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CASES IN ITALIAN COURTS

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1. *Novara Tribunal, 6 June 2011*

As regards the sale of movables, the clause ‘ex works’ introduced in a delivery note is not capable of influencing the determination of the ‘place of delivery’ of the goods under Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000. In fact, the ‘place of delivery’ is a factual notion, which inevitably coincides with the place of destination of the goods.

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2. *Corte di Cassazione (plenary session), 1 August 2011 No 16847*

Italian courts retain jurisdiction over an action filed by a former employee of the *Pontificio Collegio americano del Nord* to obtain a declaration of unlawful termination of the employment relationship and the subsequent re-instatement of the employee in her position. In fact, said *Collegio* cannot be characterized as a ‘central entity of the Catholic Church’ under Article 11 of the Treaty between Italy and the Holy See of 11 February 1929.

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3. *Corte di Cassazione, 1 September 2011 No 17966*

The provision pursuant to which the right of a Moroccan citizen to a disability pension is conditional upon the possession of a residence permit – which does not attach importance to the fact that in the relevant period said citizen actually possessed a residence permit in Italy – must be disapplied for contrast with European Union law. In fact, pursuant to the Cooperation Agreement between the European Community and Morocco of 27 April 1976, Moroccan workers benefit, as for social security, of a regime characterized by the absence of any discrimination based upon nationality compared to the citizens of the Member States where they are employed.

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4. *Corte di Cassazione, 29 September 2011 No 19932*

Pursuant to Article 64(b) of Law of 31 May 1995 No 218, an Albanian judgment cannot be recognized in Italy as it orders to the Italian Embassy to pay the rent for the Ambassador’s residence, which was evicted from the plaintiffs by Albanian authorities. In fact, the document instituting the proceedings as a result of which said judgment was rendered was not served – in breach of Article 141 of the Albanian Code of Civil Procedure – on the Embassy’s representative, on the person in charge of receiving similar communications or, in their absence, on any other person employed at the Embassy, but rather on an unidentified person or a person lacking the foregoing features, and a term of only five days was granted to the defendant to file his response in violation of the fundamental rights to defence.

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5. *Corte di Cassazione, order 10 October 2011 No 20870* 419
 The motion filed by two Turkish nationals petitioning for the recognition of the Italian nationality as a result of them being children of a woman who, pursuant to Article 10 of Law 13 June 1912 No 555, lost the Italian nationality before 1 January 1948 as a result of her getting married to a foreigner must be granted, notwithstanding the mother's subsequent declaration for reacquisition of the Italian nationality pursuant to Article 219 of Law 19 May 1975 No 151.
 In light of the primary constitutional rank of the right to nationality, in case of any ambiguity in the registry office certificates it is the court's duty to carry out the necessary verifications in order to remove such ambiguity.
6. *Corte di Cassazione, order 21 November 2011 No 24544* 179
 When seized with a foreigner's request for international protection, a court ascertains the existence of circumstances that justify the adoption of a measure of subsidiary protection. If said circumstances meet the grounds for granting the measure that is being sought but they are temporary (as is the case when a rapid evolution is foreseeable in the situation of the State of repatriation or in the position of the applicant himself, and said evolution is capable of affecting the circumstances so as to render the protection unnecessary), the court shall nonetheless proceed to the positive ascertainment of the conditions for issuing the humanitarian permit. Said ascertainment is in fact to be considered as part of the duties of the police commissioner.
7. *Corte di Cassazione (plenary session), 2 December 2011 No 25761* 123
 Italian courts retain jurisdiction over a claim filed against the Italian Ministry of Foreign Affairs by an employee of the Italian Embassy in Russia. In fact, Articles 19 and 21 of Regulation (EC) No 44/2001 of 22 December 2000 – which applies to this case – provide, on the one hand, for the jurisdiction of the courts of the Member State where the employer is domiciled and, on the other hand, for the possibility to derogate from the provisions on jurisdiction concerning employment contracts by means of an agreement which either is entered into after the dispute has arisen or grants to the employee the possibility to bring the claim before a court other than those indicated. Accordingly, the agreement conferring jurisdiction to the court for the place where the employee's activity is carried out pursuant to the contract cannot produce effects since it was entered into before the dispute arose.
8. *Corte di Cassazione, order 28 December 2011 No 29424* 484
 In matter of international adoption, the declaration of suitability of the candidate adopters entails the examination by the court of the requirements provided for by Article 6 of Law 4 May 1983 No 184, including the suitability of the spouses to educate, instruct and maintain the minors that they intend to adopt.
9. *Corte di Cassazione (plenary session), order 30 December 2011 No 30646* 126
 Pursuant to Articles 3(1)(b) and 8 of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction to hear a claim for legal separation on the grounds of the common nationality of the spouses. To the contrary, the courts of the United Kingdom (rather than Italian courts) have jurisdiction with regards to child custody, since the children are resident in the United Kingdom and the Italian jurisdiction has not been accepted pursuant to Article 12(1) of said Regulation.
10. *Varese Tribunal, 13 January 2012* 798
 In an action for damages suffered as a result of a road accident which oc-

- curred in Spain, the request made by the defendant in its pleadings to apply provisions and legal principles of Italian law qualifies as a tacit designation of Italian law as the applicable law pursuant to Article 14 of Regulation (EC) No 864/2007 of 11 July 2007.
11. *Corte di Cassazione, order 24 January 2012 No 996* 129
 A claim brought by two Italian citizens who were denied family reunification with a minor given in custody to them by a Moroccan court by means of the *kafalab* must be referred to the First President of the Corte di Cassazione for the possible allocation of the decision to the plenary session.
12. *Milan Court of Appeal, 27 January 2012* 131
 Pursuant to Articles 2 and 53 of the Lugano Convention of 16 September 1988, Italian courts have jurisdiction to hear a claim brought – before 1 January 2010 – by a Swiss company against an Italian company for the breach of a non-compete agreement inserted in a contract between said two companies.
 Pursuant to Article 4(1) and (2) of the Rome Convention of 19 June 1980, Italian law governs a contract for the performance of services to be carried out by an Italian company in favour of a Swiss company. In fact, Italy is the country to which the contract is more closely connected, since the administration of the service provider is located in Italy. For the purpose of identifying the applicable law, both the place where the contract was entered into and the place where the final recipient of the service is located are irrelevant.
13. *Corte di Cassazione, order 2 February 2012 No 1493* 421
 Article 16 of the preliminary provisions to the Civil Code, although currently in force, must be construed in manner which is constitutionally proper pursuant to Article 2 of the Constitution. Accordingly, the foreigner, whether resident in Italy or not, may always – regardless of any conditions for reciprocity – bring an action before Italian courts for the monetary and non-monetary damages suffered as a result of the violation of his fundamental rights which occurred in Italy, against the person directly accountable for the damage as well as against the motor vehicle civil liability insurer or against the Guarantee Fund for victims of road accidents.
14. *Corte di Cassazione, 8 February 2012 No 1781* 134
 Pursuant to Article 64(g) of Law of 31 May 1995 No 218, a foreign judgment that awards punitive damages cannot be recognized in Italy where the amount awarded by the foreign court does not find a justification on the basis of the Italian rules on damages. Accordingly, the court before which recognition is sought, in verifying the compliance with public policy of a judgment rendered in the United States which, although not making any express reference to the common law rule of punitive damages, nonetheless orders to the defendant to pay a large amount of damages, cannot merely compare the consistency of the damages awarded with those suffered by the plaintiff without making due reference to the reasonableness and proportionality of the damages awarded as regards not only the specific features of the tort and its consequences, but also the national criteria for awarding damages. Likewise, the requested court cannot ignore the lack of reasoning in the judgment for which recognition is sought, as such circumstance – although not representing, per se, a violation of public policy – cannot be considered as irrelevant with respect to the recognition of the judgment in Italy in a case where it is necessary to identify the legal criteria actually employed by the foreign court in rendering its award.

15. *Corte di Cassazione (plenary session), 13 February 2012 No 1984* 140
 Pursuant to Article 8 of Regulation (EC) No 2201/2003, the only criterion for establishing the jurisdiction of the courts of a Member State over claims on parental responsibility over a minor is that of the habitual residence of the minor at the time when the claim is lodged. Said residence shall be the place where the minor effectively and constantly carries out his life; hence, Italian courts do not retain jurisdiction when the minor is resident abroad.
16. *Corte di Cassazione, order 16 February 2012 No 2294* 799
 The granting of the status of political refugee or of the less protective measure of subsidiary protection may not be excluded in light of the fact that the petitioner has a reasonable possibility to move to another area of the State of origin where he does not have grounded reasons to fear persecution or does not face concrete risks of suffering severe damages. In fact, such requirement, which is provided at Article 8 of Directive 2004/83/EC of 29 April 2004, was not transposed in Legislative Decree of 19 November 2007 No 251, since it is a faculty left to the Member States whether to insert it in the act implementing the Directive.
17. *Corte di Cassazione (plenary session), order 8 March 2012 No 3624* 142
 Pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a claim brought by an Italian company against an English company to ascertain the breach by the latter of a license and supply of goods agreement which includes a clause conferring jurisdiction to English courts and further specifying that the licensee, namely the plaintiff, may bring its claim in front of one of said courts only, whereas the other party retains the possibility of bringing its claim also before either Italian courts or another court which is competent under international conventions (so-called 'asymmetric clause'). The fact that said clause does not specify the criterion upon which the competent English court shall be determined is irrelevant.
18. *Corte di Cassazione (plenary session), order 9 March 2012 No 3693* 144
 Pursuant to Article 23(a) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not retain jurisdiction over a claim filed by two Italian insurance companies to recover the amounts they paid to the insured, owner of the damaged oil terminal, against two foreign insurance companies and the English owner of the damaged ship. In fact, if two financial arrangements are entered into between partially overlapping parties the first agreement including a clause conferring jurisdiction to English courts, and the second agreement, *i.e.* the one signed by the parties, referring to the first agreement in all its clauses (so-called *relatio perfecta*), the requirement of written form must be considered as fulfilled.
19. *Corte di Cassazione (plenary session), order 12 March 2012 No 3855* 147
 Pursuant to Article 23(a) of Regulation No 44/2001 of 22 December 2000, Italian courts do not retain jurisdiction over a claim for breach of contract filed by an Italian company against an English company due to a clause conferring jurisdiction to English courts which, even if not expressly signed, was included in a contract that has been entered into between entrepreneurs and that is not a standard contract.
20. *Milan Court of Appeal, 27 March 2012* 149
 A Swiss judgment imposing maintenance obligations on one of the parents as a result of divorce cannot be automatically recognized in Italy. In fact,

further to the duty to apply international conventions in a uniform manner, which is expressly stated in Article 2 of Law 31 May 1995 No 218, the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations applies to such a judgment. As a result of the reference made by Article 13 of the Convention to the State addressed, the recognition and the execution of the decision must comply with the procedure established at Article 67 of Law No 218/1995. To the contrary, the requirements for the recognition are established at Chapter II of the Convention, and are simplified compared to those established at Article 64 of Law No 218/1995. Accordingly, said requirements shall apply instead of those established at said Article 64 or those set out in any less favourable international instrument.

21. *Corte di Cassazione, 5 April 2012 No 5487* 152
 Pursuant to Article 34(1) of Regulation (EC) No 44/2001, a Spanish judgment which orders to the directors of an insolvent company to personally pay an unsatisfied creditor of said company can be recognized even if it is merely based on the ascertainment of the directors' wrongful conducts and lacks a meticulous validation of the causality link between such conducts and the alleged damages. In fact, the application of the public policy clause is confined to cases of violation of the fundamental principles of the requested State as a result of the application of a provision or established case-law of the foreign State. Said clause does not apply with regards to the assessment on the merits of the issue to be decided upon.
22. *Corte di Cassazione (plenary session), order 12 April 2012 No 5765* 156
 In light of the possibility of a joinder provided at Article 6(1) of the Brussels Convention of 27 September 1968 (which applies as a result of the reference made to it by Article 3 of Law of 31 May 1995 No 218), Italian courts have jurisdiction to hear claims for undue calling of a first demand bank guarantee brought against the beneficiary of the guarantee and the guarantor bank, both having their seat in Iran. In fact, these claims are objectively connected with the claim against the counter-guarantor Italian bank, which has been contextually lodged.
23. *Corte di Cassazione (plenary session), 13 April 2012 No 5872* 745
 Pursuant to Article 154 of Presidential Decree of 5 January 1967 No 18 as replaced by Legislative Decree of 7 April 2000 No 103 – which applies subject to the “provisions of international and treaty law” – in conjunction with Articles 18, 19 and 60 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action brought against the Ministry of Foreign Affairs by one of the Ministry's employees as regards his financial treatment for the tasks he performed abroad. In fact, pursuant to Article 21 of said Regulation, the clause in the relevant contract that derogates from the jurisdiction of Italian courts, which has been entered into before the arising of the dispute, is unenforceable.
 As concerns jurisdiction, judgments may become *res judicata* and acquire preclusive effect – thus, unfolding their effects also beyond the proceedings in which they were rendered – only if a decision on jurisdiction is accompanied by a consequent decision on the merits. The system of transfer of the trial (“*translatio iudicii*”) provided at Article 59 of Law of 18 June 2009 No 69 implies that the decision in which the court declines jurisdiction affects the subsequent action, and that accordingly the second court is bound by the decision rendered by the first court and may not decline its jurisdiction but, rather, must submit the issue of jurisdiction to the *Corte di Cassazione*. Said system

- applies only if one of the two national courts has jurisdiction and therefore operates only on internal issues pertaining to national jurisdiction. Accordingly, it does not operate in cases where jurisdiction pertains to a foreign court.
24. *Corte di Cassazione (plenary session), 26 April 2012 No 6489* 181
 Pursuant to Article IX(4) of the London Convention of 19 June 1951, work relationships of the local staff of NATO's military bases situated in Italy are governed by Italian law, which applies not only to the conditions of employment and work, but also to social security and insurance benefits.
25. *Naples Court of Appeal, 26 April 2012* 162
 Pursuant to Article 4(2) of Law of 9 February 1992 No 91, a foreigner born in Italy, who has been constantly residing in Italy until the age of 18, automatically acquires the Italian nationality if he shows the willingness of doing so.
 The Italian nationality shall be granted to a foreigner born in Italy who has reached the age of 18, once the effective (and, as such, legal) residence in Italy is ascertained based upon significant elements such as his constant presence in the Italian territory and his integration in the national social and cultural environment.
26. *Corte di Cassazione, 30 April 2012 No 6622* 165
 Article 56(3) of Law of 31 May 1995 No 218 is inspired by the principle of preservation of the validity of legal acts and refers to any kind of form, drawing no distinction between form 'ad probationem' and form 'ab substantiam'. Pursuant to said Article, Swiss law governs the formal validity of a donation made by means of a deposit on a bank account in Switzerland, as said law is the law of the country where the act of donation was made. In fact, lacking any further evidence, the place where the donation was made is the place where the money order was issued, as the deposit represents the means through which the donation was executed.
 Pursuant to Article 13(2)(b) of Law No 218 of 1995 'renvoi' is excluded with reference to the provisions on formal validity.
27. *Corte di Cassazione (plenary session), order 2 May 2012 No 6640* 169
 A contract for the supply of a plurality of goods to be manufactured (printing catalogues) does not fall in the category of 'provision of services' under Article 5(1)(b), second indent of Regulation (EC) No 44/2001 of 22 December 2000. To the contrary, it falls within the category of 'sale of goods' under Article 5(1)(b), first indent of said Regulation. Hence, pursuant to this latter provision, Italian courts do not retain jurisdiction where the material delivery of the goods, by means of which the purchaser gains actual power over the goods (as set out in the bill of lading), takes place abroad.
28. *Reggio Emilia Tribunal, order 2 May 2012* 749
 The Italian legal system does not provide for a principle of absolutely binding nature of the procedures provided in the insolvency law. Accordingly, in case of insolvency of a settlor subsequent to the institution of a liquidating trust, Article 15 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition – in accordance to which the Convention does not prevent the application of those provisions of the law of the forum that cannot be derogated and that pertain to certain matters, including insolvency – does not apply. As a result, the insolvency judgment does not affect the validity of the trust, whereas the official receiver will be able to invoke against the trust the remedies provided under the law

that governs the trust in addition to bringing ordinary and insolvency-based claw-back actions.

The transfer to the trustee of all assets and liabilities of the settlor company must, in order to be valid pursuant to the *lex fori*, allow the exact identification of the assets and liabilities being transferred. In fact, pursuant to Article 4 of the Hague Convention of 1 July 1985, preliminary issues concerning the validity of acts of transfer of the assets to the trustee do not fall within the scope of application of the Convention. Such precondition is not met where the deed of assignment merely includes a summary balance sheet listing generic items.

29. *Rome Tribunal, 2 May 2012* 422
 As a result of the Constitutional Court's decision of 9 February 1983 No 30, the principle pursuant to which the Italian nationality cannot be transmitted from an Italian mother to her offspring by right of blood (*iure sanguinis*) is to be considered as definitely expunged from the Italian legal system, also as regards the provisions in force prior to Law 13 June 1912 No 555.
 The status of national must be judicially granted to the legitimate son of an Italian mother, even if he is born before the entry into force of the Constitution and regardless of an express declaration from the mother aiming at re-acquiring such status.
 The Italian nationality in maternal lineage must be granted to the descendant of an Italian woman, who was born in 1850 and married to a foreigner, who, nonetheless, never lost her Italian nationality.
30. *Corte di Cassazione, 9 May 2012 No 7049* 800
 Since the right to compensation for non-pecuniary damages falls in the category of an individual's fundamental rights, such right pertains to all individuals, regardless of their nationality and of the reciprocity requirement provided for at Article 16 of the preliminary provisions to the Civil Code.
31. *Corte di Cassazione, 11 May 2012 No 18084* 486
 The facts constituting the offence which is the object of a European arrest warrant must be the same as those being prosecuted in Italy in order for international *lis pendens* to preclude surrender pursuant to Article 18(1)(o) of Law 22 April 2005 No 69, which implemented the Council framework decision 2002/584/JHA. In fact, *lis pendens* implies that the historical event – as regards time, place and manner – is the same, regardless of the legal characterization given to the relevant facts by different authorities. Moreover, the ground for denial of surrender provided for by Article 18(1)(p) of the same Law requires that the consummation of the offences that fall within the scope of the European arrest warrant took place wholly or partly in Italy and that the criminal conducts, sufficiently specified and proven, are adequate to ground an offence notice allowing Italian judicial authorities to take immediate and concurrent action for the same facts for which action is being taken by the foreign court.
32. *Corte di Cassazione, order 22 May 2012 No 8076* 431
 Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a claim lodged against a rating agency which does not have its seat nor operate in Italy, for the damages that occur as a result of an error in valuing certain financial instruments purchased abroad. In fact, the place where the harmful event occurred or may occur – to be construed as the place where the alleged violation of the claimants' rights (*i.e.*, the impoverishment of their assets) occurred – is the place where

the financial instruments were purchased at a price higher than the fair price, regardless of the place where the depository bank has its seat and of the place where the rating was issued.

33. *Milan Tribunal, 1 June 2012* 753
 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 between an Italian citizen and a Brazilian citizen because the spouses' last habitual residence was situated in Italy, where one of the spouses still resides.
 Pursuant to Article 31(1) of Law of 31 May 1995 No 218, Italian law governs the legal separation of two spouses having different nationality as a result of the fact that the spouses' matrimonial life was primarily localized in Italy.
 Pursuant to Article 42 of Law No 218/1995, Italian courts have jurisdiction over an action for custody of a child resident in a non-EU Member State as a result of the common Italian nationality of the father and the child.
 Pursuant to Article 3(1)(c) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts have jurisdiction over an action for the maintenance of a minor residing in a non-EU Member State based on the fact that Italian courts have jurisdiction over the action for the legal separation of the child's parents. Pursuant to Article 36 of Law No 218/1995, such maintenance claim is governed by the child's national law.
34. *Corte di Cassazione (plenary session), 7 June 2012 No 9189* 433
 Pursuant to Article 4 of Law 31 May 1995 No 218, Italian courts do not have jurisdiction over a claim brought by an Italian company against the United States Department of the Navy Engineering Field Activity Mediterranean for the termination or declaration of invalidity of two subcontracts to build certain structures in a military base in Aviano, where both subcontracts include a clause conferring exclusive jurisdiction to U.S. courts under which "the subcontractor waives the right to bring a claim or any other legal action against the United States of America, except in the cases provided in the dispute settlement clause of the present contract and in the provisions of the federal legislation of the United States of America". In fact, pursuant to Article 14 of Law No 218/1995 such provisions are not part of the burden of proof placed upon the parties and they are, rather, the object of the court's ex officio ascertainment. The possible existence under U.S. law of a limitation period to bring the claim (FAR 52.233-1) does not represent a provision whose effects conflict with public policy pursuant to Article 16 of Law No 218/1995 and, in any event, such possibility is an issue of applicable law rather than an issue of jurisdiction. Finally, the aforesaid clause cannot be considered invalid pursuant to Article 4 mentioned above, since it does not completely exclude the possibility to seize a jurisdictional body. The United States Court of Federal Claims, which the parties may seize pursuant to said clause, is in fact a jurisdictional body.
35. *Corte di Cassazione, 21 June 2012 No 10375* 801
 In case of dual nationality, the conditions for international protection are not met if the individual, who cannot remain in one of the States of which he is a citizen, can nevertheless move to the other State of which he is a citizen without facing any risks.
36. *Corte di Cassazione, order 26 June 2012 No 10686* 802
 Pursuant to the comprehensive provisions laid down by Legislative Decree of 19 November 2007 No 251 and Legislative Decree of 25 July 1998 No 286, the right to asylum is fully implemented and regulated in the three follow-

ing institutes: status of refugee, subsidiary protection and right to be granted a humanitarian permit. Accordingly, direct application of Article 10(3) of the Constitution is excluded. Moreover, the humanitarian permit may be granted only where the established serious grounds for protection are transitory.

37. *Milan Tribunal, 26 June 2012* 802
 In an action for damages for the failure to return convertible bonds deposited with a company having its legal seat in London, sub-deposited with a Swiss bank and returned by said bank to the issuer without collecting the payments due in respect of the expiring bonds, Italian courts do not retain jurisdiction – pursuant to Article 6(2) of the Lugano Convention of 30 October 2007 – over the Swiss bank where the bonds were sub-deposited and which has been summoned by the defendant. In fact, the principal claim in such action was brought before the Italian court for the purpose of summoning the Swiss bank before the same court, thus depriving it of its natural court.
 Pursuant to Article 4 of the Rome Convention of 19 June 1980, a contract to deposit convertible bonds with an English company is governed by Italian law. In fact, Italy is the country more closely connected to the contract, since the delivery of the bonds occurred in Italy and the claimant is an Italian citizen.
38. *Corte di Cassazione, 4 July 2012 No 11156* 485
 Pursuant to Regulation (EC) No 2201/2003, the right of custody of a child encompasses also the right to determine the child's place of residence. The transfer of a child or the refusal to return a child is unlawful if it occurs in breach of the right of custody, so long as such right is actually exercised.
39. *Corte di Cassazione, 30 July 2012 No 13556* 441
 A divorce judgment rendered by a foreign court, and namely a court of Texas, which incorporates the foreign spouses' agreement on the division of the common property, as well as their agreement to refer to Italian courts any decisions on rights of custody and on maintenance of the children, falls within the scope of application of Article 64 of Law 31 May 1995 No 218, and not within the scope of Article 66 of the same Law. In fact, such decision is formally and substantively the expression of jurisdictional power, even if its content adheres to the parties' agreement.
 Pursuant to Article 64(g) of Law No 218 of 1995, the recognition in Italy of a divorce judgment between foreign spouses rendered by a foreign court which does not fully lay down the conditions for the right of custody and for the maintenance of the ex-spouses' minor children does not conflict with public policy pursuant to Article 64(g) of Law No 218 of 1995. In fact, there is no constitutional principle requiring that all rights and duties arising from a certain status are finally laid down in a single decision.
40. *Corte di Cassazione, 2 August 2012 No 13905* 999
 Italy must pay the compensation established pursuant to the law for the loss of goods, rights and interests suffered in East Asia during World War II by the shareholders of a steamer sunk by the United States Navy, regardless of the fact that before the sinking the ship had been seized by the Italian authorities which thereafter leased it to a Japanese company and regardless of the fact that the loss was not caused by acts aimed at limiting or hindering private property or by sovereign acts carried out by Japanese troops. To the contrary, for the compensation to be afforded, it is sufficient that such loss occurred as a result of the conduct of either belligerent or was determined by circumstances connected to the war events in that geographical area.

41. *Corte di Cassazione, order 20 September 2012 No 15981* 1000
 The provision by a foreign legal system of criminal sanctions against homosexual people constitutes an infringement of a fundamental right and justifies the granting of protective measures (such as the status of refugee or subsidiary protection), since it constitutes an objective act of persecution against the relevant foreign citizen.
42. *Corte di Cassazione, order 24 September 2012 No 16202* 1001
 As far as international protection is concerned, the credibility of the applicant must be assessed according to the criteria established at Article 3(5) of Legislative Decree of 19 November 2007 No 251 (*i.e.* any reasonable effort to support the application having been made; appropriate reasons having been given as to the fact that no objective evidence has been filed; the statements made by the applicant not being in conflict with the situation in the country of origin; the application having been timely filed and being intrinsically sound) rather than on the basis of the mere lack of objective evidence. Information on the social and political environment in the applicant's country of origin must be gathered, in correlation with the alleged grounds for persecution or danger, pursuant to the sources of information provided at Article 8(3) of Legislative Decree of 28 January 2008 No 25 or, in the absence of such sources or to integrate them, through other sources of information, specifying the reasons for such choice.
43. *Corte di Cassazione, 27 September 2012 No 16511* 447
 Pursuant to Article 64(g) of Law 31 May 1995 No 218, a foreign judgment ordering payment of a sum corresponding to the credit received (upon execution of the relevant acknowledgements of debt) from the administration of a local casino in a place where gambling is lawful for the purpose of receiving chips to gamble does not conflict with public policy, notwithstanding Articles 718 and 729 of the Criminal Code whereby gambling practices and participation in gambling are sanctioned in the Italian legal system. In fact, the notion of public policy is to be interpreted in light of the evolution developed by legal scholars and case-law, both at a national level and at a European Union level, whereby it can be inferred that no disfavor against gambling exists as such but only to the extent that, dodging State control, gambling may represent a serious risk due to criminal infiltrations.
44. *Constitutional Court, 12 October 2012 No 230* 995
 The question of constitutional legitimacy of Article 673 of the Code of Criminal Procedure, raised with reference to Articles 3, 13, 25(2), 27(3) of the Constitution and to Article 117(1) of the Constitution with respect to Articles 5, 6 and 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 – insofar as it does not provide for the revocation of the sentence (or of the criminal decree or of the parties' plea bargain) in case of subsequent change in the case law resulting from a decision of the Corte di Cassazione (criminal, plenary session) stating that the relevant facts do not amount to a misdemeanor pursuant to the law – is unfounded.
45. *Corte di Cassazione (plenary session), order 18 October 2012 No 17845* 453
 In a claim for breach of contract due to the failure to pay the relevant goods, which has been brought by an Italian company against a German company, the clause conferring jurisdiction to German courts does not exclude the jurisdiction of Italian courts if such clause lacks the signature of the claimant's legal representative, as Article 23(1)(a) of Regulation (EC) No 44/2001 of 22 December 2000 mandatorily requires the agreement conferring jurisdiction to be in writing.

46. *Bologna Tribunal, 24 October 2012* 1002
 Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over an action brought against an Irish company for the infringement of the provisions on unfair competition laid down by Article 2598 of the Civil Code, which infringement arises from the fact that the defendant has offered on the market, and namely on the English market, components that reproduce patents deposited by the plaintiff, thereby putting in place conducts apt to generating confusion on the specific market concerned. In fact, in such a case the English market is the place where the harmful event occurred.
47. *Varese Tribunal, decree 27 October 2012* 455
 Pursuant to Article 5(1)(a) and (b) of the Lugano Convention of 30 October 2007, Italian courts do not have jurisdiction over a dispute on the breach of a payment obligation in a contract for sale between an Italian seller and a Swiss buyer that features substantial elements of both sale of goods and provision of services. In fact, as agreed in the contract, the place for the delivery of the goods and for the provision of the services is situated in Switzerland.
48. *Corte di Cassazione, 20 November 2012 No 20382* 923
 The proceedings for the enforcement of a German judgment on maintenance obligations is governed by Regulation (EC) No 44/2001 of 22 December 2000, since the applicable provisions are those that were in force when the enforcement proceedings were commenced. The fact that the judgment for which enforcement is sought was rendered in 1998 and the underlying proceedings on the merits were commenced in 1989 is irrelevant.
Ex parte proceedings pursuant to Articles 38 et seq. of Regulation (EC) No 44/2001 do not entail an infringement of rights to defense, the full exercise of such rights being allowed by the adversarial proceedings commenced at the opposition stage.
49. *Corte di Cassazione (plenary session), 28 November 2012 No 21108* 762
 Pursuant to Article 7 of Law of 31 May 1995 No 218, international *lis pendens* occurs between the proceedings brought abroad and the proceedings subsequently brought in Italy between the same parties, regardless of the object of the claims raised by the plaintiff in the two proceedings and of the relevant causes of action, if the practical results pursued in the two proceedings are identical. Article 7 of Law No 218/1995 must, in fact, be interpreted in a non-restrictive and formalistic manner. In this case, international *lis pendens* may be declared by the court on its own motion if the occurrence of the relevant requirements results from the allegations of the parties.
50. *Corte di Cassazione (criminal), 29 November 2012 No 46340* 930
 Pursuant to Article VII(2)(b) of the London Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces, Italian courts have exclusive jurisdiction over an act committed by a U.S. military that is qualified as misdemeanor under Italian law but not under U.S. law, such as for example an act of abduction aimed at an “extraordinary rendition”. The fact that such act was carried out by said military in the performance of his duties is irrelevant. As concerns similar misdemeanors, the possible assertion of jurisdiction (request for waiver) by the U.S. authority and the subsequent waiver (or, more specifically, the adhesion to the request for waiver) of the Italian authority are void, since such rules are applicable only in case of concurrent jurisdiction of the two authorities. The decisions of the po-

litical authorities are not binding on the court that is competent for the interpretation of the Agreement's provisions.

Pursuant to Articles 43 and 5 of the Vienna Convention of 24 March 1963 on consular relations, the immunity from criminal jurisdiction of foreign consular agents is limited to the acts accomplished during the exercise of the consular functions, *i.e.* of typically administrative functions, which – unlike the case of abduction aimed at an “extraordinary rendition” – are principally aimed at facilitating the commercial activities of the country that is being represented and at aiding the nationals of said country that face difficulties in the host country. In fact, such functions must be exercised in compliance with the laws and regulations of the State of residence. Furthermore, in the Italian constitutional system the assessment of whether an act may be characterized as falling within the consular functions is left to the judicial authorities. Finally, the issue of whether the misdemeanor at issue is also forbidden by international law becomes moot due to the fact that said act violates Italian law and that Italian government did not give its consent, which – in any event – could not be granted on the basis of national law.

The agent of a foreign State in “special mission” who carried out an act *iure imperii* which is characterized as misdemeanor in the host State may not benefit from any functional immunities. In fact, international law does not provide for any customary provision that ensures immunity from criminal jurisdiction to an individual acting as an organ of a sovereign State, unless such individual is a diplomatic or consular agent or an individual holding high office. In the case at issue, functional immunity could not in any case be acknowledged in light of the fact that the goal of an extraordinary rendition conflicts in itself with international humanitarian law.

Pursuant to Article 41 of the abovementioned Vienna Convention and Article 3 of Law of 9 August 1967 No 804, which implemented said Convention in Italy, consular officers may be arrested or held in preventive detention only for felonies and namely for intentional crimes that can be punished with a maximum period of detention of no less than five years or with a harsher sentence, such as an abduction aimed at an extraordinary rendition, and only following a decision of the competent judicial authority.

Pursuant to Articles 33 and 31 of the abovementioned Vienna Convention, the private dwelling of a consular agent may be subject to search, and the objects and notes found therein may be seized.

Pursuant to Article VII(6)(a) of the abovementioned London convention of 19 June 1951 and Articles 729 and 696(1) of the Code of Criminal Procedure, the obtainment of evidence abroad is subject to the law of the place where such evidence is obtained. Nonetheless, such provisions may not be applied with reference to the obtainment of a document if such document is situated in the offices of a NATO base located in the Italian territory, since such place does not benefit from any immunity from criminal jurisdiction, or the if document is a non-official document or was spontaneously handed over or, in any case, if it was handed over as a result of self-determination.

Pursuant to Articles 165, 295 and 296 of the Code of Criminal Procedure, the records of Italian criminal proceedings commenced against a foreign fugitive citizen, *i.e.* an individual who is untraceable and who voluntarily evades precautionary detention, such as in the case at issue, or evades house arrest or travel ban or mandatory residence must be notified to the defense attorney appointed by him or assigned to him. Furthermore, the issuance of the decree of abscond does not necessarily need to be preceded by researches abroad aiming at finding the whereabouts of the individual who is generically known to be abroad, since the rules provided for untraceable people cannot be applied by

analogy. The abscond of an individual residing abroad must, nonetheless, be ascertained by the court in a manner that is stricter than that established for an Italian national escaping abroad, because it may not be ruled out that the foreign resident merely aims at returning to his home State.

Pursuant to Articles 1(3) and 3(2)(a) of the Treaty between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters signed on 9 November 1982, said treaty only applies to the research of people called upon to testify and not to fugitives. A provisional order issued against a foreign defendant whose native language is other than Italian must be translated, although not necessarily at the time of its issue or execution, only where it results beyond any doubt from the records available to the court at the time of the order's adoption that the foreigner was unable to understand Italian. No real violation of due process may however be invoked by the defendant as regards the lack of translation where the procedural records are to be notified by means of delivery to the defense attorney.

Pursuant to Article 12 of Law of 31 May 1995 No 218, a power of attorney *ad litem* used in connection with proceedings brought before Italian courts, even if issued abroad, is governed by Italian provisions on civil procedure. However, in allowing such power of attorney to be granted by notarial deed or document with authenticated signature, said provisions refer to the governing law of the agreement and therefore, if the power of attorney has been granted abroad, to the law of the place where it has been granted, provided that said law shall at least contemplate the possibility to make notarial deeds and documents with authenticated signature, and regulate them in a manner not conflicting with the fundamental requirements under the Italian legal system.

Pursuant to Articles 8 and 10 of the Agreement between Italy and Egypt of 3 December 1977 on the recognition and execution of judgments in civil and commercial matters and on personal status, a power of attorney *ad litem* issued by an Egyptian public official (a notary) is valid in Italy if the official's signature was legalized by Italian consular authorities.

51. *Corte di Cassazione, order 11 December 2012 No 22731* 459

Pursuant to Article 5(5) of Regulation (EC) No 44/2001 of 22 December 2000, the Tribunal of Milan has jurisdiction over a claim for the performance of a subcontract brought against a French company with a secondary seat in Milan, where said company has a structured center that steadily appears as the extension of the company's head office, has its own management and is set up so as to do business with third parties. Like the provisions at Article 5, paragraphs from 1 to 4 of Regulation (EC) No 44/2001, Article 5(5) directly identifies the domestic court which is territorially competent, and therefore the rules on venue provided at Articles 18 et seq. of the Code of Civil Procedure do not apply.

52. *Corte di Cassazione, 11 December 2012 No 22577* 1005

The interpretation of European law provided by the Court of Justice of the European Union constitutes an additional source of EU law, in light of the fact that such interpretation defines the scope of an EU law provision indicating the manner in which said provision should have been understood and applied as of its entry into force, and states the meaning of said provision and the boundaries of its application with "erga omnes" effect within the European Union. Accordingly, the services of forensic medicine are subject to VAT, whether performed after 1 January 2005 (pursuant to Article 1(80) of Law of 24 December 2007 No 244) or before that date (based upon an interpretation

of Article 10(18) of Presidential Decree of 26 October 1972 No 633 in compliance with Article 13(A)(1)(c) of Directive 77/388/EEC of 17 May 1977, as per the case law of the Court of Justice of the European Union).

53. *Milan Tribunal, 11 December 2012* 768
 Pursuant to Articles 3(2) and 32 of Law of 31 May 1995 No 218 and to Article 3 of Regulation (EC) No 2201/2003, Italian courts have jurisdiction over an action for divorce between two foreign nationals residing in Italy.
 In light of recital No 18 and Article 5(3) of Regulation (EU) No 1259/2010 of 20 December 2010, Italian courts may indicate to the parties – in an order issued pursuant to Article 709 of the Code of Civil Procedure – that they have the possibility of choosing the governing law and that their supplemental pleading or their entry of appearance may include such designation.
54. *Milan Court of Appeal, 27 December 2012* 772
 The ascertainment of the existence of a foreign arbitration clause entails a waiver of jurisdiction and, as such, raises an issue of substance and not of jurisdiction. Accordingly, the challenge against a decision of inadmissibility of a claim shall necessarily be brought through appellate proceedings. Article 353 of the Code of Civil Procedure and the possibility to refer the action to the court of first instance as provided therein do not therefore apply.
 Pursuant to Article II(3) of the New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards, the ascertainment that the agreement is valid, operative and capable of being performed – which, if positive, results in the court referring the parties to arbitration – is carried out under the *lex fori*, including its public policy principles.
 As a consequence of the adoption of international embargo measures against Iraq further to the Iraqi invasion of Kuwait and of the related national measures of implementation, the rights arising from the contracts that fall in the scope of the embargo can no longer be disposed of. As such, the relevant subject matter is incapable of settlement by arbitration pursuant to Article II(1) of the 1958 New York Convention and, therefore, the arbitration.
55. *Corte di Cassazione, 8 January 2013 No 220* 963
 Pursuant to Article 31 of the Lugano Convention of 16 September 1988, the definition of “interested party” – who has legal standing to apply for a declaration of enforceability – includes not only the parties to the proceedings that led to the judgment for which enforcement is being sought, but also the assignee of the right that is the object of said judgment.
 Pursuant to Article 12 of Law of 31 May 1995 No 218, the issue of legal standing in the Italian legal system (*i.e.*, in this case, the standing to seek the enforcement of a foreign decision) is governed by Italian law, since it is a procedural issue.
56. *Corte di Cassazione, 17 January 2013 No 1163* 465
 Pursuant to Article 64(g) of Law 31 May 1995 No 218, the judgment of the Supreme Court of the Commonwealth of the Bahamas which orders the payment of the sum due under a loan agreement entered into to obtain fiches to play at the local casino (rather than to pay a gambling debt) may be recognized. In fact, Article 1933 of the Italian Civil Code – whereby actions for the payment of gambling and betting debts cannot be brought – is not the expression of a principle of public policy. In fact, in the subject matter at issue, the latter must be determined on the basis of the examination of those provisions that aim at avoiding the potential criminal degeneration of regulated games and, as such, it does not suffer any prejudice from the recognition of a judg-

ment that bears the effect of satisfying a credit freely entered into, outside of any criminal environment.

57. *Corte di Cassazione, 17 January 2013 No 1164* 966
 Pursuant to Article 57 of Regulation (EC) No 44/2001 of 22 December 2000, the control of Italian courts for the purpose of declaring enforceable in Italy a notarial authentic instrument drawn up in a EU Member State and certified as enforceable in said Member State must be limited to the fact that the act is not contrary to public policy and to the formal aspects of the act, in accordance with the Regulation's aim of simplification. The aspects that are external to said instrument and that occurred after it has been declared enforceable in the Member State of issuance must be excluded from said control, whereas they can be challenged during the subsequent enforcement stage. Accordingly, an order of the foreign court providing for the suspension of the enforceability of said instrument upon an escrow deposit, which has been issued after said instrument was declared enforceable, is irrelevant for the Italian court carrying out said control. Such order, in fact, does not even affect the interest of the applicant in obtaining the recognition of said instrument.
 Pursuant to Article 22(5) of Regulation (EC) No 44/2001, the abovementioned order suspending the enforceability of the foreign instrument does not affect its enforceability in Italy. In fact, the opposite solution would conflict with the fact that said provision grants exclusive jurisdiction to the court of the State where enforcement is sought.
58. *Corte di Cassazione, 21 January 2013 No 1302* 472
 Pursuant to Articles 72(1) and 74 of Law 31 May 1995 No 218, the Rome Convention of 19 June 1980 on the law applicable to contractual obligations governs an employment contract entered into before the Convention entered into force, but which is the object of a dispute arisen after the entry into force of the Convention, as a result of the referral made to the Convention by Article 57 of Law No 218 of 1995.
 Pursuant to Article 6 of the 1980 Rome Convention, absent any parties' choice, U.S. law governs an employment contract if, in performance of the contract, the employee habitually carried out his work in the United States.
 In a dispute concerning the dismissal of an Italian employee who carried out his activity in the United States, U.S. law cannot be applied insofar as it does not provide for protection against unjustified dismissal, since it manifestly conflicts with Italian public policy, which is grounded on the protection of labor as provided for by the Constitution (Articles 4 and 35) and now also by Article 30 of the EU Charter of fundamental rights.
 Pursuant to Article 7(3) of U.S.-Italian Social Security Agreement signed in Washington on 23 May 1975, services performed by an Italian national in the United States for an Italian employer or for an enterprise controlled by an Italian firm are covered under the laws of Italy on social welfare.
59. *Corte di Cassazione (plenary session), 5 February 2013 No 2595* 970
 Pursuant to Articles 240 and 238 TEC (now respectively Articles 274 and 272 TFEU), Italian courts have jurisdiction over an action brought in order to obtain from the European Commission the payment of a credit arising as the result of a decision of the Commission itself. Such dispute is, in fact, contractual in nature. This conclusion is not affected by the fact that the relationship between an individual and the European Commission is a "contract of public law", given that disputes relating to such contracts pertain to the jurisdiction of national courts except, where the parties include in their contract an arbi-

tration clause conferring jurisdiction to the Court of Justice of the European Union.

60. *Reggio Emilia Tribunal, order 9 February 2013* 787
 Only the rectification by the registry office of a gender attribution provided for by a judgment that became *res iudicata* may ground the petition for divorce pursuant to Article 3(2)(g) of Law of 1 December 1979 No 898.
 The married foreign trans-sexual, who has undergone a change-of-sex acquiring the same sex as his Italian spouse, is entitled to a residence permit for family reasons, notwithstanding the fact that he did not request the registry office to rectify his gender attribution pursuant to Law of 14 April 1982 No 164. In fact, as long as the spouses live together, the marriage is legally valid as the emotional and spiritual ties between the spouses cannot be excluded. Any further investigation would represent an unduly and disproportionate intrusion in the spouses' personal and familiar affairs based upon an ungrounded assumption that gender-identity and cohabitation "more uxorio" are incompatible with each other, which assumption does not take into account the plurality of gender-orientation choices within the trans-sexual community, as in any other community.
61. *Corte di Cassazione, 19 February 2013 No 4049* 974
 The entry into force of the Treaty of Lisbon has not affected the position of the European Convention of Human Rights in the system of the sources of law. In fact, the reference made to said Convention by Article 6(3) TEU does not create an obligation on the national court to directly disapply a national provision in case of a conflict between the latter and the Convention. In such a case, the only available remedy is afforded by a decision of the Constitutional Court as regards the constitutionality of the relevant national provision.
62. *Corte di Cassazione, 20 February 2013 No 4144* 980
 Pursuant to Article 9 of the convention on social welfare of 16 June 2000 between the Holy See and Italy, employees that work in the territory of the Vatican City State and are not Vatican employees are subject to the Italian legislation, and Vatican employees, who are Italian citizens and belong to one of the categories of workers indicated in the administrative agreement related to the Convention, are registered, for the events not already covered by the institutions of the Holy See, with the Italian institutions as concerns the insurance on old-age, disability and survivors as well as the insurance for accidents at work and professional diseases, in conformity with the agreements entered into or to be entered into between the institutions of the Holy See and of Italy.
 Pursuant to Article 15(1) of the Lateran Concordat of 11 February 1929, Italian courts have jurisdiction over labor matters concerning the personnel of the "Bambino Gesù" hospital in Rome, which is an asset belonging to the Holy See and does not have legal personality. In fact, such hospital is situated in a building which, although benefitting from extraterritoriality, is nonetheless part of the Italian territory. Furthermore, the hospital does not have its seat in the territory of the Vatican City State and the hospital-care activities carried out therein – which, incidentally, are carried out within the Italian legal system in application of the rules established by it on hospital care – is not directly and functionally related with the institutional goals and the primary religious tasks that are typical of the Catholic Church or with the exercise of sovereign functions that are distinctive of a State.
 Pursuant to Article 17 of the 1929 Lateran Concordat and Article 3 of Presidential Decree of 29 September 1973 No 601 – which must be inter-

- preted restrictively as they are meant to provide benefits to the persons to which they apply – the pension paid upon termination of the relevant employment contract by the Italian national entity for social security (“Istituto Nazionale per la Previdenza Sociale”) to an employee of the “Bambino Gesù” hospital who has not opted to register with the “Amministrazione del Patrimonio Apostolico – Gestione del Fondo Pensioni” is not exempt from income taxes (IRPEF).
63. *Corte di Cassazione (plenary session), order 20 February 2013 No 4211* 482
 Pursuant to Article 16 of Regulation (EC) No 44/2001 of 22 December 2000, which is referred to by Article 3(2) of Law 31 May 1995 No 218, Italian courts have jurisdiction over a claim brought by two individuals residing in Italy against a bank of San Marino for the declaration of invalidity of the purchase orders of Argentinean bonds and for the subsequent restitution of the amount paid, since such contracts fall in the category of consumer contracts pursuant to Section 4 of the Regulation. Moreover, pursuant to Articles 16 and 17 of the Regulation, the clause conferring jurisdiction to the courts of San Marino stipulated by the parties when entering into the depository contract is ineffective.
64. *Corte di Cassazione (plenary session), order 21 February 2013 No 4284* 793
 Pursuant to the decision rendered by the International Court of Justice on 3 February 2012, where the Court acknowledged Germany’s right to immunity from jurisdiction for similar facts and to Law of 14 January 2013 No 5, which was subsequently adopted to implement the Court’s decision, Italian Courts do not retain jurisdiction over a claim for damages brought by the heir of an Italian national detained, tortured and killed in Italy by the nazi armed forces during World War II.
65. *Corte di Cassazione (plenary session), 11 March 2013 No 5945* 983
 Pursuant to Article 3(1) of Regulation (EC) No 1346/2000 of 29 May 2000, Italian courts have jurisdiction to declare the insolvency of an Italian company, regardless of such company having transferred its legal seat abroad (namely, in France) prior to the opening of the insolvency proceedings. The presumption that the debtor’s centre of main interest coincides with the place of its legal seat – which is laid down by said provision – is to be considered overcome when, from an overall assessment of all relevant elements (e.g., it is impossible to actually contact the company at its legal seat abroad or the legal representative continues to reside in Italy), it results that the actual centre of direction and control – which has to be determined based upon elements that are objective and recognizable by third parties – is situated in Italy. Pursuant to Article 10 of Italian law on insolvency, the expiration of the one-year term since the cancellation of the company from the register of companies is equally irrelevant. In fact, said term is only relevant for companies that terminated their business activities in Italy. On the contrary, the transfer of the seat abroad, at least in those cases where the law of the place where the new seat is located is consistent with the principles regulating this matter in the Italian legal system, does not affect the legal continuity of the transferred company and does not entail the termination of company’s activities.
66. *Corte di Cassazione (plenary session), 3 June 2013 No 13900* 989
 In proceedings concerning jurisdictional issues held before the Corte di Cassazione, reference can be made to provisions that were not examined in the related proceedings before lower courts, since the plenary session of the Corte di Cassazione can in this case also address issues of fact. Accordingly, the ple-

nary session has authority to directly assess the evidence and draw conclusions therefrom in full autonomy and independence from the parties' allegations and from the evaluations of the lower courts, and can rectify errors in the parties' and lower courts' arguments as well as fill-in possible gaps.

Pursuant to Article 5(1)(a) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action brought by an Italian company against an Austrian bank for the enforcement of a first demand guarantee. In fact, the place where the obligation in question was or is to be performed is deemed to be in Italy, due to the fact that (i) jurisdiction over a foreigner must be ascertained on the basis of the plaintiff's allegations and, accordingly, the provision at Article 5(1)(a) of Regulation No 44/2001 applies even if the defendant challenges the existence or enforceability of the contract, (ii) such place must be determined with reference to the obligation corresponding to the right which forms the object of the plaintiff's claim and to the place of performance of said obligation, as determined pursuant to the law that governs the legal relationship in dispute, (iii) pursuant to Article 4(3) of the Rome Convention of 19 June 1980 – overcoming the presumption established at Article 4(2) of the same Convention, as referred to by Article 57 of Law of 31 May 1995 No 218 – such law is Italian law, since the obligation of the guarantor is aimed at ensuring the satisfaction of the financial interest of the beneficiary which has been prejudiced by the lack of performance and, accordingly, the obligation in question is most closely connected with Italy, where the company acting as plaintiff has its seat. Consequently, the place of performance is the creditor's domicile pursuant to Article 1182(3) of the Civil Code, since the obligation of the guarantor is performed through the payment of a given amount of money.

Pursuant to Article 8 of Law No 218/1995 – according to which Italian courts have jurisdiction if the facts and provisions on which jurisdiction is based supervene during the proceedings – in coordination with Article 5(5) of Regulation (EC) No 44/2001 and Article 4(2), last sentence of the Rome Convention of 19 June 1980, the opening of a secondary seat in Italy by the Austrian bank after the proceedings of first instance was brought is irrelevant, absent an actual link between the object of the claim and said secondary seat.

67. *Trieste Tribunal, order 11 July 2013* 796

In an action for damages suffered as a result of a road accident in which a Romanian national deceased, the petition for interim relief cannot be granted, due to the following reasons. On the one hand, evidence lacks of the petitioners' legal standing, which is governed by Italian law and for which mere notarization, by a Romanian notary public, of the signatures on the power of attorney in which the signatories declare to be relatives of the deceased is not sufficient. On the other hand, the time needed to gain knowledge of Romanian law and case law, that are applicable pursuant to Article 4 of Regulation (EC) No 864/2007 as the law of the place where the damage occurred – even though carried out by the court on its own motion pursuant to the application by analogy of Article 14 of Law of 31 May 1995 No 218 – is incompatible with the immediate granting of interim relief.

EU CASE-LAW

Acts of EU institutions: 2.

Consumer protection: 5.

Contracts: 19, 24, 28, 34.

EC Regulation No 1346/2000: 21, 23, 47.

EC Regulation No 44/2001: 4, 8, 11, 13, 22, 30, 36, 38, 41, 42, 44, 45, 48, 49, 50.

EC Regulation No 1206/2001: 12, 31.

EC Regulation No 1896/2006: 26, 37, 41.

EC Regulation No 1393/2007: 27.

EU Citizenship: 3, 9, 15, 20, 40.

EU Law: 17, 18, 33, 35.

Freedom of establishment: 1, 10, 43.

Freedom of movement of persons: 14, 16, 32, 39.

Interpretation of EU law: 2, 6, 25.

Industrial property: 2, 6.

Judicial proceedings before the Court of Justice: 7, 29.

Preliminary ruling: 7, 29.

Rome Convention of 1980: 46.

Treaties and general international rules: 2.

1. *Court of Justice, 21 February 2012 case C-123/11* 811

Articles 49 and 56 TFEU do not, in the circumstances of the main proceedings, preclude national legislation under which a parent company merging with a subsidiary established in another Member State, which has ceased activity, cannot deduct from its taxable income the losses incurred by that subsidiary in respect of the tax years prior to the merger, while that national legislation allows such a possibility when the merger is with a resident subsidiary. Such national legislation is none the less incompatible with EU law if it does not allow the parent company the possibility of showing that its non-resident subsidiary has exhausted the possibilities of taking those losses into account and that there is no possibility of their being taken into account in its State of residence in respect of future tax years either by itself or by a third party. The rules for calculating the non-resident subsidiary's losses for the purpose of their being taken over by the resident parent company must not constitute unequal treatment compared with the rules of calculation which would be applicable if the merger were with a resident subsidiary.

2. *Court of Justice, 15 March 2012 case C-135/10* 189

The provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO) signed at Marrakesh on 15 April 1994 and of the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty of 20 December 1996 are applicable in the legal order of the European Union.

As the International Convention for the Protection of Performers, Pro-

ducers of Phonograms and Broadcasting Organisations, adopted at Rome on 26 October 1961, does not form part of the legal order of the European Union it is not applicable there; however, it has indirect effects within the European Union. Individuals may not rely directly either on that Convention or on the Agreement or the Treaty mentioned above.

The concept of 'communication to the public' which appears in Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property and Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted in the light of the equivalent concepts contained in the convention, the agreement and the treaty mentioned above and in such a way that it is compatible with those agreements, taking account of the context in which those concepts are found and the purpose of the relevant provisions of the agreements as regards intellectual property.

3. *Court of Justice, 29 March 2012 in joined cases C-7/10 and C-9/10* 188

Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, must be interpreted as meaning that the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.

4. *Court of Justice, order 13 June 2012 case C-156/12* 183

The action, brought under Article 43 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in order to contest a decision holding that an order for enforcement was enforceable under Article 38 to 42 of that Regulation and ordering conservatory attachment measures constitutes implementation of EU law for the purposes of Article 51 of the Charter of Fundamental Rights of the European Union.

The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, may include the right to be exempted from payment of procedural costs and/or fees due for obtaining the assistance of a lawyer in respect of such an action.

However, it is for the national court to ascertain whether the conditions for grant of such aid constitute a restriction on the right of access to courts and tribunals which infringes the very essence of that right, whether they pursue a legitimate aim and whether there is a reasonable level of proportionality between the means used and the aim pursued.

In carrying out that assessment, the national court may take into consideration the subject-matter of the dispute, any reasonable chances of the applicant's success, the gravity of what is at stake for him, the complexity of the law and procedure applicable and the ability of the applicant effectively to defend his cause. In order to assess the proportionality, the national court may also take into account the extent of the procedural costs to be advanced and whether or not they constitute an insurmountable obstacle to access to justice.

Having regard more specifically to legal persons, the national court may take account of their situation. Thus, it may take into consideration, in particular, the legal form of the legal person in question and whether it is for profit or not and the financial capabilities of its members or shareholders and whether it is possible for them to obtain the sums necessary to bring the court proceedings.

5. *Court of Justice, 14 June 2012 case C-618/10* 191
 Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding legislation of a Member State which does not allow the court before which an application for an order for payment has been brought to assess of its own motion, *in limine litis* or at any other stage during the proceedings, even though it already has the legal and factual elements necessary for that task available to it, whether a term relating to interest on late payments contained in a contract concluded between a seller or supplier and a consumer is unfair, in the case where that consumer has not lodged an objection.
 Article 6(1) of Directive 93/13 must be interpreted as precluding legislation of a Member State which allows a national court, in the case where it finds that an unfair term in a contract concluded between a seller or supplier and a consumer is void, to modify that contract by revising the content of that term.
6. *Court of Justice, 21 June 2012 case C-5/11* 190
 A trader who directs his advertising at members of the public residing in a given Member State and creates or makes available to them a specific delivery system and payment method, or allows a third party to do so, thereby enabling those members of the public to receive delivery of copies of works protected by copyright in that same Member State, makes, in the Member State where the delivery takes place, a ‘distribution to the public’ under Article 4(1) of Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.
7. *Court of Justice, order 12 July 2011 case C-466/11* 191
 It follows from Article 28 of the 1969 Vienna Convention on the Law of Treaties, which binds the EU institutions and forms part of the EU legal order as a rule of customary international law that, in the absence of a different intention expressed in the treaty concerned, the provisions of that treaty do not bind the States party to it so far as concerns an act or an event predating its entry into force.
 According to Article 51 of the Charter of Fundamental Rights of the European Union, the Court has no jurisdiction on a preliminary ruling on the interpretation of the Charter when the situation in the main proceedings does not come within the scope of EU law.
8. *Court of Justice, 19 July 2013 case C-154/11* 184
 An embassy of a third State situated in a Member State is an ‘establishment’ within the meaning of Article 18(2) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in a dispute concerning a contract of employment concluded by the embassy on behalf of the sending State, where the functions carried out by the employee do not fall within the exercise of public powers. It is for the national court seised to determine the precise nature of the functions carried out by the employee.
 An agreement on jurisdiction concluded before a dispute arises falls within Article 21(2) of Regulation No 44/2001 in so far as it gives the employee the possibility of bringing proceedings, not only before the courts ordinarily having jurisdiction under the special rules in Articles 18 and 19 of that Regulation, but also before other courts, which may include courts outside the European Union.
9. *Court of Justice, 5 September 2012 case C-83/11* 497
 On the basis of a proper construction of Article 3(2) of Directive 2004/38/

EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States the Member States are not required to grant every application for entry or residence submitted by family members of a Union citizen who do not fall under the definition in Article 2(2) of that Directive, even if they show, in accordance with Article 10(2) thereof, that they are dependants of that citizen; it is, however, incumbent upon the Member States to ensure that their legislation contains criteria which enable those persons to obtain a decision on their application for entry and residence that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons; the Member States have a wide discretion when selecting those criteria, but the criteria must be consistent with the normal meaning of the term ‘facilitate’ and of the words relating to dependence used in Article 3(2) and must not deprive that provision of its effectiveness; and every applicant is entitled to a judicial review of whether the national legislation and its application satisfy those conditions.

In order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are ‘dependants’ of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.

On a proper construction of Article 3(2) of Directive 2004/38, the Member States may, in the exercise of their discretion, impose particular requirements relating to the nature and duration of dependence, provided that those requirements are consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of the Directive and do not deprive that provision of its effectiveness.

The question whether issue of the residence card referred to in Article 10 of Directive 2004/38 may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that Directive has endured in the host Member State does not fall within its scope.

10. *Court of Justice, 6 September 2012 case C-38/10* 190
 A member State (*i.e.*, the Portuguese Republic) has failed to fulfil its obligations under Article 49 TFEU by adopting and maintaining in force tax provisions that are applicable in the case of transfer, by a Portuguese company, of its registered office and its effective management to another Member State or in the case of transfer, by a company not resident in Portugal, of some or all of the assets attached to a Portuguese permanent establishment from Portugal to another Member State, and which prescribe the immediate taxation of unrealised capital gains relating to the assets concerned but not of unrealised capital gains resulting from purely national operations.
11. *Court of Justice, 6 September 2012 case C-619/10* 185
 Article 34(2) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, to which Article 45(1) thereof refers, read in conjunction with recitals 16 and 17 in the preamble, must be interpreted as meaning that, where the defendant brings an action against the declaration of enforceability of a judgment given in default of appearance in the Member State of origin which is accompanied by the certificate provided for by Article 54 of that Regulation, claiming that he has not been served with the document instituting the proceedings, the court of the Member State in which enforcement is sought hearing the action has jurisdiction to verify that the information in that certificate is consistent with the evidence.

Article 34(1) of Regulation No 44/2001, to which Article 45(1) thereof refers, must be interpreted as meaning that the courts of the Member State in which enforcement is sought may refuse to enforce a judgment given in default of appearance which disposes of the substance of the dispute but which does not contain an assessment of the subject-matter or the basis of the action and which lacks any argument of its merits, only if it appears to the court, after an overall assessment of the proceedings and in the light of all the relevant circumstances, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial referred to in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, on account of the impossibility of bringing an appropriate and effective appeal against it.

12. *Court of Justice, 6 September 2012 case C-170/11* 187
 The provisions of Regulation (EC) No 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters, in particular Article 1(1) thereof, must be interpreted as meaning that the competent court of a Member State which wishes to hear as a witness a party residing in another Member State has the option, in order to perform such a hearing, to summon that party before it and hear him in accordance with the law of its Member State.
13. *Court of Justice, 6 September 2012 case C-190/11* 186
 Article 15(1)(c) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not requiring the contract between the consumer and the trader to be concluded at a distance.
14. *Court of Justice, 27 September 2012 case C-137/11* 499
 EU law, in particular Articles 13(2)(b) and 14c(b) of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Regulation (EC) No 1606/98 of 29 June 1998, and Annex VII thereto, precludes national legislation such as that at issue in the main proceedings in so far as it allows a Member State to presume irrebuttably that management from another Member State of a company subject to tax in the first Member State has taken place in that first Member State.
15. *Court of Justice, 4 October 2012 case C-75/11* 498
 By granting reduced fares on public transport in principle only to students whose parents are in receipt of Austrian family allowances, the Republic of Austria has failed to fulfil its obligations under the combined provisions of Articles 18, 20 and 21 TFEU and also Article 24 of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
16. *Court of Justice, 4 October 2012 case C-115/11* 500
 Article 14(2)(b) of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a person who, under successive employment contracts stating the place of employment to be the territory of several Member States, in fact works during the term of each of those contracts only on the territory of

one of those States at a time, cannot fall within the concept of ‘a person normally employed in the territory of two or more Member States’, within the meaning of that provision.

17. *Court of Justice, 4 October 2012 case C-249/11* 502
 European Union law must be interpreted as precluding the application of a national provision which provides for the imposition of a restriction on the freedom of movement, within the European Union, of a national of a Member State, solely on the ground that he owes a legal person, governed by private law, an unsecured debt which exceeds a statutory threshold.
 EU law must be interpreted as precluding legislation of a Member State under which an administrative procedure that has resulted in the adoption of a prohibition on leaving the territory, which has become final and has not been contested before the courts, may be reopened – in the event of the prohibition being clearly contrary to EU law – only in circumstances exhaustively listed in the code of administrative procedure of that State, despite the fact that such a prohibition continues to produce legal effects with regard to its addressee.
18. *Court of Justice, 18 October 2012 case C-173/11* 500
 Article 7 of Directive 96/9/EC of 11 March 1996 on the legal protection of databases must be interpreted as meaning that the sending by one person, by means of a web server located in Member State A, of data previously uploaded by that person from a database protected by the *sui generis* right under that Directive to the computer of another person located in Member State B, at that person’s request, for the purpose of storage in that computer’s memory and display on its screen, constitutes an act of ‘re-utilisation’ of the data by the person sending it. That act takes place, at least, in Member State B, where there is evidence from which it may be concluded that the act discloses an intention on the part of the person performing the act to target members of the public in Member State B, which is for the national court to assess.
19. *Court of Justice, 23 October 2012 in joined cases C-581/10 and C-629/10* 192
 Articles 5 to 7 of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that passengers whose flights are delayed are entitled to compensation under that Regulation where they suffer, on account of such flights, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.
 Consideration of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Articles 5 to 7 of Regulation No 261/2004.
20. *Court of Justice, 8 November 2012 case C-40/11* 498
 Outside the situations governed by Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and where there is no other connection with the provisions on citizenship of EU law, a third-country national cannot claim a right of residence derived from a Union citizen.

21. *Court of Justice, 8 November 2012 case C-461/11* 489
 Article 45 TFEU must be interpreted as precluding national legislation which makes the grant of debt relief subject to a condition of residence in the Member State concerned.
22. *Court of Justice, 15 November 2012 case C-456/11* 491
 Article 32 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it also covers a judgment by which the court of a Member State declines jurisdiction on the basis of a jurisdiction clause, irrespective of how that judgment is categorised under the law of another Member State.
 Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.
23. *Court of Justice, 22 November 2012 case C-116/11* 489
 Article 4(2)(j) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as amended by Regulation (EC) No 788/2008 of 24 July 2008, must be interpreted as meaning that it is for the national law of the Member State in which insolvency proceedings have been opened to determine at which moment the closure of those proceedings occurs.
 Article 27 of Regulation No 1346/2000 must be interpreted as meaning that it permits the opening of secondary insolvency proceedings in the Member State in which the debtor has an establishment, where the main proceedings have a protective purpose. It is for the court having jurisdiction to open secondary proceedings to have regard to the objectives of the main proceedings and to take account of the scheme of the Regulation, in keeping with the principle of sincere cooperation.
 Article 27 of Regulation No 1346/2000 must be interpreted as meaning that the court before which an application to have secondary insolvency proceedings opened has been made cannot examine the insolvency of a debtor against which main proceedings have been opened in another Member State, even where the latter proceedings have a protective purpose.
24. *Court of Justice, 22 November 2012 case C-139/11* 193
 Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as meaning that the time-limits for bringing actions for compensation under Articles 5 and 7 of that Regulation are determined in accordance with the rules of each Member State on the limitation of actions.
25. *Judgment of the Civil Service Tribunal, 11 December 2012 case F-97/11* 496
 For the purposes of determining the cessation of the entitlement of household allowance pursuant to Article 1(2) of Annex VII of Staff Regulation of EU Officials, the date of the change of marital status to be taken into consideration is when the civil judgment declaring the applicant's divorce becomes *res iudicata*. To this extent, the procedural law of the forum must be applied.

26. *Court of Justice, 13 December 2012 case C-215/11* 494
 Article 7 of Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment.
 Pursuant to Article 25 of that Regulation and subject to the conditions laid down therein, the national court remains free to determine the amount of the court fees in accordance with rules laid down by domestic law, provided that those rules are no less favourable than those governing similar domestic actions and do not make it in practice impossible or excessively difficult to exercise the rights conferred by EU law.
 Articles 4 and 7(2)(c) of Regulation No 1896/2006 must be interpreted as not precluding a claimant from demanding, in an application for a European order for payment, interest for the period from the date on which it falls due until the date of payment of the principal.
 Where the defendant is ordered to pay to the claimant the interest accrued up to the date of payment of the principal, the national court is free to determine the way in which the European order for payment form, set out in Annex V to Regulation No 1896/2006, is to be completed in practice, provided that the form thus completed enables the defendant, first, to be fully aware of the decision that he is required to pay the interest accrued up to the date of payment of the principal and, second, to identify clearly the rate of interest and the date from which that interest is claimed.
27. *Court of Justice, 19 December 2012 case C-325/11* 495
 Article 1(1) of Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State, in which the judicial proceedings are taking place.
28. *Court of Justice, 31 January 2013 case C-12/11* 1013
 Article 5 of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that circumstances such as the closure of part of European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute ‘extraordinary circumstances’ within the meaning of that Regulation which do not release air carriers from their obligation laid down in Articles 5(1)(b) and 9 of the Regulation to provide care.
 Articles 5(1)(b) and 9 of Regulation No 261/2004 must be interpreted as meaning that, in the event of cancellation of a flight due to ‘extraordinary circumstances’ of a duration such as that in the main proceedings, the obligation to provide care to air passengers laid down in those provisions must be complied with, and the validity of those provisions is not affected.
 However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of

the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.

29. *Court of Justice, 31 January 2013 case C-394/11* 812
 The Court of Justice of the European Union has no jurisdiction on a preliminary ruling referred by a national body which is not a ‘court or tribunal’ within the meaning of Article 267 TFEU, since the decision that body is called on to give is similar to an administrative decision.
30. *Court of Justice, 7 February 2013 case C-543/10* 492
 Article 23 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a jurisdiction clause agreed in the contract concluded between the manufacturer of goods and the buyer thereof cannot be relied on against a sub-buyer who, in the course of a succession of contracts transferring ownership concluded between parties established in different Member States, purchased the goods and wishes to bring an action for damages against the manufacturer, unless it is established that that third party has actually consented to that clause under the conditions laid down in that Article.
31. *Court of Justice, 21 February 2013 case C-332/11* 807
 Articles 1(1)(b) and 17 of Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that the court of one Member State, which wishes the task of taking of evidence entrusted to an expert to be carried out in another Member State, is not necessarily required to use the method of taking evidence laid down by those provisions to be able to order the taking of that evidence.
32. *Court of Justice, 21 February 2013 case C-46/12* 810
 Articles 7(1)(c) and 24(2) of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States must be interpreted as meaning that a EU citizen who pursues a course of studies in a host Member State whilst at the same time pursuing effective and genuine employment activities such as to confer on him the status of ‘worker’ within the meaning of Article 45 TFEU may not be refused maintenance aid for studies which is granted to the nationals of that Member State. It is for the national court to make the necessary findings of fact in order to ascertain whether the employment activities of the applicant in the main proceedings are sufficient to confer that status on him. The fact that the person entered the territory of the host Member State with the principal intention of pursuing a course of study is not relevant for determining whether he is a ‘worker’ within the meaning of Article 45 TFEU and, accordingly, whether he is entitled to that aid under the same terms as a national of the host Member State under Article 7(2) of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community.
33. *Court of Justice, 26 February 2013 case C-617/10* 812
 The *ne bis in idem* principle laid down in Article 50 of the Charter of Fundamental Rights of the European Union does not preclude a Member State from imposing successively, for the same acts of non-compliance with declara-

tion obligations in the field of value added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.

EU law does not govern the relations between the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that Convention and a rule of national law. EU law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter of Fundamental Rights of the European Union conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice of the European Union, whether that provision is compatible with the Charter.

34. *Court of Justice, 26 February 2013 case C-11/11* 1014
 Article 7 of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as meaning that compensation is payable, on the basis of that Article, to a passenger on directly connecting flights who has been delayed at departure for a period below the limits specified in Article 6 of that Regulation, but has arrived at the final destination at least three hours later than the scheduled arrival time, given that the compensation in question is not conditional upon there having been a delay at departure and, thus, upon the conditions set out in Article 6 having been met.
35. *Court of Justice, 26 February 2013 case C-399/11* 813
 Article 4a(1) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant issued for the purposes of executing a sentence conditional upon the conviction rendered *in absentia* being open to review in the issuing Member State. Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is compatible with the requirements under Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union.
 Article 53 of the Charter of Fundamental Rights of the European Union must be interpreted as not allowing a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution.
36. *Court of Justice, 14 March 2013 case C-419/11* 803
 Article 15(1) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a natural person with close professional links to a company, such as its managing director or majority shareholder, cannot be considered to be a consumer within the meaning of that provision when he gives an aval on a promissory note issued in order to guarantee the obligations of that company under a contract for the grant of credit.

Therefore, that provision does not apply for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.

Article 5(1)(a) of Regulation No 44/2001 applies for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.

37. *Court of Justice, 21 March 2013 case C-324/12* 808
 The failure to observe the time-limit for lodging a statement of opposition to a European order for payment, by reason of the negligence of the defendant's representative, does not justify a review of that order for payment, since such a failure to observe the time-limit does not constitute extraordinary circumstances within the meaning of Article 20(1)(b) or exceptional circumstances within the meaning of Article 20(2) of Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure.
38. *Court of Justice, 11 April 2013 case C-645/11* 804
 Article 1(1) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the concept of 'civil and commercial matters' includes an action for recovery of an amount unduly paid in the case where a public body is required, by an authority established by a law providing compensation in respect of acts of persecution carried out by a totalitarian regime, to pay to a victim, by way of compensation, part of the proceeds of the sale of land, has, as the result of an unintentional error, paid to that person the entire sale price, and subsequently brings legal proceedings seeking to recover the amount unduly paid.
 Article 6 No 1 of Regulation No 44/2001 must be interpreted as meaning that there is a close connection, within the meaning of that provision, between claims lodged against several defendants domiciled in other Member States in the case where the latter, in circumstances such as those at issue in the main proceedings, rely on rights to additional compensation which it is necessary to determine on a uniform basis.
 Article 6 No 1 of Regulation No 44/2001 must be interpreted as meaning that it is not intended to apply to defendants who are not domiciled in another Member State, in the case where they are sued in proceedings brought against several defendants, some of whom are also persons domiciled in the European Union.
39. *Court of Justice, 16 April 2013 case C-202/11* 810
 Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State (as Dutch-speaking region of the Kingdom of Belgium) which requires all employers whose established place of business is located in that entity's territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion.
40. *Court of Justice, 8 May 2013 case C-87/12* 1012
 Article 20 TFEU must be interpreted as not precluding a Member State

from refusing to allow a third-country national to reside in its territory, where that third-country national wishes to reside with a family member who is a European Union citizen residing in the Member State of which he holds the nationality and has never exercised his right of freedom of movement as a Union citizen, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen.

41. *Court of Justice, 16 May 2013 case C-228/11* 805
 Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it does not allow the courts of the place where a harmful event occurred which is imputed to one of the presumed perpetrators of damage, who is not a party to the dispute, to take jurisdiction over another presumed perpetrator of that damage who has not acted within the jurisdiction of the court seised.
42. *Court of Justice, 13 June 2013 case C-144/12* 809
 Article 6 of Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure, read in conjunction with Article 17 thereof, must be interpreted as meaning that a statement of opposition to a European order for payment that does not contain any challenge to the jurisdiction of the court of the Member State of origin cannot be regarded as constituting the entering of an appearance within the meaning of Article 24 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the fact that the defendant has, in the statement of opposition lodged, put forward arguments relating to the substance of the case is irrelevant in that regard.
43. *Court of Justice, 20 June 2013 case C-186/12* 1013
 Article 49 TFEU must be interpreted as not precluding national legislation which excludes the application of the principle of the joint and several liability of parent companies *vis-à-vis* the creditors of their subsidiaries to parent companies having their seat in the territory of another Member State.
44. *Court of Justice, 18 July 2013 case C-147/12* 806
 The concept of ‘matters relating to tort, delict or quasi delict’ in Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it covers actions brought by a creditor of a limited company seeking to hold liable a member of the board of directors of that company and one of its shareholders for the debts of that company, because they allowed that company to continue to carry on business even though it was undercapitalised and was forced to go into liquidation.
 The concept of ‘the place where the harmful event occurred or may occur’ in Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that as regards actions seeking to hold liable a member of the board of directors and a shareholder of a limited company for the debts of that company, that place is situated in the place to which the activities carried out by that company and the financial situation related to those activities are connected.
 The fact that the claim at issue has been transferred by the initial creditor to another has no impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001.

45. *Court of Justice, 12 September 2013 case C-49/12* 1008
 The concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it covers an action whereby a public authority of one Member State claims, as against natural and legal persons resident in another Member State, damages for loss caused by a tortious conspiracy to commit value added tax fraud in the first Member State.
46. *Court of Justice, 12 September 2013 case C-64/12* 1007
 Article 6(2) of the 1980 Rome Convention on the law applicable to contractual obligations must be interpreted as meaning that, even where an employee carries out the work in performance of the contract habitually, for a lengthy period and without interruption in the same country, the national court may, under the concluding part of that provision, disregard the law of the country where the work is habitually carried out, if it appears from the circumstances as a whole that the contract is more closely connected with another country.
47. *Court of Justice, 19 September 2013 case C-251/12* 1007
 Article 24(1) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that a payment made at the behest of a debtor subject to insolvency proceedings to one of the latter’s creditors does not fall within the scope of that provision.
48. *Court of Justice, 26 September 2013 case C-157/12* 1009
 Article 34(4) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not covering irreconcilable judgments given by courts of the same Member State.
49. *Court of Justice, 3 October 2013 case C-170/12* 1010
 Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of alleged infringement of copyrights protected by the Member State of the court seised, the latter has jurisdiction to hear an action to establish liability brought by the author of a work against a company established in another Member State and which has, in the latter State, reproduced that work on a material support which is subsequently sold by companies established in a third Member State through an internet site also accessible with the jurisdiction of the court seised. That court has jurisdiction only to determine the damage caused in the Member State within which it is situated.
50. *Court of Justice, 3 October 2013 case C-386/12* 1011
 Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, in particular, Article 22(1) thereof must be interpreted as not applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State, in view of the fact that such proceedings are concerned with the ‘legal capacity of natural persons’ for the purposes of Article 1(2)(a) of Regulation No 44/2001, a matter which falls outside the material scope of that Regulation.

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