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#### CASES IN ITALIAN COURTS

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1. *Corte di Cassazione, 7 July 2008 No 18613* ..... 199  
Pursuant to Article 31(1) of Law of 31 May 1995 No 218, Italian law, being the common national law, governs the legal separation of two spouses, an Italian citizen and a foreign citizen who has also acquired the Italian citizenship.
2. *Belluno Tribunal, 6 March 2009* ..... 140  
Pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over an application for divorce lodged jointly by two Indian spouses who habitually reside in Italy.  
The law applicable to the dissolution of a marriage between citizens of a State having different personal laws shall be determined based on the combined

provision of Articles 31 and 18 of Law of 31 May 1995 No 218. In particular, if divorce has been requested jointly by two Indian citizens of Hindu faith, Italian courts shall declare the immediate cessation of the civil effects of the marriage pursuant to the rules for the resolution of interpersonal conflicts of laws provided for by the Indian legal system and contained in the Hindu Marriage Act of 18 May 1955. In fact, said Act applies to persons who have contracted a Hindu marriage, even if the latter has been registered only in the relevant Indian register and no separation judgment has been previously issued, since the allegation that it is impossible to restore the communion of the spouses is sufficient to exclude any contrast with public policy pursuant to Article 16 of the aforesaid Law No 218 of 1995.

3. *Rome Court of Appeal, 10 March 2009* ..... 721

Pursuant to Article 154 of Presidential Decree of 5 January 1967 No 18 concerning the system for administration of foreign affairs, as amended by Legislative Decree of 7 April 2000 No 103, employment contracts entered into for the purpose of hiring temporary employees at the Italian consular offices pursuant to Article 153 of said Decree are governed by local law, and any related dispute is subject to the jurisdiction of local courts.

For the purposes of a dispute aimed at ascertaining the existence of a permanent employment relationship, a clause derogating the Italian jurisdiction and conferring jurisdiction to Argentinean courts that is contained in two fixed term employment contracts entered into by the Consulate of Italy for hiring local personnel, shall be deemed invalid pursuant to Article 4(2) of Law of 31 May 1995 No 218. In fact, the right in dispute is an inalienable right (*diritto indisponibile*), since it pertains to the constituent phase of said relationship.

The provisions on access to public employment through a competitive examination laid down by Legislative Decree of 30 March 2001 No 165 implement the principles laid down by Article 97 of the Constitution and are mandatory within the meaning of Article 17 of Law of 31 May 1995 No 218. Accordingly, the Argentinean law chosen by the parties in the contracts whereby the employees have been hired does not apply in a dispute between the Ministry of Foreign Affairs and two temporary employees working at the Consulate of Italy in Buenos Aires concerning the transformation of fixed term employment relationships into permanent ones.

4. *Milan Tribunal, 8 May 2009* ..... 405

Pursuant to Article 6(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action aimed at declaring that an anti-competitive agreement prohibited by Article 81(1) of the EC Treaty (now Article 101(1) of the Treaty on the Functioning of the European Union) and by Article 53(1) of the EEA Agreement does not exist, and that in any case no actual damages have occurred, brought against a plurality of defendants, some of which are domiciled in other Member States of the European Union. In fact, such claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments, since they are aimed at ascertaining the non-existence of an anti-competitive behaviour that is substantially the same and may hypothetically affect all defendants.

Pursuant to Article 16(1) of Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down by Articles 81 and 82 of the EC Treaty, an action aimed at ascertaining that a cartel and certain anti-competitive conducts did not exist or occur or did not affect prices is inadmissible for lack of interest to initiate the action (*interesse ad agere*) pursuant to Article 100 of the Code of Civil Procedure, if said action is based

on a different interpretation of the same facts on the basis of which a decision of the Commission has been issued. Indeed, in such a case national courts are not empowered to issue any decision that may have useful effects for the plaintiff, not even the removal of a situation of legal uncertainty.

In relation to a claim aimed at declaring that an anti-competitive agreement did not cause damages to the clients – domiciled in different Member States – of the colluding undertakings a plurality of illegal conducts and damages may occur, which are different for each client. Accordingly, it is not possible to lodge claims for said (non) damaging events, which occurred in different Member States, before a single court, either pursuant to Article 5(3) or pursuant to Article 6(1) of Regulation No 44/2001.

5. *Florence Tribunal, 18 May 2009* ..... 145

Pursuant to Article 32 of Law of 31 May 1995 No 218, Italian courts have jurisdiction over a request for divorce filed by an Italian citizen against her Spanish spouse, even if the spouses had their exclusive common residence in Spain.

Pursuant to Article 31 of Law No 218 of 1995, Spanish law applies to a divorce between an Italian citizen and a Spanish citizen, if the spouses lived their matrimonial life (which lasted only few months) in Spain.

A foreign law pursuant to which the courts shall verify that the conditions for the declaration of divorce established by said law are satisfied does not conflict with public policy, even if said law provides that divorce can be declared upon request of one spouse after three months from the marriage.

6. *Pesaro Tribunal (criminal), order 12 June 2009* ..... 149

Italian law, and particularly the national provisions on cultural property, apply to the finding in high seas of a wreck of historical and artistic value by a ship flying the Italian flag, since, pursuant to a principle of international law which is incorporated in Articles 4(2) of the Criminal Code and 4 of the Navigation Code and in the Geneva Convention of 29 April 1958 (Articles 7-13) and the Montego Bay Convention of 10 December 1982 (Article 92), ships in high seas are subject to the authority of the State to which they belong. Thus, being on a ship in international waters is the same as being in the territory of the State of the ship's flag. Accordingly, said wreck is the property of the Italian State.

7. *Corte di Cassazione, 16 June 2009 No 13936* ..... 200

The notion of habitual residence referred to in the Hague Convention of 25 October 1980 on International Child Abduction refers to a factual situation. In fact, the habitual residence is the place where the child, based on a constant and enduring stay, has the centre of his/her affective relations – not limited to the relationship with his/her parents – as they stem from his/her everyday life in said place.

8. *Monza Tribunal, 22 June 2009* ..... 157

Pursuant to Article 5(1) of the Lugano Convention of 16 September 1988, Italian courts have jurisdiction over an action brought against a defendant domiciled in Switzerland for the payment of the price under a construction contract, if, based on the law applicable to said contract, the payment obligation should have been performed in Italy.

Based on Article 4 of the Rome Convention of 19 June 1980, the law applicable to a construction contract is the law of the State where the place of business of the contractor (i.e. of the party effecting the characteristic performance of the contract in the course of its business activity) is located.

9. *Tivoli Tribunal, 4 August 2009* ..... 160  
 Pursuant to Article 32 of Law of 31 May 1995 No 218, Italian courts have jurisdiction over a request for divorce filed by an Italian citizen, who also holds the US citizenship, against her spouse, a US citizen.  
 Pursuant to Article 31 of Law of 31 May 1995 No 218, the law applicable to the divorce of two US citizens – which is determined based on, *inter alia*, the criterion of the prevailing localisation of the matrimonial life – is the law of the State of Virginia. Said law provides that divorce can be declared upon request of the parties if the spouses have lived separately and far away from each other, without cohabiting, for a continuous period of one year.
10. *Corte di Cassazione (plenary session), order 20 August 2009 No 18509* ..... 162  
 Pursuant to Article 19(2)(a) of Regulation (EC) No 44/2001 of 22 December 2000, an employer domiciled in a Member State may be sued in another Member State before the courts of the place where the employee habitually carries out his work.  
 A dispute concerning an employment relationship between a flight assistant and a Belgian air carrier carried out on airplanes flying the Belgian flag falls under the jurisdiction of Belgian courts and not of Italian courts.
11. *Corte di Cassazione, order 25 September 2009 No 20688* ..... 165  
 Article 7 of Law of 31 May 1995 No 218 does not apply in case of proceedings pending before a foreign arbitrator, since the case of a dispute pending before foreign courts and the case of a dispute pending before a foreign arbitrator are different.
12. *Genoa Court of Appeal, 7 November 2009* ..... 167  
 The decision of a court in proceedings for recognition and enforcement of a foreign divorce judgment pursuant to Articles 64 seq. of Law of 31 May 1995 No 218 has a mere declaratory (as opposed to constitutive) nature. In fact, the court, after verifying the interest to initiate the action (*interesse ad agire*) under Article 67, shall only ascertain whether the requirements for recognition are satisfied.  
 The requirement that the foreign judgment has become *res iudicata*, which is provided for by Article 64(d) of Law No 218 of 1995, is satisfied by a certificate drawn up by a notary of Muslim law at the Moroccan judiciary authority attesting that the divorce judgment issued in Morocco has become final and irrevocable and providing for its registration in the deed of marriage.  
 A divorce judgment issued on the basis of a law which does not contemplate a double degree of jurisdiction, which provides for the dissolution of the marriage without prior legal separation of the spouses but allows it when the irrevocable breakup of the family due to the violent conduct of the husband is ascertained, and which does not allow for the joint custody of children is not in conflict with public policy within the meaning of Article 64(g).  
 Pursuant to Article 64 of Law No 218 of 1995, a Moroccan judgment declaring the divorce of a Moroccan citizen and an Italian citizen, residing in Morocco during their marriage, and granting the exclusive custody of the child to the mother shall be recognized and enforced in Italy.
13. *Belluno Tribunal, 23 December 2009* ..... 727  
 According to Article 19(3) of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction over an action for legal separation between a US citizen and a German citizen who were resident firstly in Germany and then in Italy, if at the time when the document instituting the proceedings in Italy was lodged pursuant to Article 16(1)(a) of said Regulation, German courts were already

seised of the actions for legal separation and for divorce that are pending between the same parties, and said courts have affirmed jurisdiction on the basis of Article 3(1)(a) of said Regulation.

14. *Rome Court of Appeal, 13 January 2010* ..... 173

According to Article 64 of Law of 31 May 1995 No 218 – which has introduced the principle of automatic recognition of foreign judgments that have become *res iudicata* if the requirements set forth by said Article are satisfied – a request for the recognition of a Canadian divorce judgment is inadmissible for lack of interest (*interesse ad agere*) where the plaintiff is only interested in registering said judgment on the deed of marriage. Indeed in such case the conditions set forth by Article 67 of said Law – whereby the judicial proceedings for ascertaining that the requirements for recognition are satisfied can be initiated only if the plaintiff is seeking to enforce the foreign judgment or it is necessary to oppose a challenge to the effects of said judgment or to face a failure to comply therewith – are not met.

Since the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents does not apply to the recognition of a Canadian divorce, its conformity to the original issued by the foreign court is necessary under Articles 64 and followings of Law No 218 of 1995, and Italian courts cannot accept for said purpose a mere certification of the clerk's office of the court issuing the judgment or of another public official of the relevant foreign State.

15. *Corte di Cassazione (criminal), 19 January 2010 No 2950* ..... 201

16. *Corte di Cassazione (criminal), 19 January 2010 No 2951* ..... 201

For the purposes of applying the provisions on conditional surrender laid down by Article 19(c) of Law of 22 April 2005 No 69 – which implemented the Framework Decision No 2002/584/JHA on the European arrest warrant – a notion of residence shall be adopted which is consistent with the circumstance that such provision considers the position of foreigners resident in Italy similar to that of Italian citizen. As a consequence, the foreigner should have real, and not merely temporary, roots in Italy, showing that he/she has established constantly over time and with sufficient stability, the main (even though not exclusive) centre of his/her affective, professional or economic interests in Italy.

17. *Monza Tribunal, 1 February 2010* ..... 416

In case of a European Enforcement Order issued pursuant to Regulation (EC) No 805/2004 of 21 April 2004, the existence of the conditions laid down by Article 3, which establish when a claim shall be regarded as “uncontested”, cannot be subject to review by the courts of the State of enforcement, but only by the courts of the State in which the decision has been issued, through an application for the withdrawal of the European Enforcement Order certificate filed by the debtor pursuant to Article 10 of said Regulation.

In a case where the writ of execution merely states that the foreign judgment is accompanied by the European Enforcement Order certificate, without the latter being attached to the writ, the lack of notification of said certificate does not constitute grounds for appeal against the writ of execution (*opposizione al precetto*) but rather grounds for challenging the formal validity of the Enforcement Order, which can be raised only through the appeal against enforcement acts (*opposizione agli atti esecutivi*) within twenty days from the notification of the writ of execution.

18. *Pesaro Tribunal (criminal), order 10 February 2010* ..... 175
- Pursuant to Article 51 of Law of 31 May 1995 No 218, reference shall be made to the law of the State where the good was located at the time of its transfer in order to determine whether a Greek statue found in high seas by a ship flying the Italian flag and currently situated in the United States has been illicitly transferred abroad.
- Pursuant to Article 240 of the Criminal Code and to Article 174 of Legislative Decree of 22 January 2004 No 42, the confiscation of the aforesaid cultural good, which is of historical and archaeological interest and is the property of the Italian State, shall be ordered. In fact, at the time when the relevant events occurred, said good could be transferred only with the necessary authorisation under the combined provision of Articles 826 and 828 of the Civil Code and Articles 23 and 24 of Law of 1 June 1939 No 1089. Since now it can no longer be transferred due to the combined provision of Articles 54(2)(a) and 61 of Legislative Decree of 22 January 2004 No 42, its transfer abroad is null and void pursuant to Article 35 of Law No 1089 of 1939 which applies *ratione temporis*.
19. *Constitutional Court, 18 February 2010 No 51* ..... 135
- The question of constitutional legitimacy of Article 34 of Presidential Decree of 5 January 1967 No 200 on consular functions and powers – raised with reference to Articles 3, 24, 25 and 32 of the Constitution – insofar as said Article 34 does not expressly provide for the authority of consuls to appoint a guardian (*amministratore di sostegno*) in favour of an Italian citizen resident abroad is unfounded.
20. *Corte di Cassazione, 15 March 2010 No 6197* ..... 200
- The notion of habitual residence referred to in the Hague Convention of 25 October 1980 on International Child Abduction refers to a factual situation. In fact, the habitual residence is the place where the child, based on a constant and enduring stay, has the centre of his/her affective relations – not limited to the relationship with his/her parents – as they stem from his/her everyday life in said place.
21. *Mantua Tribunal, decree 16 March 2010* ..... 1041
- In case of a marriage celebrated abroad by foreign citizens residing in Italy, the separate ownership of property under Italian law chosen by the spouses pursuant to Article 30 of Law of 31 May 1995 No 218 shall be annotated at the margin of the registration of the deed of marriage pursuant to Article 162(4) of the Civil Code, notwithstanding the refusal to do so by the registrar general of births, deaths and marriages (*ufficiale di stato civile*).
22. *Corte di Cassazione, 26 March 2010 No 7307* ..... 495
- Pursuant to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the mail can be used alongside with the main method of serving documents through the Central Authority, for the purposes of serving a document to a person who resides in the United States and neither lives nor is domiciled in Italy, since the United States did not make any objection to the use of such ancillary method for serving documents. However, the fact that the document remained at the post office for the entire period of availability established by the law of the State of the addressee for the ordinary postal deliveries is irrelevant for the purposes of the validity of service, since the requirements set forth by Italian law aimed at ensuring that a person who is temporary absent acquires actual and



- effective knowledge of the judicial document to be served do not apply to post offices of foreign States.
23. *Corte di Cassazione (plenary session), order 15 April 2010 No 8988* ..... 187  
 Pursuant to Articles 4 and 11 of Law of 31 May 1995 No 218, Italian (administrative) courts have jurisdiction over a dispute brought by an Italian company – which has been unduly excluded from a competitive tender concerning the construction of certain roads in Portugal – against the Republic of Portugal, where the latter entered an appearance in Italy without objecting the lack of jurisdiction of Italian courts.
24. *Ragusa Tribunal, decree 16 April 2010* ..... 190  
 The refusal by the registrar general of births, deaths and marriages (*ufficiale di stato civile*), pursuant to Article 116(1) of the Civil Code (as amended by Law of 15 July 2009 No 94), to celebrate a marriage between an Italian citizen and a foreign citizen who is waiting for the renewal of his residence permit and has filed the relevant request for renewal three years after the expiry of his first permit, is illegitimate.
25. *Corte di Cassazione, 19 April 2010 No 9276* ..... 194  
 Before the entry into force of Law of 31 May 1995 No 218 the burden of identifying the provisions of the foreign law applicable to the dispute laid upon the interested party.  
 Pursuant to Article 25(2)(c) of Law No 218 of 1995, Tunisian law governs the formal and material requirements of both the preliminary agreement and the agreement itself for to the creation of a company to be incorporated in Tunisia, since the process of incorporation of said company is to be completed in Tunisia. Indeed both the Rome Convention of 19 June 1980 – whose Article 1(e) provides that it does not apply to questions governed by the law of companies, such as the creation of a company – and Article 25 of the Preliminary Provisions to the Civil Code do not apply to the present case.
26. *Milan Court of Appeal (criminal), 15 June 2010* ..... 420  
 Pursuant to Article 6 of the European Convention of 4 November 1950 for the Protection of Human Rights, any national court is required to verify whether, beyond any reasonable doubt, the person charged has unequivocally waived his/her right to enter an appearance in the proceedings. For said purpose, a court cannot rely on presumptions lacking a sufficient factual basis.  
 Since the decree stating that the defendant is absconding (*decreto di latitanza*) is a necessary requirement in order for the relevant effects provided for by the Code of Criminal Procedure to occur, in a case where such decree has not been validly issued the decree of indictment (*decreto di rinvio a giudizio*) issued pursuant to Article 179 of the Code of Criminal Procedure and the following sentence shall be declared null and void.
27. *Corte di Cassazione (plenary session), order 18 June 2010 No 14702* ..... 426  
 A dispute between a purchaser domiciled in Italy and his/her foreign counterparties arising out of a contract relating to the purchase of the right to use immovable properties on a timeshare basis for touristic purposes pursuant to Directive 94/47/EC – which does not qualify as a contract where the organisational aspects of the trip are prevailing and whose main object is the granting of the right to use an apartment in a tourist village in Spain – falls within the scope of Article 22(1) of Regulation (EC) No 44/2001 of 22 December 2000. Accordingly, Italian courts do not have jurisdiction over the aforesaid dispute.

28. *Corte di Cassazione (plenary session), order 18 June 2010 No 14703* ..... 431
- Pursuant to Article 43 of the Vienna Convention of 24 April 1963 on Consular Relations, Italian courts have jurisdiction over disputes concerning employment relationships with embassies of foreign States located in Italy, not only in case of employees with merely ancillary duties, but also in case of employees performing consular functions, provided that the claim concerns only the payment of the relevant remuneration or in any case involves exclusively economic issues that do not interfere with the organisation of the consular functions.
- Pursuant to the combined provision of Articles 18(2) and 19 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a dispute brought by an employee against an embassy of a foreign State located in Italy, since the place of business of the employer is located in the Italian territory.
- Pursuant to the combined provision of Articles 21 and 23 of Regulation (EC) No 44/2001, an agreement conferring jurisdiction entered into by an employee and his/her employer, an embassy of a foreign State located in Italy, is not valid if it is not entered into in writing after the dispute has arisen.
29. *Corte di Cassazione (plenary session), order 25 June 2010 No 15328* ..... 435
- Pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over an action for legal separation that has been brought by an Italian citizen against her French spouse, who habitually resides in France, after said Italian citizen has re-established her habitual residence in Italy for more than six months.
- The notion of habitual residence under Regulation (EC) No 2201/2003 does not refer to the formal or registered residence, but rather to the place where the relevant person actually and continuously lives his/her personal life and, if relevant, carries out his/her work.
30. *Aosta Tribunal, 25 June 2010* ..... 437
- Pursuant to Article 3 of Law of 31 May 1995 No 218, which is referred to by Article 32 of said Law, Italian courts have jurisdiction over an action for legal separation brought by a Moroccan citizen against her husband, who holds the same citizenship, since he is resident in Italy.
- Pursuant to Article 64 of Law No 218 of 1995, a divorce declared by a Moroccan Tribunal based on Article 123 of the *Code de la famille* cannot be recognised in Italy as said divorce is revocable and therefore contrary to public policy.
- Article 7 of Law No 218 of 1995 relating to *lis pendens* does not apply where proceedings for legal separation are pending in Italy and a decision on divorce has already been issued in Morocco.
- Based on Article 31(2) of Law No 218 of 1995, Italian law applies to the legal separation of two Moroccan spouses, in the absence of similar separation proceedings in Morocco.
31. *Corte di Cassazione, 2 July 2010 No 15806* ..... 730
- Italian courts can legitimately grant an objection (*eccezione di transazione*) that a judicial settlement made between an employer and one of its employees before German courts constitutes a settlement entered into by the parties on the subject matter of the dispute, if the protections granted to said employee when entering into said settlement are similar to those provided for by Italian law for the validity of waivers and settlements.

32. *Corte di Cassazione, 14 July 2010 No 16549* ..... 443

The decree of the Juvenile Court of the habitual residence of the child, that rules on the judgment of non-return issued by the courts of the State to which the child has been wrongfully removed pursuant to Article 11(8) of Regulation (EC) No 2201/2003 of 27 November 2003 can be appealed immediately to the *Corte di Cassazione*, given the analogy between the proceedings under said Article 11 and the proceedings regulated by Article 7 of Law of 15 January 1994 No 64 implementing the Hague Convention of 25 October 1980 on International Child Abduction.

A Juvenile Court requested to review a judgment of non-return issued by a court of the State to which the child has been wrongfully removed pursuant to Article 11 of Regulation (EC) No 2201/2003 judges correctly if it limits the scope of its review to the existence of the conditions required by Article 13(1)(b) of the Hague Convention of 25 October 1980 on the basis of which the foreign court has denied the return of the child and if, pursuant to Article 10(b)(iv) of the aforesaid Regulation, it declines jurisdiction over further claims aimed at obtaining the exclusive custody of the child and a declaration that the rights of custody of the other parent have lapsed. In fact, the expression 'rights of custody' used in Article 11 of the aforesaid Regulation shall be referred exclusively to the subject matter of the proceedings regulated therein and shall be given the limited meaning of 'right to take part to the decision concerning the place of residence of the child'.

33. *Corte di Cassazione, 15 July 2010 No 16579* ..... 1045

An Italian company does not lack standing (*legittimazione passiva*) in relation to a claim for reinstatement in the workplace and compensation for damages suffered as a consequence of a wrongful dismissal of an employee of a foreign company, where such company is an organizational articulation of the former.

In case of an employment contract entered into between an employee, an Italian citizen residing in Italy, and a foreign company, which was acting on behalf of an Italian company to the benefit of which the employee has carried out his/her work even though the place of work was located abroad, the choice of Italian law as the law governing the contract, even if not explicit, results in a reasonable certain manner from the provisions of said contract if it contains specific references to Italian rules regulating employment relationships and a choice of court clause in favour of the Tribunal of Milan.

34. *Corte di Cassazione, 23 July 2010 No 17346* ..... 456

The spouse of an Italian citizen (or of a citizen of another Member State of the European Union) shall, after the first three months of informal stay in the Italian territory, request a residence permit (*carta di soggiorno*) pursuant to Article 10 of Legislative Decree of 6 February 2007 No 30. Until he/she receives said permit (which is necessary in order to exercise his/her rights within the European Union), his/her status as a person regularly staying in Italy is governed by Italian law.

Pursuant to Articles 19(2)(c) of Legislative Decree of 25 July 1998 No 286 and 28 of Presidential Decree of 31 August 1999 No 396, the requirement that the relatives actually live together needs to be satisfied for the purposes of both granting a residence permit for preserving family unity and of granting and maintaining a residence title for marriage. Said requirement shall be ascertained by the competent administration and is subject to verification by the courts.

35. *Varese Tribunal, decree 23 July 2010* ..... 732
- Same-sex unions – whereby two persons of the same sex constantly live together – are social relationships protected and recognised by Article 2 of the Constitution, and can qualify as “families” within the meaning arising from the interpretation of Articles 8, 9 and 12 of the European Convention for the Protection of Human Rights, even though each State is free to determine whether the provisions on marriage shall apply to them.
- In the absence of any intervention by the Italian legislator, the provisions on marriage cannot apply to same-sex couples through court decisions. However, it is possible to extend to said couples certain rights to which married couples are entitled, whenever the need for a uniform treatment arises as a result of a case-by-case analysis.
36. *Corte di Cassazione, 4 August 2010 No 18111* ..... 497
- The expulsion of a foreigner is prohibited in a case where the territorial Commission has rejected the application for the recognition of the status of refugee but said foreigner, pending such procedure, has requested to the local head of police administration (*questore*) the issuance of a residence title.
37. *Corte di Cassazione (plenary session), order 9 August 2010 No 18481* ..... 459
- Pursuant to Articles 10(1), 11 and 117 of the Constitution, Italian courts have jurisdiction over a claim brought by a healthcare director (*direttore sanitario*) of a polyclinic of ACISMOM in order to ascertain that he is entitled to the same remuneration as that of directors of complex operating units of the National Healthcare System (*Sistema sanitario nazionale*), pursuant to the agreements entered into between the aforesaid association and the Italian State.
38. *Saluzzo Tribunal, decree 11 August 2010* ..... 740
- Pursuant to the combined provision of Article 30(1) of Law No 218 of 1995 and Articles 19 and 69(b) of Presidential Decree of 3 November 2000 No 396, the registrar general of births, deaths and marriages (*ufficiale di stato civile*) shall register the choice of Italian law – as governing both the rights in property arising out of the matrimonial relationship and the agreement providing for the separate ownership of property – at the margin of the deed of a marriage that has been celebrated abroad between two Albanian citizens resident in Italy and that has already been registered in the Italian registers of births, marriages and deaths (*registri di stato civile*). In fact, said registration does not have a duplicative function (i.e. the function of “crystallizing” an act of a foreign authority), but rather of giving publicity to said choice of law, which does not exclude the possibility that subsequent matrimonial agreements entered into by the foreign spouses as a result of their contractual freedom be registered in relation to the same deed of marriage.
39. *Corte di Cassazione (plenary session), order 16 September 2010 No 19577* ..... 498
- Ordinary courts have jurisdiction over a dispute concerning an application for the granting of a residence permit for humanitarian reasons that is lodged prior to 20 April 2005. In fact, the legal position of the foreigner lodging said application is to be qualified as a legal right (*diritto soggettivo*), which is among the fundamental human rights that enjoy the protection granted by Article 2 of the Constitution and Article 3 of the European Convention on Human Rights and cannot be downgraded to the status of legitimate interest (*interesse legittimo*) as a consequence of discretionary assessments made by administrative authorities. In fact, said authorities can only be entrusted with the power to ascertain the factual requirements that allow for humanitarian

protection, i.e. with the exercise of mere technical discretion, whereas the balancing of interests and positions protected by the Constitution is reserved exclusively to the legislator.

40. *Varese Tribunal, decree 4 October 2010* ..... 743

Pursuant to Article 19 of Regulation (EC) No 2201/2003 of 27 November 2003, in cases of *lis pendens* or related actions the court second seised shall decline jurisdiction in favour of the court that has been seised first of the same dispute or of a related dispute, but may take provisional measures in the best interest of the child who is in the territory of the State pursuant to Article 20 of said Regulation.

Based on Article 8 of Regulation (EC) No 2201/2003, the courts of the place of habitual residence of the child have jurisdiction with respect to decisions concerning the rights of custody and the modalities for visiting him/her, due to the proximity of the child to the courts that shall decide upon his/her life conditions.

In a case of *lis pendens* Italian courts – although second court seised - can take provisional measures concerning the children resident in Italy.

41. *Corte di Cassazione, 15 October 2010 No 21296* ..... 464

The provisions of Italian law governing the access and immigration of non-EU citizens are based on the obligation to request a residence permit within eight working days from the entry in Italy (Article 5(2), (3) and (8) of Legislative Decree of 25 July 1998 No 286) in accordance with the specific procedure laid down by Article 9 of Presidential Decree of 31 August 1999 No 394 and under penalty of expulsion, which applies to any person who does not comply with such obligation (Article 13(2)(b) of Legislative Decree No 286 of 1998). Accordingly, a non-EU citizen needs a specific title issued to him/her by one of the countries of the European Union and in course of validity in order to be regularly staying in Italy (Article 4 of Legislative Decree No 286/1998, as supplemented by Law of 30 July 2002 No 189).

The requirement according to which the citizens of non-EU countries need in any case a residence title in Italy does not conflict with the Conventions Implementing the Schengen Agreement of 14 June 1985. In fact, the Implementing Convention of 19 June 1990 provides that «aliens who have legally entered the territory of one of the Contracting Parties shall be obliged to report, in accordance with the conditions laid down by each Contracting Party, to the competent authorities of the Contracting Party whose territory they enter». Such provision must be interpreted as including all duties and requests, as well as the subsequent issuance of the relevant authorisation, relating to the granting of the residence permit by Italian authorities.

42. *Council of State, fourth division, 18 October 2010 No 7538* ..... 1049

Based on Article 3(1) of Law of 31 May 1995 No 218, which is applied by way of analogy, Italian administrative courts do not have jurisdiction over an action aimed at ordering to a public body of another Member State of the European Union to grant access – pursuant to the transparency rules applicable in Italy (Law of 7 August 1990 No 241) – to the administrative acts relating to a public tender for a construction contract carried out in said State pursuant to the law of said State which implements EU law, if said public body does not have a person authorized to represent it in legal proceedings pursuant to Article 77 of the Code of Civil Procedure in its local office (*sede secondaria*) in Italy and Austrian law is expressly stated to be the law applicable

to the tender procedure. The fact that said construction contract also concerns activities of public interest regulated by Italian law is irrelevant.

A decision whereby the administrative authorities of another Member State have rejected an appeal against said tender – which has become *res iudicata* and is binding and non subject to appeal before any competent administrative or judicial authority – precludes any review by Italian courts as to the contrast with Italian technical rules of both the said tender and the contract, as entered into between the mentioned foreign public body and the successful tenderer.

43. *Catania Court of Appeal, 20 October 2010* ..... 747

The provision of customary international law pursuant to which foreign States are immune from jurisdiction – as is incorporated in the Italian legal system by Article 10 of the Constitution – does not apply to a dispute brought by a public body for the payment of social security contributions that a foreign State failed to pay with respect to civilian workers employed in its military bases located in the Italian territory. In fact, said dispute does not concern a relationship between sovereign bodies nor an act made by said foreign State in the exercise of its sovereign powers.

Pursuant to Article IX(4) of the London Convention of 19 June 1951, the conditions of employment and work of local civilian workers at NATO military bases located in Italy are governed by Italian law.

Pursuant to Article 25 of Law of 31 May 1995 No 218, reference shall be made to the law of the State in which territory the incorporation procedure of the relevant organisation has been completed in order to identify the persons who are authorised to represent a foreign organisation (whether public or private) in legal proceedings.

44. *Belluno Tribunal, 5 November 2010* ..... 756

Pursuant to the combined provision of Articles 67(3) and 65 of Law of 31 May 1995 No 218, a decision issued in a State that is not part of the European Union (i.e. Ukraine) that has dissolved a marriage between two citizens of said State and that can be recognised in Italy causes a request for separation brought before Italian courts to be inadmissible, even if said courts are competent pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 due to the fact that the spouse acting as plaintiff has established his/her habitual residence in Italy since more than one year.

A foreign decision declaring a divorce without prior legal separation, and without regulating the rights of custody over children and the rights in property arising out of the matrimonial relationship does not conflict with public policy. In fact, with regard to the first of such issues it is sufficient the ascertainment that the spiritual and material communion of the spouses cannot be restored. Insofar as the other issues are concerned, they can be the object of autonomous proceedings aimed at the revision of the aforesaid foreign decision.

45. *Corte di Cassazione (criminal), 12 November 2010 No 40022* ..... 787

The requirements for granting the extradition of an Italian citizen are not met if the relevant application has been lodged by a State with which Italy has not entered into a convention on extradition.

46. *Corte di Cassazione (criminal), 12 November 2010 No 40036* ..... 788

Pursuant to the European Convention of 13 December 1957 on Extradition, any re-examination of the evidence on the basis of which the relevant enforceable order has been issued by foreign judicial authorities is

prohibited, since national courts shall only carry out a formal review of the foreign enforceable order.

47. *Varese Tribunal, order 12 November 2010* ..... 466

The transfer to ordinary civil proceedings that is provided for by Article 17 of Regulation (EC) No 1896/2006 of 12 December 2006 (which creates a European order for payment procedure) in the event that a statement of opposition to a European order for payment is lodged, shall occur through the granting of a term to both parties. To the plaintiff, for the purpose of supplementing the pleading it filed in the summary proceedings so that it conforms to the requirements laid down by Article 163 of the Code of Civil Procedure, and to the defendant for lodging a pleading supplementing its statement of opposition pursuant to, and with the contents required by, Article 167 of the Code of Civil Procedure.

48. *Padua Tribunal, 16 November 2010* ..... 468

*Lis pendens* occurs pursuant to Article 27 of Regulation (EC) No 44/2001 of 22 December 2000 if the parties to a contract providing for reciprocal obligations bring, one against the other, in Italy and in France, proceedings aimed at ascertaining that the other party did not perform, or performed incorrectly, its obligations under said contract. Under said circumstances the relevant Italian court is not required to stay the proceedings if it ascertains that it has been seised prior to the relevant French court pursuant to Article 30 of said Regulation, and it can proceed to verify its jurisdiction in the proceedings relating to the opposition to a summary injunction (*decreto ingiuntivo*). It is irrelevant that the French court – which did not rule upon the objection that said Italian court was the court first seised – has issued a provisional decision declining jurisdiction over the claims brought before it and considering Italian courts as competent with respect to such claims.

A contract whereby an Italian company shall supply to a French company a vehicle for the cleaning of refuse containers as well as two other systems for the cleaning of refuse containers to be installed in frames manufactured by third parties and made available to the Italian company by said French company constitutes a sale of goods within the meaning of Article 5(1)(b), first hyphen of Regulation (EC) No 44/2001.

Pursuant to Article 5(1)(b), first hyphen of Regulation (EC) No 44/2001, Italian courts do not have jurisdiction in relation to a contract for the sale of movables where the delivery of the goods has occurred in France in compliance with said contract and it was not challenged by the parties and is proved by written evidence.

49. *Corte di Cassazione (plenary session), order 22 November 2010 No 23593* ..... 1055

Pursuant to the Lugano Convention of 16 September 1988, Italian courts do not have jurisdiction over a claim for damages brought against a Swiss clinic and three physicians working at said clinic based on alleged malpractice as the general criterion of domicile or seat of the defendant laid down by Article 2 of said Convention does not apply. Nor does the criterion relating to the performance of the obligation in question laid down by Article 5(1) apply since said obligation should have been performed in Switzerland pursuant to Swiss law, which is the applicable law by virtue of Article 4 of the Rome Convention of 19 June 1980. Finally also the criterion laid down by Article 5(3) does not apply, since the ‘harmful event’, i.e. the initial damages, occurred in Switzerland.

50. *Milan Court of Appeal, 24 November 2010* ..... 1057  
 The judgments issued by an English court against a defendant who has been excluded from the proceedings due to him/her acting in contempt of court are not in contrast with public policy and can therefore be declared enforceable in Italy pursuant to Article 27(1) of the Brussels Convention of 27 September 1968. In fact, the exclusion order, even if it has objectively serious consequences, has been adopted in compliance with the rights of defence and the *audi alteram partem* principle for the purpose of allowing the correct administration of justice, following the repeated failure by the defendant to comply with the orders of the court. Since said failure represents a procedural strategy, and has been made with full knowledge of the possible consequences under English law, no violation of fundamental rights has occurred, since the sanctions applied are proportional to said failure.
51. *Corte di Cassazione, 25 November 2010 No 23933* ..... 474  
 German law applies to an employment contract between a German company and an Italian employee in case the German language has been chosen, the drafting and execution of the contract occurred in Germany, the remuneration has been paid in Deutschmarks, a social security number has been obtained from the German social security agency and the mandatory social contributions have been paid to it and the plaintiff did not raise any objection for the entire duration of the employment relationship. In fact, pursuant to Article 3 of the Rome Convention of 19 June 1980, the choice of applicable law by the parties may be inferred from the provisions of the contract if the same provide reasonable indications thereon, through a series of revealing circumstances such as those set forth above.
52. *Corte di Cassazione (criminal), 25 November 2010 No 41728* ..... 789  
 As far as extradition abroad is concerned, Article 38 of the Convention of 12 February 1971 between Italy and Morocco relating to reciprocal judicial assistance, enforcement of judgments and extradition grants to the requested State the mere faculty to release the person being extradited from provisional arrest if the request for extradition and related documentation are not received within thirty days. In such a case, the longer term of forty days provided for by Article 715(6) of the Code of Criminal Procedure shall apply, since the different time limit set out in the relevant provision of said Convention – which lacks a specific implementing rule in the domestic legal system – is not mandatory.
53. *Ravenna Tribunal, order 3 December 2010* ..... 1065  
 Pursuant to Article 5 of the Code of Civil Procedure, Italian courts have jurisdiction over a dispute concerning the arrest of a ship (*sequestro conservativo di nave*) that sailed out of the Italian territorial sea, following a decision rejecting the request for the arrest, against which the requesting creditor has subsequently filed an appeal.  
 Pursuant to Article 536 of the Navigation Code and Rule A of the York-Antwerp Rules, the payment of a ransom for the release of a ship and its cargo that have been hijacked by pirates, which shall be qualified as a *crimen iuris gentium*, constitutes a general average act. Accordingly, there is no *prima facie* case (*fumus boni iuris*) for requesting the arrest of said ship to guarantee the compensation for the damages caused by the retention of the cargo by the shipowner for the purpose of obtaining the payment of the relevant contribution to the general average.
54. *Varese Tribunal, order 12 December 2010* ..... 761  
 Where a statement of opposition to a European order for payment is



lodged, the transfer to ordinary civil proceedings provided for by Article 17 of Regulation (EC) No 1896/2006 shall occur through the granting of a term both to the plaintiff and to the defendant. With regard to the former, such term is granted for supplementing the pleading he/she filed in the summary proceedings so that it meets the requirements laid down by Article 163 of the Code of Civil Procedure; with regard to the latter such term serves the purpose of lodging a pleading supplementing its statement of opposition pursuant to, and with the contents required by, Article 167 of the Code of Civil Procedure.

55. *Corte di Cassazione, 15 December 2010 No 25320* ..... 1068
- European Union law does not require national courts to disregard national procedural rules conferring the authority of *res iudicata* to a decision (i.e., in this case, the rules concerning the terms for appeal) not even if the disapplication of said rules would allow to remedy a breach of European Union law. However, the above does not apply in exceptional cases where there are discriminations between situations ruled by European Union law and situations ruled by domestic law, or where the exercise of rights granted by Community law is made, in practice, impossible or extremely difficult.
56. *Corte di Cassazione (criminal), 23 December 2010 No 26056* ..... 791
- Pursuant to Article 8(3) of Legislative Decree of 28 January 2008 No 25, the courts shall have an active role in examining a petition for international protection, regardless of the principle applicable to civil proceedings pursuant to which the facts of the case and the evidence thereof shall be alleged by the parties (*principio dispositivo*) and related estoppel. On the contrary, the courts shall rely on the possibility to gather the necessary information and documents on their own motion.
57. *Turin Court of Appeal, decree 23 December 2010* ..... 478
- Pursuant to Article 64(b) and (c) of Law of 31 May 1995 No 218, a decision of a Syrian court to dissolve the personal relationship arising from a '*katb ktab*' of Islamic law can be recognised in Italy, since the interested parties can participate to the relevant proceedings in compliance with the *audi alteram partem* principle.
- Pursuant to Article 64(g) of Law No 218 of 1995, a decision of a Syrian court to cease the personal relationship arising from a *katb ktab* of Islamic law can be recognised in Italy, since the ruling ascertaining or providing for its dissolution merely terminates a legal relationship that cannot produce effects in the Italian legal system and therefore does not conflict with public policy. In fact, *katb ktab* can be considered a simple agreement governed by family law as it is an agreement preceding the actual marriage, which does not allow the parties to live together and therefore is similar to an engagement, even though it imposes obligations upon the contracting parties, who cannot marry with another person.
58. *Corte di Cassazione (criminal), 27 December 2010 No 45524* ..... 792
- As far as the European arrest warrant is concerned, the provisions of Article 18(1)(p) of Law of 22 April 2005 No 69 – pursuant to which the fact that the crime for which the relevant request has been made has been committed in whole or in part on the Italian territory is one of the optional grounds for refusing to surrender the requested person – shall be coordinated with Article 31 of EC Framework Decision No 2002/584/JHA, which has been implemented in Italy by said Law. According to Article 31, said Framework Decision is without prejudice to bilateral or multilateral agreements or arrangements in force when it was adopted 'in so far as such agreements or arrangements

allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants’.

In the relationship with Germany, the bilateral agreement of 24 October 1979, which supplements the European Convention of 13 December 1957 on Extradition, applies. By virtue of Article II of said agreement, the relevance of the ground for refusal laid down by Article 7 of said Convention has been limited in case the request for surrender concerns also other crimes that are not subject to the jurisdiction of the requested State, if it is appropriate that all relevant crimes are adjudicated by the judicial authorities of the requesting State.

59. *Corte di Cassazione, 29 December 2010 No 26285* ..... 1073
- The power-duty of national courts to conform to European Union law necessarily implies the disapplication of domestic procedural rules that preclude the *Corte di Cassazione* from examining questions that were not specifically alleged by the appellant and that therefore prevent the full application of the provisions of European Union law (i.e., in this case, the rules concerning the terms for appeal). Such power-duty to disregard rules of national law continues to coexist with the same power-duty to correctly interpret them, especially so if the correct interpretation of said rules can overcome any inconsistency with European Union law.
60. *Bari Court of Appeal, 29 December 2010* ..... 481
- Pursuant to Article 64 of Law of 31 May 1995 No 218, an application for recognition of a judgment issued by the Tribunal of Jerusalem (Israel) shall be rejected, if the applicant has not proved that it is a party to the legal relationship in question and therefore that he has an interest in said recognition.
- Pursuant to Article 64(a) of Law No 218 of 1995, an application for recognition of a foreign judgment shall be rejected if no proof is given by the applicant that the criteria on the basis of which the foreign court has affirmed jurisdiction correspond to the principles pursuant to which Italian courts assert jurisdiction in similar cases as envisaged by Articles 3 and followings of said Law.
61. *Corte di Cassazione, 7 January 2011 No 277* ..... 763
- An application for the return of a child cannot be granted if, at the time of removal, the applicant was not actually exercising his/her custody rights. In fact, said exercise constitutes an essential requirement pursuant to Article 13(a) of the Hague Convention of 25 October 1980 on International Child Abduction. The causes and the reasons for which said custody rights were not exercised are irrelevant.
62. *Corte di Cassazione, 11 January 2011 No 450* ..... 1078
- In a case concerning damages arising out of a road accident occurred in Italy, the heirs of a non-EU citizen residing abroad can bring an action for damages against both the driver’s insurance company and the road accident fund (*Fondo di garanzia per le vittime della strada*). In fact, a constitutionally oriented interpretation of Article 16 of the Preliminary Provisions to the Civil Code implies not only that the condition of reciprocity shall not be required for the purpose of ensuring that the foreigner is compensated for the infringement of any inviolable right protected under Articles 2, 3 and 10 of the Constitution, but also that said foreigner can benefit from all claims for compensation available to Italian citizens, even if they are directed towards a person different from that who has caused said infringement.
- The constitutionally oriented interpretation of Article 16 of the Preliminary

Provisions to the Civil Code implies that the right to compensation of a non-EU citizen residing abroad extends to the economic and non-economic damages caused by an infringement of the inviolable right to health and therefore also of the right to psychophysical integrity and to fully and freely carry out the activities performed by human beings within their family, as laid down by Articles 2, 29 and 30 of the Constitution, even if the condition of reciprocity is not satisfied. On the contrary, any damage arising from the loss of, or damage to, the assets owned by the foreigner cannot be recovered if the condition of reciprocity is not met, since the right to ownership is not – according to the prevailing opinion – an inviolable right of human beings.

63. *Bari Juvenile Court, decree 12 January 2011* ..... 1113  
 Pursuant to Article 3 of the Hague Convention of 25 October 1980 on International Child Abduction, a removal is to be considered wrongful when it is in breach of rights of custody that were actually exercised. The condition of actual exercise of rights of custody – which is reaffirmed by Article 13(a) of said Convention – is also maintained in Article 2 of Regulation (EC) No 2201/2003 of 27 November 2003.
64. *Milan Juvenile Court, decree 16 January 2011* ..... 484  
 Pursuant to Article 2(9) and (11) of Regulation (EC) No 2201/2003 of 27 November 2003, both parents have the right to participate to any decision concerning the place of residence of the children even if they temporarily do not live together, provided that they both have parental responsibility and jointly exercise the rights of custody by operation of law, agreement or judgment. Any change of the habitual residence of the children from Germany to Italy that is unilaterally made by the parent who is exercising the rights of joint custody and by whom the children are located pursuant to Italian and German law, to an agreement between the spouses (who are *de facto* separated) and to a judgment of German courts, constitutes a wrongful removal of the children in light of the aforesaid Regulation.  
 With regard to the procedure for the hearing of the children, only the statements rendered in proceedings before judicial authorities can be considered. The use of statements made by the children and recorded by one of the parents on an audiovisual support (CD/DVD) constitutes a manifest violation of the provisions of Conventions regulating the hearing of children, and particularly of Article 12 of the New York Convention of 20 November 1989 and of Article 10 of the Strasbourg Convention of 25 January 1996 on the Exercise of Children's Rights, since there is no guarantee whatsoever as to the manner in which said statements have been obtained and there are serious doubts as to their genuineness. Moreover, as said statements have not been integrated with the testimony of third parties pursuant to Article 2702 of the Civil Code, they do not constitute written testimony allowed by Law of 18 June 2009 No 69 and, in any case, no evidence has been given that the father has given his consent to the same.  
 Pursuant to Article 20 of Regulation (EC) No 2201/2003, Italian courts, which are requested to adopt provisional measures aimed at allowing the return of the children in Germany to occur in the most appropriate manner (as it will be determined by the public prosecutor and the Central authority) may order that the children are placed in an appropriate educational community, that immediate psychological support is made available to them and that the parents visiting rights are determined on equal footing.
65. *Corte di Cassazione (plenary session), 14 February 2011 No 3568* ..... 766  
 Pursuant to Article 4 of Law of 31 May 1995 No 218, Italian courts do not

have jurisdiction over an action brought by an Italian company against another Italian company (which acted as agent of the carrier that has executed a bill of lading) for the damages suffered by the transported goods. In fact, a clause conferring jurisdiction shall be deemed valid even if it indicates as competent five courts of the People's Republic of China, since the question of validity of the clause identifying the competent court in a foreign legal system falls within the exclusive competence of said legal system.

The requirement that a clause derogating Italian jurisdiction shall be evidenced in writing, as laid down by Article 4(2) of Law No 218 of 1995, shall be deemed satisfied if said clause is contained in a bill of lading executed only by the carrier (and not by the shipper) in accordance with a usage applicable in the field of transport law, if the shipper, intentionally adhering to a usage he was or he ought to have been aware of, has received the bill of lading without raising any objection and has endorsed it in favour of the cargo receiver, bearer of the bill of lading, against whom said clause is therefore enforceable. In fact, said Article 4(2) shall be interpreted in conformity with the principles laid down by Article 17 of the Brussels Convention of 27 September 1968 and Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, which are not directly applicable given that the dispute in question lacks the requirement of internationality.

66. *Corte di Cassazione, 14 February 2011 No 3572* ..... 775

Article 36(4) of Law of 4 May 1983 No 184 provides that an adoption declared abroad upon request of Italian citizens who demonstrate that, at the time of the decision, they had continuously stayed in the territory of the relevant foreign State and had established their residence there for at least two years shall be recognized in Italy for all purposes through a decision of the competent Juvenile Court. Said Article does not derogate from the general principle laid down by Article 35(3) of said Law, pursuant to which the adoption of a child conferring to him/her the status of legitimate child (*adozione con effetti legittimanti*) that has been declared abroad cannot be registered in the Italian registers of births, marriages and deaths (*registri dello stato civile*) if said registration is in conflict with the fundamental principles of Italian family and minor law. Among such principles is the one laid down by Article 6 of Law No 184 of 1983, pursuant to which an adoption conferring the status of legitimate child is possible only for married couples and not for single persons.

67. *Rome Tribunal, 14 February 2011* ..... 1088

Pursuant to Articles 2, 5(1) and 23 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a claim for damages suffered by the plaintiff as a result of the fact that he/she has not obtained – in compliance with a contract for the sale of a group of companies – the position of President in a company of said group nor a prestigious position in the acquiring group where the defendant company has its seat in France, the place of performance of the obligation in question is located in France and the object of the dispute does not fall within the scope of application of the clause conferring jurisdiction to Italian courts that is contained in said contract.

68. *Corte di Cassazione, 17 February 2011 No 3919* ..... 779

Pursuant to Article 10 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the service abroad of judicial documents can be effected by postal channels, if the State of destination does not object. In such a case, there is no requirement to provide a translation, and Article 5(4) of said

Convention – pursuant to which a form containing a translated summary of the document to be served shall be served together with said document – does not apply, since such requirement is not provided for in respect of service to be made pursuant to Article 10 of said Convention.

As far as the recognition of foreign judgments is concerned, a judgment issued by a Portuguese court does not conflict with the right of defence under Article 64(b) of Law No 218 of 1995, if Italian courts ascertain that the document instituting the proceedings has been duly served. The translation of the same in the Italian language is not required. Therefore, the *audi alteram partem* principle has been complied with, and the defendant has had the opportunity to arrange for his/her defence.

69. *Como Tribunal, Division of Erba, 22 February 2011* ..... 782

Pursuant to Article 5(1) of the Brussels Convention of 27 September 1968 – which is still referred to by Article 3(2) of Law of 31 May 1995 No 218 as said reference does not extend to Regulation (EC) No 44/2001 of 22 December 2000 – Italian courts have jurisdiction over an action for the performance of the obligation to pay the residual amount of the price of certain movable goods brought by the seller, an Italian company, against the buyer, a company with registered office in the United States. In fact, pursuant to Article 57(1) of the Vienna Convention of 11 April 1980 the place of performance of the payment obligation in question is located at the seller's place of business in Italy.

Pursuant to Article 5(1)(b) of Regulation (EC) No 44/2001, Italian courts do not have jurisdiction over a dispute between an Italian and a Spanish company if the goods sold shall be delivered in Spain, since the place of delivery shall be the place where the goods are finally delivered, i.e. where they are physically (as opposed to legally) delivered to the buyer, even in case the obligation in question is the obligation to pay for the goods.

70. *Corte di Cassazione, 4 April 2011 No 7599* ..... 1092

Pursuant to Article 32 of Law of 31 May 1995 No 218, Italian courts have jurisdiction over proceedings for legal separation if one of the spouses is an Italian citizen and the marriage has been celebrated in Italy.

Pursuant to Article 4 of the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Infants, Italian courts have also jurisdiction in relation to measures for the protection of children who are Italian citizens.

Pursuant to Article 11 of Law No 218 of 1995, the lack of jurisdiction of Italian courts can be raised at any stage or instance of the proceedings by the defendant who has entered an appearance and has not accepted, even implicitly, the jurisdiction of Italian courts or by the court of its own motion where the defendant is in default of appearance, or in case of actions *in rem* concerning immovable properties located abroad or, finally, where jurisdiction is excluded by a rule of international law and the relevant objection is not precluded by *res iudicata*. If none of the above cases occurs, Article 4 of said Law on acceptance of jurisdiction by the defendant remains applicable.

Pursuant to Article 31 of Law No 218 of 1995, Canadian law – as the law of the place of prevailing localization of the matrimonial life at the time of filing of the document instituting the proceedings – applies to the legal separation of two spouses of different nationality. Said place is to be construed as the place of main centre of the interests and affective relationships of the spouses and does not necessarily coincide with the family's residence. In fact, said criterion must be construed as referring to the actual development of family relationships and to the history of matrimonial life, which is subject to change over time. The lack of

indication by the spouses, since the celebration of the marriage, of a place where the spouses would have settled does not make it impossible to ascertain the relevant foreign law within the meaning of Article 14 of Law No 218 of 1995 and therefore said Article, that cannot be interpreted by analogy, does not apply.

71. *Tivoli Tribunal, 6 April 2011* ..... 1097

Pursuant to Article 3(1) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over an action for judicial separation brought by an Italian citizen against a German citizen residing in Germany, if the habitual residence of the plaintiff is located in the Italian territory and the plaintiff has been residing in Italy for at least six months immediately prior to the filing of the document instituting the proceedings.

Pursuant to Article 31 of Law of 31 May 1995 No 218, Italian law – as the law of the State of prevailing localization of the matrimonial life – applies to the legal separation of two spouses of different nationality, who have lived in Italy for most of the time. For this purpose, it is irrelevant that they spent short periods of time in Germany.

Pursuant to Article 5(2) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a counterclaim for maintenance allowance (*assegno di mantenimento*), which is ancillary to an action for judicial separation over which Italian courts have jurisdiction. To the contrary, Italian courts do not have jurisdiction over a claim for a contribution to the maintenance of a child, since said claim is not ancillary to an action concerning the status of persons. In fact, said claim falls under the jurisdiction of the courts of the place where the maintenance creditor (i.e. the child) has his/her domicile or habitual residence, insofar German courts, where the child has resided in Germany since his/her birth.

Pursuant to Article 8 of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction in matters of parental responsibility over a child who has never been habitually resident in Italy. Nor do Italian courts have jurisdiction pursuant to Article 10 where no wrongful removal of the child from Italy or failure to return him/her to Italy has occurred, or pursuant to Article 12 if the defendant has not accepted such jurisdiction.

Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a claim aimed at ascertaining that the judicial separation is due to the other spouse's fault (*addebito della separazione giudiziale*), which is brought by an Italian citizen against a German citizen. In fact, said fault implies the breach of marital duties and, as such, arises from a tortious conduct committed with willful misconduct or negligence, whose alleged harmful consequences occurred in the Italian territory.

72. *Corte di Cassazione (plenary session), order 8 April 2011 No 8034* ..... 1103

Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action for damages in tort brought against persons domiciled in other Member States of the European Union and in Switzerland. In fact, both the initial damages and the event giving rise to the damages – i.e. the offer of financial instruments by a non-harmonised fund without the prescribed authorization of the Bank of Italy and the untruthfulness of the related prospectus – have occurred in Italy. Moreover, said financial instruments shall be deemed to have been placed in Italy, due to the application by way of analogy of the 'PRIMA' – place of the relevant intermediary approach' principle laid down by Article 10 of Legislative Decree of 21 May 2004 No 170. In fact, the accounts of the intermediaries where the registration in favour of the account holder occurs are located in Italy.

Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action in tort for prospectus liability arising out of the untruthfulness of a prospectus drafted by an Irish company, since said liability arises from the diffusion of false and/or misleading information. It therefore arises in the place where the prospectus is distributed, i.e. in Italy.

An action for damages in tort brought in Italy against persons domiciled in other Member States of the European Union and in Switzerland for the offer of financial instruments by a non-harmonised fund without the prescribed authorization of the Bank of Italy and the untruthfulness of the related prospectus and an action brought in Ireland by one of the companies named as defendants against another of said companies for contractual liability for the obligations of the latter as the depository of said financial instruments are not related actions within the meaning of Article 28 of Regulation (EC) No 44/2001. Indeed both the relevant facts and the liability regimes are different.

73. *Milan Tribunal, 8 April 2011* ..... 1112

Pursuant to Article 3(b) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the application for the legal separation of two Italian citizens who are habitually resident in Scotland. Pursuant to Article 19 of said Regulation, there is no international *lis pendens* if the document instituting the separation proceedings in Italy has been lodged prior to the lodging of the corresponding document in Scotland.

74. *Corte di Cassazione (plenary session), 26 May 2011 No 11559* ..... 1115

Italian courts have jurisdiction over an action brought by an employee against his/her employer, which has its seat in Italy, in order to challenge the legitimacy of a dismissal in relation to work carried out abroad because, pursuant to Article 11 of Law of 31 May 1995 No 218, the fact that the judgment of first instance, that rejected the plea of lack of jurisdiction, has not been appealed on such grounds precludes the defendant from subsequently raising any such objection.

#### EU CASE-LAW

*EU Law*: 6, 9.

*Consumer protection*: 10.

*Contracts*: 12.

*EU Citizenship*: 14.

*Freedom of movement of goods*: 20.

*Freedom to provide services*: 8, 17.

*Judicial proceedings before the Court of Justice*: 1, 18.

*Personal status*: 4.

*Prohibition of discrimination*: 20.

*Regulation (EC) No 1347/2000*: 2.

*Regulation (EC) No 44/2001*: 13, 21.

*Regulation (EC) No 1206/2001*: 18.

*Regulation (EC) No 2201/2003*: 3, 5, 7, 11, 15, 16.

*Right to name*: 14.

*Rome Convention of 1980*: 19.

1. *Court of Justice, order 12 January 2010 case C-497/08* ..... 836

A judicial authority is not entitled to refer to the Court of Justice for a preliminary ruling under Article 234 EC when it acts in a non-judicial capacity and it is required to render an administrative decision – such as the appointment of a ‘supplementary’ liquidator for the remaining assets of a company struck off the register – without being required at the same time to decide a legal dispute.

2. *Court of Justice, order 17 June 2010 case C-312/09* ..... 204

Regulation (EC) No 1347/2000 of 29 May 2000 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility on children of both spouses is not applicable to divorce proceedings brought before courts of a State which was not a Member of the EU at the time the action was brought.

3. *Court of Justice, 1 July 2010 case C-211/10 PPU* ..... 208

A ‘judgment on custody that does not entail the return of the child’, within the meaning of Article 10(b)(iv) 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, is a final judgment, adopted on the basis of full consideration of all the relevant factors, in which the court with jurisdiction rules on arrangements for the custody of a child who is no longer subject to other administrative or judicial decisions. Such judgment is final also when the ruling on the question of custody of the child provides for a review or reconsideration of the issue of custody of the child at regular intervals, within a specific period or in certain circumstances. A provisional measure does not constitute such a judgment and cannot be the basis of a transfer of jurisdiction to the courts of the Member State to which the child has been wrongfully removed.

A judgment of the court with jurisdiction ordering the return of the child falls within the scope of Article 11(8) of Regulation (EC) No 2201/2003 even if it is not preceded by a final judgment of that court relating to rights of custody of the child.

Pursuant to the second subparagraph of Article 47(2) of Regulation (EC) No 2201/2003 a judgment delivered subsequently by a court in the Member State of enforcement which awards provisional rights of custody and is deemed to be enforceable under the law of that State cannot preclude the enforcement of a certified judgment which had been delivered previously by the court which has jurisdiction in the Member State of origin and ordered the return of the child.

The enforcement of a certified judgment cannot be refused in the Member State of enforcement because as a result of a subsequent change of circumstances, it might be seriously detrimental to the best interests of the child. Such a change must be pleaded before the court which has jurisdiction in the Member State of origin, which should also hear any application to suspend enforcement of its judgment.

4. *Civil Service Tribunal, 1 July 2010 case F-45/07* ..... 243

Where autonomous interpretation is not possible, as in the case of the



notion of ‘surviving spouse’ for the purposes of the application of Article 79 of the Staff Regulations and Article 18 of Annex VIII, reference to the law of the Member States must be made in order to determine the meaning and scope of a provision of EU law, also in the absence of an express reference. To this extent however the identification by an administrative authority of the Union of the applicable law to a person’s marital status is not necessary, having regard both to the absence of a complete set of rules of private international law within EU law and to the divergences of the national systems of private international law, while it is sufficient to refer to the substantive law of the State having the closest connection with the dispute.

The fact that a EU institution, on the basis of applicable national substantive law, recognizes that two persons have the status of surviving spouse of one and the same deceased former official, for the purposes of granting a pecuniary benefit, does not in any way constitute even implicit acceptance at EU level of multiple marriage, and thus it does not raise a question of compatibility with EU public policy.

5. *Court of Justice, 15 July 2010 case C-256/09* ..... 224

Article 20 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 applies only to measures adopted by courts whose jurisdiction is not based on a provision of such Regulation.

The prohibition of revision of the jurisdiction of the court of origin of the decision, provided for in Article 24 of Regulation (EC) No 2201/2003, is based on the principle that such court of origin must determine whether it has jurisdiction having regard to the provisions of Regulation (EC) No 2201/2003 and that such ascertainment must be clearly evident from the judgment itself. Such a prohibition therefore does not preclude the court of another Member States to which a judgment is submitted to ascertain the basis on which the court of origin has declared its jurisdiction; when the decision submitted does not contain material elements unquestionably demonstrating jurisdiction on the merits of the court of origin, the receiving judge may determine whether it is evident from that decision that the court of origin intended to consider itself competent on a provision of Regulation No 2201/2003.

The system of mutual recognition and enforcement of decisions as laid down in Articles 21 et seq. of Regulation (EC) No 2201/2003 does not apply to provisional measures, relating to rights of custody, falling within the scope of Article 20 of that Regulation.

6. *Court of Justice, 5 October 2010 case C-173/09* ..... 540

European Union law precludes a national court which is called upon to decide a case referred back to it by a higher court hearing an appeal from being bound, in accordance with national procedural law, by legal rulings of the higher court, if it considers, having regard to the interpretation which it has sought from the Court, that those rulings are inconsistent with European Union law.

7. *Court of Justice, 5 October 2010 case C-400/10 PPU* ..... 500

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, defines as an autonomous concept the notion of ‘rights of custody’, within the meaning of Article 2(9), while it does not determine which person must have such rights of custody and

refers such question to the law of the Member State where the child was habitually resident immediately before its removal or retention.

The wrongful removal of a child, within the meaning of Article 2(11)(a) of Regulation (EC) No 2201/2003, depends entirely on the existence of a rights of custody, conferred by the relevant national law, in breach of which that removal has taken place.

Regulation (EC) No 2201/2003, interpreted in light of Articles 7 and 24 of the Charter of Fundamental Rights of the European Union, does not preclude a Member State from providing by its law that the acquisition of rights of custody by a child's father, where he is not married to the child's mother, is dependent on the father's obtaining a judgment from a national court with jurisdiction awarding such rights to him.

8. *Court of Justice, 7 October 2010 case C-515/08* ..... 838

Articles 56 and 57 TFEU preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to send a prior declaration of posting, in so far as the employer must be notified of a registration number for the declaration before the planned posting may take place and the national authorities of that first State have a period of five working days from receipt of the declaration to issue that notification.

Articles 56 and 57 TFEU do not preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to keep available to the national authorities of the latter, during the posting, copies of documents equivalent to the social or labour documents required under the law of the first Member State and also to send those copies to the authorities at the end of that period.

9. *Court of Justice, 21 October 2010 case C-227/09* ..... 841

The optional derogations provided for in Article 17 of Directive 93/104/EC of 23 November 1993 as amended by Directive 2000/34/EC concerning certain aspects of the organization of working time, pursuant to which, at given specific conditions, it is possible to derogate through collective agreements or agreements concluded between the two sides of industry at national or regional level from the workers' right to a minimum weekly rest period, laid down in Article 5 of the Directive, cannot be directly relied upon against individuals by the Authorities of a Member State which has not exercised that option when transposing the Directive, nor impose to the judges of that Member State to interpret the domestic law as permitting the application of collective agreements derogating to the provisions on weekly rest period.

10. *Court of Justice, 9 November 2010 case C-137/08* ..... 843

The national court must investigate of its own motion whether a term conferring exclusive territorial jurisdiction in a contract concluded between a seller or supplier and a consumer falls within the scope of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and, if it does, assess of its own motion whether such a term is unfair.

11. *Court of Justice, 9 November 2010 case C-296/10* ..... 511

The provisions of Article 19(2) 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 are not applicable where a court of a Member State is first seised

only for the purpose of its granting provisional measures within the meaning of Article 20 of that Regulation and where a court of another Member State which has jurisdiction as to the substance of the matter within the meaning of the same Regulation is seised second of an action directed at obtaining the same measures, whether on a provisional basis or as final measures.

The fact that a court of a Member State is seised in the context of proceedings to obtain interim relief or that a judgment is handed down in the context of such proceedings and there is nothing in the action brought or in the judgment handed down indicating that the court seised for the interim measures has jurisdiction within the meaning of Regulation (EC) No 2201/2003 does not necessarily preclude that, as may be provided for by the national law of that Member State, there may be an action as to the substance of the matter which is linked to the action to obtain interim measures and in which there is evidence to demonstrate that the court seised has jurisdiction within the meaning of such Regulation.

Where, notwithstanding efforts made by the court second seised to obtain information by the party claiming *lis pendens*, by the court first seised and by the central authority, the court second seised lacks any evidence which enables it to determine the cause of action of proceedings brought before another court and which is aimed, in particular, at demonstrating the jurisdiction of that court in accordance with Regulation (EC) No 2201/2003, and where, because of specific circumstances, the interest of the child requires the handing down of a judgment which may be recognised in Member States other than that of the court second seised, it is the duty of that court, after the expiry of a reasonable period in which answers to the enquiries made are awaited, to proceed with consideration of the action brought before it. The duration of that reasonable period must take into account the best interests of the child in the specific circumstances of the proceedings concerned.

12. *Court of Justice, 2 December 2010 case C-108/09* ..... 1148

In relation to Internet sales, the rules concerning the act of selling *per se*, in particular the on-line offer and the conclusion of the contract by electronic means, that fall within the scope of Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal market ('Directive on electronic commerce'), must be kept separate from the rules relating to the conditions under which the goods sold via Internet can be delivered on the territory of a Member State, that should be assessed under Articles 34 and 36 TFEU on the free movement of goods.

13. *Court of Justice, 7 December 2010 in joined cases C-585/08 and C-144/09* ..... 796

A contract concerning a voyage by freighter involving, for an inclusive price, transport and accommodation for a period of more than 24 hours is a contract of transport which provides for a combination of travel and accommodation for an inclusive price within the meaning of Article 15(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, interpreted in the light of Article 6(4)(b) of Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) which makes express reference to Directive 90/314/EEC of 13 June 1990 on 'package' travel, 'package' holidays and 'package' tours.

In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation (EC) No 44/2001, it should be ascertained

whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them. For the purpose of determining if the trader's activity is directed to the Member State of the consumer's domicile, the following matters, the list of which is not exhaustive, are capable of constituting evidence thereof: namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient and the same is true for the mention of an email address and of other contact details, or for the use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

14. *Court of Justice, 22 December 2010 case C-208/09* ..... 1117

The refusal by the authorities of a Member State to recognise all the elements of the surname of a national of that State, as determined in another Member State – in which that national resides – at the time of his or her adoption as an adult by a national of that other Member State, and as entered for fifteen years in the register of civil status of the first State is a restriction on the freedoms conferred on every EU citizen by Article 21 TFEU, but is not contrary to this provision where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law, provided that the measures adopted by those authorities in that context are justified on public policy grounds, that is to say, they are necessary for the protection of the interests which they are intended to secure and are proportionate to the legitimate aim pursued.

15. *Court of Justice, 22 December 2010 case C-491/10 PPU* ..... 527

A decision disposing for the return of the child can be certified by the court of the Member State of origin in accordance with the requirements of Article 42 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, interpreted in compliance with Article 24 of the Charter of Fundamental Rights of the European Union, only after that court ensures that, having regard to the child's best interests and to all the circumstances of the individual case, the judgment to be certified was made with due regard to the child's right freely to express his or her views and that a genuine and effective opportunity to express those views was offered to the child, taking into account the procedural means of national law and the instruments of international judicial cooperation.

The systems for recognition and enforcement of judgments handed down in a Member State which are established by Regulation (EC) No 2201/2003 are based on the principle of mutual trust between Member States in the fact that

their respective national legal systems are capable of providing an equivalent and effective protection of fundamental rights, recognised at European Union level, in particular, of the child's right to be heard, set forth by Article 24 of the Charter of Fundamental Rights. Therefore the court having jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of Regulation (EC) No 2201/2003 as interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin.

16. *Court of Justice, 22 December 2010 case C-497/10 PPU* ..... 812

The concept of 'habitual residence', for the purposes of Articles 8 and 10 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 must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case. If the application of the abovementioned tests were to lead to the conclusion that the child's habitual residence cannot be established, the court having jurisdiction would have to be determined on the basis of the criterion of the child's presence, under Article 13 of the same Regulation.

Judgments of a court of a Member State which refuse to order the prompt return of a child under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction to the jurisdiction of a court of another Member State and which concern parental responsibility for that child have no effect on judgments which have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.

17. *Court of Justice, 10 February 2011 in joined cases C-307/09 to C-309/09* ..... 1149

The hiring-out of workers, within the meaning of Article 1(3)(c) of Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, is a service provided for remuneration in respect of which the worker who has been hired out remains in the employ of the undertaking providing the service, no contract of employment being entered into with the user undertaking. It is characterised by the fact that the movement of the worker to the host Member State constitutes the very purpose of the provision of services effected by the undertaking providing the services and that that worker carries out his tasks under the control and direction of the user undertaking.

18. *Court of Justice, 17 February 2011 case C-283/09* ..... 824
- After the entry into force of the Treaty of Lisbon (on 1st December 2009), repealing Article 68 EC, the Court has jurisdiction to adjudicate on the reference for preliminary rulings on the interpretation of acts adopted in the field of Title IV of the EC Treaty lodged by a national court against whose decisions there is still judicial remedy, even if the question for preliminary ruling has been referred before that date.
- The condition of admissibility of a reference for preliminary ruling pursuant to Article 267 second paragraph TFEU, on the basis of which the question referred to the Court must be necessary to enable the referring court to ‘give judgment’ must be interpreted in a broad sense in order for the Court of Justice to interpret all procedural provisions of European Union law that the referring court is required to apply in order to give judgment, in particular those set by Regulation (EC) No 1206/2001 of 28 May 2001 on the taking of evidence in civil or commercial matters. The concept of ‘give judgment’ must therefore be understood as encompassing the whole of the procedure leading to the judgment of the referring court, including all issues relating to the responsibility for the costs of proceedings.
- Articles 14 and 18 of Council Regulation (EC) No 1206/2001 must be interpreted as meaning that a requesting court is not obliged to pay in advance to the requested court for the expenses of a witness or to reimburse the expenses paid to the witness examined.
19. *Court of Justice, 15 March 2011 case C-29/10* ..... 1129
- In a situation in which an employee carries out his activities in more than one Contracting State, the country in which the employee habitually carries out his work in performance of the contract, within the meaning of Article 6(2)(a) of the 1980 Rome Convention on the law applicable to contractual obligations is that in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his obligations towards his employer.
20. *Court of Justice, 7 April 2011 case C-291/09* ..... 1138
- Article 34 TFEU must be interpreted as not precluding the legislation of a Member State from requiring the provision of security pending judgment, by a claimant of Monegasque nationality which has brought proceedings before one of the civil courts of that State against a national of that State in order to obtain payment of invoices relating to the delivery of goods assimilated to Community goods, although such a requirement is not imposed on nationals of that Member State. Such requirement entails however a direct discrimination based on the nationality of the claimant, prohibited under the first paragraph of Article 18 TFEU, which however cannot be invoked by a Monegasque company.
21. *Court of Justice, 9 June 2011 case C-87/10* ..... 1143
- The first indent of Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case of distance selling, the place where the goods were or should have been delivered pursuant to the contract must be determined on the basis of the provisions of that contract.
- In order to verify whether the place of delivery is determined ‘under the contract’, the national court seised must take account of all the relevant terms and clauses of that contract which are capable of clearly identifying that place, including terms and clauses which are generally recognised and applied through

the usages of international trade or commerce, such as the Incoterms drawn up by the International Chamber of Commerce in the version published in 2000.

If it is impossible to determine the place of delivery on that basis, without referring to the substantive law applicable to the contract, the place of delivery is the place where the physical transfer of the goods took place, as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at the final destination of the sales transaction.

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