuant to Article 6(1)(a) and (b) of said Law has occurred and is then bound (with no discretionary power) to grant, or deny the granting of, the Italian citizenship. Therefore the *Corte di Cassazione* may, if necessary, rule on the merits of the case, declaring that the foreign spouse has acquired the Italian citizenship.
68. *Milan Court of Appeal, 4 December 2007* 1076
- Pursuant to Article 11 of Law 31 May 1995 No 218, a defendant who has not expressly or tacitly accepted the jurisdiction of Italian courts may object to the lack of jurisdiction at any stage of the proceedings.
- An insurer cannot avail himself of a clause conferring exclusive jurisdiction to certain courts that is contained in a contract of insurance to which the beneficiary of the insurance is not a party since Article 12(1) of the Brussels Convention of 27 September 1968 allows such a derogation only if the relevant agreement on jurisdiction is entered into after the dispute has arisen.
- In light of the interpretation given by the EC Court of Justice and of the amendment made in this respect to EC Regulation No 44/2001 of 22 December 2000, Article 8(2) of 1968 Brussels Convention – which provides that, in case the policyholder sues the insurer, the criterion of the domicile of the policyholder shall apply – shall be construed so that, in case of an action brought by the insured or the beneficiary of the insurance against the insurer, the criterion of the domicile of the insured or of the beneficiary of the insurance, respectively, shall also apply.
- Italian courts have jurisdiction over an action concerning the payment of an insurance indemnity that is brought by a company having its seat in Italy – which is the insured or beneficiary under a contract of insurance entered into by a different company as policyholder – against a German insurance company.
69. *Corte di Cassazione (plenary session), order 17 December 2007 No 26479* 785
- Pursuant to Article 5(3) of EC Regulation No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action for pre-contractual liability that is based on the unjustified breaking-off of the negotiations to create an *associazione temporanea di imprese*, the existence of which is necessary in order for the parties to enter into a construction contract with a third party. In fact, damages shall be deemed to have occurred in Italy, where the construction contract was supposed to be performed.
70. *Council of State, Sixth Division, 17 December 2007 No 6465* 789
- A decree denying the granting of the Italian nationality through

naturalisation is adequately motivated if the relevant reasons are identified by reference, or if the statement of reasons summarily refers to other decisions consistent with it.

71. *Council of State, Sixth Division, 18 December 2007 No 6526* 792
 In order to obtain the Italian nationality, it is not sufficient that a marriage is formally celebrated between a foreigner and an Italian citizen, but it is also required that a genuine marital relationship is consequently established and is consistent with the requirements laid down in Article 143 of Civil Code (in this case, for a period of at least three years).
72. *Corte di Cassazione (plenary session), order 19 December 2007 No 26746* 795
 The prohibition laid down by Article 372 of Code of Civil Procedure, pursuant to which deeds and documents that have not been produced in the previous instances of proceedings before the lower courts cannot be filed during proceedings before the *Corte di Cassazione*, does not apply with respect to the special proceedings for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) since the latter does not constitute an appeal.
 Pursuant to Article 5(1)(b) of EC Regulation No 44/2001 – which provides that, in case of provision of services, the courts of the place where the services were provided or should have been provided have jurisdiction – Italian courts have jurisdiction over a claim for payment of various amounts pursuant to an agency agreement if the agent has carried out its activities in Italy.
73. *Corte di Cassazione (criminal), 28 December 2007 No 47564* 800
 Law 22 April 2005 No 69 (which has implemented Council Framework Decision No 2002/584/JHA of 13 June 2002 on the European arrest warrant), rather than the general extradition procedure, applies to a case where Romania has circulated through Interpol or the SIS system certain wanted notifications to locate the wanted person prior to the date on which it entered into the European Union, and has issued an arrest warrant that has been executed in Italy after said date since the circulation of wanted notifications at the international level does not determine the commencement of the extradition procedure, which therefore cannot be considered pending because of said circulation.
74. *Corte di Cassazione (plenary session), 9 January 2008 No 169* 1081
 Pursuant to Article 5(1) of the Lugano Convention of 16 September 1988, Italian courts have no jurisdiction on a dispute relating to individual contract of employment if the employee habitually carries out her/his work outside Italy. The need underlying said provision, aimed at ensuring adequate protection to the employee as the weak party, does not imply that jurisdiction shall be conferred to the courts more favourable to said employee.
75. *Naples Tribunal, 10 January 2008* 542
 For the purposes of determining whether a foreign decision to open insolvency proceedings abroad (and specifically in Ukraine) has the effect of prohibiting individual enforcement actions in Italy, the effects of said foreign decision according to its legal system of origin shall be taken into consideration, rather than those that would result from a decision declaring bankruptcy pursuant to Italian law (and particularly pursuant to Article 51 of Bankruptcy Law).
 Pursuant to the principle of territoriality, which is laid down by Article 9 of Bankruptcy Law, a foreign decision declaring bankruptcy cannot have in Italy those effects, such as the effect of prohibiting individual enforcement actions,

that depend upon the condition that the declaration of bankruptcy is issued by Italian judicial authorities and that the bankruptcy proceedings are carried out and operate under the control of said authorities.

76. *Corte di Cassazione, 27 February 2008 No 5089* 1123
- Under Article 17 of Presidential Decree 16 September 2004 No 303 administrative courts have jurisdiction over an action brought by a non-EU citizen for the annulment of an order issued by the Prefect that has rejected her/his request to stay on the national territory while a decision of the ordinary courts on her/his application for the recognition of the status of political refugee was pending. In fact, the order being challenged is based on a discretionary evaluation as to the existence of an actual risk that the foreigner may, during said period, avoid the enforcement of the measure of removal from the national territory that has been issued against her/him.
77. *Corte di Cassazione (plenary session), order 27 February 2008 No 5090* 1086
- Pursuant to Article 6(1) of the Brussels Convention of 27 September 1968 – which is referred to by Article 3(2) of Law 31 May 1995 No 218 in order to determine the scope of Italian jurisdiction in cases where the defendant is neither domiciled nor resided in Italy – Italian courts have jurisdiction over an action concerning a supply contract brought by an Italian company against an Algerian company (which is its counterparty under said contract), an Algerian bank (which has issued a first demand guarantee in favour of said Algerian company) and an Italian bank (which, in turn, has issued a first demand guarantee in favour of said Algerian bank). In fact, said provision applies if the various claims brought by the plaintiff against them are so closely connected that it is expedient to hear and determine them together.
- An arbitration agreement or an arbitral clause providing for foreign arbitration raises a question of merits and not one of jurisdiction, since the arbitral award has the nature of a private agreement (*atto di autonomia privata*) and the arbitrators do not exercise jurisdictional functions. Said question of merits concerns the ascertainment – to be made by the courts having jurisdiction according to the ordinary criteria – of the validity of the agreement providing for foreign arbitration, which implies a waiver of all jurisdictions, whether Italian or foreign.
78. *Corte di Cassazione (plenary session), order 27 February 2008 No 5091* 1090
- In a case concerning a claim for damages arising from the failure to perform an obligation to make an offer to form an *associazione temporanea di imprese* for the award of a contract under a competitive bidding in Italy, the place of performance of the obligation in question pursuant to Article 5(1)(a) of EC Regulation No 44/2001 of 22 December 2000 shall be determined in light of the interpretation given by the EC Court of Justice to the similar provision laid down by Article 5 of the Brussels Convention of 27 September 1968. Accordingly, the place of performance of the obligation in question shall be determined under the law that governs said obligation in accordance with the conflict-of-law rules of the court seized.
- Pursuant to Article 4 of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations – which is referred to by Article 57 of Law 31 May 1995 No 218 – Italian law applies since the rebuttable presumption laid down by paragraph 2 of said provision in favour of the place where the party who is to effect the performance which is characteristic of the contract (i.e., in this case, the French defendant) has its central administration is overruled by the fact that the contract is more closely connected with Italy pursuant to paragraph

5 of said provision. In fact, the aforesaid offer should have been made by the defendant in Italy and the *associazione temporanea d'impres*e that was supposed to be formed should also have operated here. Therefore, Italian courts have jurisdiction since, pursuant to Article 1182(1) of Civil Code, the place of performance of the obligation in question is located in Italy and the offer object of the dispute could only be made to the public body that launched the competitive bidding.

79. *Bergamo Tribunal, 14 March 2008* 805

Once the existence of an inviolable right has been ascertained, it shall be granted to a foreigner regardless of whether the condition of reciprocity laid down by Article 16 of Preliminary Provisions to the Civil Code is satisfied.

In a case where Albanian citizens have brought certain claims for damages arising from a road accident, the condition of reciprocity does not apply to the base component of the non-economic damages that can be recovered (i.e. the moral damages and the so-called existential damages), whereas the component having a punitive function is subject to reciprocity. Financial damages arising as a result of the infringement of inviolable rights, such as funeral expenses and damages arising from the loss of economic contribution, are also subject to the condition of reciprocity.

80. *Corte di Cassazione, 20 March 2008 No 7472* 809

The *kafalab* contemplated by Islamic law – as regulated by the laws of Morocco – can constitute the pre-requisite for family reunion pursuant to Article 29(2) of Legislative Decree 25 July 1998 No 286.

81. *Corte di Cassazione (plenary session), order 14 April 2008 No 9745* 1094

Pursuant to Article 23 of EC Regulation No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a dispute brought by the trustee in bankruptcy (*curatore*) of an Italian company against a French company, in which the main claim is aimed at obtaining a declaration that the agreements amending a contract for the construction of certain ships by the defendant are null and void and, consequently, at enforcing the guarantee for defects provided by the original contract, and the subordinate claim is a claw-back action (*revocatoria fallimentare*) concerning said agreements, since said agreements contain clauses conferring exclusive jurisdiction to French courts. In fact, the existence of jurisdiction shall be determined with exclusive reference to the main claim, which does not 'arise from bankruptcy', as it may be brought even before, and regardless of, the fact that the plaintiff is declared bankrupt. Furthermore, said dispute does not fall within the scope of application of Article 3(2) of Law 31 May 1995 No 218, with reference to Article 24 of Bankruptcy Law.

Pursuant to Article 6(1) of EC Regulation No 44/2001, Italian courts do not have jurisdiction if the claims brought against one of the defendants, which has its seat in Italy, do not have elements of connection with those brought against the main defendant that justify the application of said provision.

82. *Milan Court of Appeal, 14 May 2008* 1098

Following the interpretation of Article 3(1) of EC Regulation No 1346/2000 on Insolvency Proceedings given by the EC Court of Justice the presumption that the registered office of a company coincides with the centre of main interests of the debtor may be overcome by appropriate evidence.

Italian courts have jurisdiction – and also the proper venue (*competenza territoriale interna*) – to open insolvency proceedings against an Italian company

that has subsequently transferred its registered office in Luxembourg, thereby acquiring Luxembourg nationality, if it is proved that said company has not carried out any business or other activities in said State.

83. *Rovereto Tribunal, 18 June 2008* 1103
 EC Regulation No 1348/2000 on the Service of Documents in Civil and Commercial Matters allows the service of documents by mail under the conditions set forth in the communications of the Member States pursuant to Article 23 of said Regulation. For the purposes of this case, the communication made by Germany makes service admissible if, among other things, the document served is drafted in German or in a language of the serving State, if the addressee is a citizen of said State. The breach of said Regulation does not determine that the service of a summary injunction (*decreto ingiuntivo*) to a German company without a German translation is void or ineffective, but only a restoration of the relevant procedural term to the benefit of said company.
84. *Pesaro Tribunal, 11 July 2008* 1111
 Pursuant to Article 23 of EC Regulation No 44/2001 of 22 December 2000, a clause conferring jurisdiction to German courts provided for in an agency contract is valid since the provisions of said Regulation concerning individual contracts of employment, and particularly Article 21, do not apply to agency contracts.

EUROPEAN COMMUNITIES CASES

Acts of Community institutions: 5.

Community Law: 2, 3, 6, 15.

Community proceedings: 4, 6.

Consumer protection: 8.

Co-operation in criminal matters: 4.

EC Regulation No 1348/2000: 17.

EC Regulation No 44/2001: 1, 9, 13, 18.

EC Regulation No 2201/2003: 10, 11, 20.

Freedom of establishment: 12.

Freedom to provide services: 14, 16, 19.

Non contractual liability of the Community: 5, 7.

1. *Court of Justice, 3 May 2007, case C-386/05* 249
 The first indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying where there are several places of delivery within a single Member State. In such a case, the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of

determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice.

2. *Court of Justice, 7 June 2007, case C-335/05* 255

It is not necessary to interpret a provision of secondary Community law, in so far as it is possible, in conformity with an international agreement concluded by the Community, where such provision merely allows the Member States an option, without prejudice to their ability and responsibility to comply with their obligations under international agreements.

3. *Court of Justice, 21 June 2007, joined cases C-231/06 to C-233/06* 268

Following a judgment given by the Court on an order for reference from which it is apparent that the national legislation is incompatible with Community law, it is for the authorities of the Member State concerned to take the general or particular measures necessary to ensure that Community law is complied with, by ensuring in particular that national law is changed so as to comply with Community law as soon as possible and that the rights which individuals derive from Community law are given full effect. Where discrimination infringing Community law has been found, for as long as measures reinstating equal treatment have not been adopted, the national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature, and apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category.

4. *Court of Justice, 28 June 2007, case C-467/05* 861

A reference for a preliminary ruling concerning the interpretation of a Framework Decision, adopted under Title VI EU, is not inadmissible on the sole ground that it does not mention Article 35 EU but it makes reference to Article 234 EC.

The Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that, in criminal proceedings and, in particular, in enforcement proceedings following a judgment which resulted in a final criminal conviction, the concept of 'victim' for the purposes of the Framework Decision does not include legal persons who have suffered harm directly caused by acts or omissions that are in violation of the criminal law of a Member State.

5. *Court of First Instance, 11 July 2007, case T-47/03* 270

Since the identification of the persons, groups and entities contemplated in Security Council Resolution 1373(2001), and the adoption of the ensuing measure to freeze funds, involve the exercise of the Community's own powers, entailing a discretionary assessment by the Community, the Community institutions concerned are as a rule bound to observe, as a general principle of Community law, the rights of the defence of the parties directly and individually concerned by these acts. The restrictions on the general principle of observance of the rights of the defence as well as the restrictions which may be imposed on the obligation to state reasons for an act required by Article 253 EC, are nevertheless admissible when justified by compelling reasons of general interest, such as those overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations.

As the fundamental principle that the rights of the defence must be

observed is essentially a procedural guarantee, annulment of the contested act will constitute adequate compensation for the damage caused by that breach.

6. *Court of Justice, 18 July 2007, case C-119/05* 864
 The Court retains jurisdiction to deliver preliminary rulings on questions referred to it concerning the interpretation and application of the ECSC Treaty and on measures adopted under that Treaty, even if those questions are referred to it after the expiry of the ECSC Treaty.
 National courts do not have jurisdiction to give a decision on whether State aid is compatible with the common market since the assessment of the compatibility of aid measures or of an aid scheme with the common market falls within the exclusive competence of the Commission, subject to review by the Community Courts. Therefore, Community law precludes the application of a provision of national law, such as Article 2909 of the Italian Civil Code, which seeks to lay down the principle of *res judicata*, in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a decision of the Commission of the European Communities which has become final.
7. *Court of Justice, 11 September 2007, case C-431-05* 555
 Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPs Agreement'), constituting Annex 1C to the Agreement establishing the World Trade Organisation ('the WTO'), signed at Marrakesh on 15 April 1994, has been concluded by the Community and its Member States by virtue of joint competence, the Court, hearing a case brought before it in accordance with the provisions of the EC Treaty, in particular Article 234 EC, has jurisdiction to define the obligations which the Community has thereby assumed and, for that purpose, to interpret the provisions of the TRIPs.
 It is not contrary to EC law that Member States directly apply Article 33 of the TRIPs Agreement since it refers to the field of patents which, at this point in the development of Community law, does not fall within EC competence.
8. *Court of Justice, 4 October 2007, case C-429/05* 1152
 Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directive 98/77/EC of 16 February 1998, must be interpreted as allowing national courts to apply of their own motion the provisions transposing into national law Article 11(2), providing for the right to pursue remedies granted in some cases to the consumer against the grantor of credit.
9. *Court of Justice, 11 October 2007, case C-98/06* 258
 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 is to be interpreted as meaning that the fact that claims brought against a number of defendants have different legal bases does not preclude application of that provision.
 Article 6(1) of Regulation No 44/2001 applies where claims brought against different defendants are connected when the proceedings are instituted, that is to say, where it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings, without there being any further need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.

10. *Court of Justice, 27 November 2007, case C-435/06* 559

Article 1(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, is to be interpreted in an autonomous way to the effect that a single decision ordering a child to be taken into care and placed outside his original home in a foster family is covered by the term 'civil matters' for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.

Regulation No 2201/2003 is to be interpreted as meaning that harmonised national legislation on the recognition and enforcement of administrative decisions on the taking into care and placement of persons, adopted in the context of Nordic Cooperation, may not be applied to a decision to take a child into care that falls within the scope of that Regulation.

Subject to the factual assessment which is a matter for the national court alone, Regulation No 2201/2003 is to be interpreted as applying *ratione temporis* in a case such as that in the main proceedings.

11. *Court of Justice, 29 November 2007, case C-68/07* 570

Articles 6 and 7 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on their national law, if the courts of another Member State have jurisdiction under Article 3 of that Regulation.

12. *Court of Justice, 11 December 2007, case C-438/05* 867

Article 43 EC is to be interpreted as meaning that, in principle, collective action initiated by a trade union or a group of trade unions against a private undertaking in order to induce that undertaking to enter into a collective agreement, the terms of which are liable to deter it from exercising freedom of establishment, is not excluded from the scope of that Article.

Article 43 EC is capable of conferring rights on a private undertaking which may be relied on against a trade union or an association of trade unions.

Article 43 EC is to be interpreted to the effect that collective action such as that at issue in the main proceedings, which seeks to induce a private undertaking whose registered office is in a given Member State to enter into a collective work agreement with a trade union established in that State and to apply the terms set out in that agreement to the employees of a subsidiary of that undertaking established in another Member State, constitutes a restriction within the meaning of that article. That restriction may, in principle, be justified by an overriding reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

13. *Court of Justice, 13 December 2007, case C-463/06* 575

The reference in Article 11(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 to Article 9(1)(b) of that Regulation is to be interpreted as meaning that the injured party may bring an

action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State.

14. *Court of Justice, 18 December 2007, case C-341/05* 874

A Member State in which the minimum rates of pay are not determined in accordance with one of the means provided for in Article 3(1) and (8) of Directive 96/71/EC of 16 December 1996, on the posting of workers in the framework of the provision of services, is not entitled, pursuant to that Directive, to impose on undertakings established in other Member States, in the framework of the transnational provision of services, negotiation at the place of work, on a case-by-case basis, having regard to the qualifications and tasks of the employees, so that the undertakings concerned may ascertain the wages which they are to pay their posted workers.

As regards the matters referred to in Article 3(1), first subparagraph, (a) to (g), Directive 96/71/EC expressly lays down the degree of protection for workers of undertakings established in other Member States who are posted to the territory of the host Member State which the latter State is entitled to require those undertakings to observe. Nevertheless, Article 3(7) of Directive 96/71, which provides that paragraphs 1 to 6 are not to prevent application of terms and conditions of employment which are more favourable to workers, cannot be interpreted as allowing the host Member State to make the provision of services in its territory conditional on the observance of terms and conditions of employment which go beyond the mandatory rules for minimum protection. Therefore – without prejudice to the right of undertakings established in other Member States to sign of their own accord a collective labour agreement in the host Member State, in particular in the context of a commitment made to their own posted staff, the terms of which might be more favourable – the level of protection which must be guaranteed to workers posted to the territory of the host Member State is limited, in principle, to that provided for in Article 3(1), first subparagraph, (a) to (g) of Directive 96/71, unless, pursuant to the law or collective agreements in the Member State of origin, those workers already enjoy more favourable terms and conditions of employment.

Article 49 EC and Article 3 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services are to be interpreted as precluding a trade union, in a Member State in which the terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g) of that directive are contained in legislative provisions, save for minimum rates of pay, from attempting, by means of collective action in the form of a blockade ('blockad') of sites, to force a provider of services established in another Member State to enter into negotiations with it on the rates of pay for posted workers and to sign a collective agreement the terms of which lay down, as regards some of those matters, more favourable conditions than those resulting from the relevant legislative provisions, while other terms relate to matters not referred to in Article 3 of the same Directive.

National rules of the Member State of establishment that fail to take into account collective agreements to which undertakings, that post workers to such State, are already bound in the Member State of origin, in so far as such undertakings are treated in the same way as national undertakings which have not concluded a collective agreement, give rise to discrimination in contrast with

Articles 49 and 50 EC, which cannot be justified on any of the grounds specified in Article 46 EC.

15. *Court of Justice, 17 January 2008, case C-246/06* 1155

Where rules of national law fall within the scope of Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC of 23 September 2002, the national courts are bound, as regards a state of insolvency occurring between the date of the entry into force of Directive 2002/74/EC and the deadline for transposition of that directive into national law, to ensure that the application of those rules of national law is consistent with the general principles and fundamental rights as recognised by the Community legal order and, in particular, the principle of non-discrimination.

16. *Court of Justice, 3 April 2008, case C-346/06* 1157

Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, interpreted in the light of Article 49 EC, precludes an authority of a Member State from adopting a measure of a legislative nature requiring the contracting authority to designate as contractors for public works contracts only those undertakings which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the remuneration prescribed by the collective agreement the minimum wage in force at the place where those services are performed.

17. *Court of Justice, 8 May 2008, case C-14/07* 839

Article 8(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters is to be interpreted as meaning that the addressee of a document instituting the proceedings which is to be served does not have the right to refuse to accept that document, provided that it enables the addressee to assert his rights in legal proceedings in the Member State of transmission, where annexes are attached to that document consisting of documentary evidence which is not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, but which has a purely evidential function and is not necessary for understanding the subject-matter of the claim and the cause of action. It is for the national court to determine whether the content of the document instituting the proceedings is sufficient to enable the defendant to assert his rights or whether it is necessary for the party instituting the proceedings to remedy the fact that a necessary annex has not been translated.

Article 8(1)(b) of Regulation No 1348/2000 is to be interpreted as meaning that the fact that the addressee of a document served has agreed in a contract concluded with the applicant in the course of his business that correspondence is to be conducted in the language of the Member State of transmission does not give rise to a presumption of knowledge of that language, but is evidence which the court may take into account in determining whether that addressee understands the language of the Member State of transmission.

Article 8(1) of Regulation No 1348/2000 is to be interpreted as meaning that the addressee of a document served may not in any event rely on that provision in order to refuse acceptance of annexes to the document which are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands where the

addressee concluded a contract in the course of his business in which he agreed that correspondence was to be conducted in the language of the Member State of transmission and the annexes concern that correspondence and are written in the agreed language.

18. *Court of Justice, 22 May 2008, case C-462/06* 855
- The rule of special jurisdiction provided for in 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 cannot be applied to a dispute falling under Section 5 of Chapter II of that Regulation concerning the jurisdiction rules applicable to individual contracts of employment.
19. *Court of Justice, 19 June 2008, case C-319/06* 1125
- Directive 2006/123/EC of 12 December 2006 on services in the internal market, according to Article 3(1)(a) thereof, is not intended to replace Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services and the latter prevails over the former in the event of conflict.
- The classification of national provisions by a Member State as public-order legislation applies to national provisions compliance with which has been deemed to be so crucial for the protection of the political, social or economic order in the Member State concerned as to require compliance therewith by all persons present on the national territory of that Member State and all legal relationships within that State.
- Under Article 3(10) of Directive 96/71/EC a Member State cannot apply to undertakings of another Member State which post workers to its territory provisions imposing terms and conditions of employment on matters other than those referred to Article 3(1) of the same Directive, even if they are defined as public policy provisions. In fact such provisions constitute a restriction on freedom to provide services under Article 49 EC, particularly when the posted workers already enjoy the essentially comparable protection by virtue of obligations to which their employer is already subject in the Member State in which it is established.
20. *Court of Justice, 11 July 2008, case C-195/08 PPU* 1134
- A decision ordering return of the child pursuant to Article 11(8) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility can be certified pursuant to Article 42 of said Regulation, so that the same judgment is to be recognised in the other Member States without any special procedure being required nor opposition to the recognition being possible, only when a judgment of non-return has been issued beforehand in the State of enforcement pursuant to Article 13 of the 1980 Hague Convention on civil aspects of child abduction of minors.
- Once a non-return decision has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 of Regulation (EC) No 2201/2003, that that decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the Regulation, opposition to the recognition of the decision ordering return is not permitted

and it is for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.

Except where the procedure concerns a decision certified pursuant to Articles 11(8) and 40 to 42 of Regulation No 2201/2003, any interested party can apply for non-recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.

Article 31(1) of Regulation No 2201/2003, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non-recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that decision. In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.

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