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1. *Bologna Court of Appeal, 24 May 2012* 184

Under Article 67 of Law 31 May 1995 No 218, in the event that a judgment assigning maintenance rights to a minor rendered by a tribunal of the Czech Republic is not complied with, the request for the ascertainment of the conditions for its recognition in Italy put forth by the Ministry of Interior on 21 October 2009, further to international rogatory issued through diplomatic channels under the New York Convention of 20 June 1956 on the recovery abroad of maintenance, is admissible. Such judgment is effective in Italy as it was rendered as a result of a proceeding where both parties were assisted and defended by legal counsels, it is final, and it complies with the parties' agreements and with the principles of the Italian legal system.

2. *Savona Tribunal, order of 14 November 2012* 185

Pursuant to Article 10 of Law 31 May 1995 No 218, Italian courts have jurisdiction over a petition filed against two companies having their seat in Luxembourg for the attachment of shares of the two defendant Italian companies because the protective measure is to be enforced in Italy. Italian courts also have jurisdiction pursuant to Article 77 of the Code of Civil Procedure and to Article 3 of Law No 218/1995 in light, on the one hand, of the power of attorney conferred to the legal counsel of the CEO of both defendant companies and, on the other hand, of the fact that the companies' seat abroad is fictitious. In fact, their real seat is located in Italy where they must therefore be considered as having their administrative seat pursuant to Articles 3 and 25 of Law No 218/1995.

3. *Corte di Cassazione, 14 February 2013 No 3646* 133

Because enforceability is not part of the "effects" of a promissory note that are regulated by Article 4 of the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes (which is directly applicable to the case at hand), the enforceability of a promissory note is governed by the law of the State where enforcement is sought.

A promissory note signed in Switzerland and issued without indications as to the place and date of issuance is enforceable in Italy against the giver of an "aval" because, under Article 63 of Royal Decree of 14 December 1933 No 1669, a promissory note issued abroad has the same effects, including the one of enforceability, of a promissory note issued in Italy provided that: (i) it fulfils

the requirements laid down at Articles 100 and 101 of the Royal Decree; (ii) it complies with the tributary prescriptions under Articles 104 and 105 of the Royal Decree and the law on stamps; and (iii) such effects are allowed by the law of the place where the promissory note was issued.

Under Article 3 of the Geneva Convention of 7 June 1930, Swiss law governs a promissory note signed in Switzerland which does not provide any indication as to the place and the dates of issuance and expiry because the rules on the filling out of a note are characterized as pertaining to form. Therefore, Article 1000 of the Federal Act on the Amendment of the Swiss Civil Code as recalled by Article 1090, second paragraph in regards of promissory notes applies under which if a note is filled out contrary to the agreements of the parties, the breach of such agreements may not be opposed against the holder, except where he acquired the promissory note in bad faith or has acquired it with gross negligence. Accordingly, the promissory note is valid even if filled out beyond its three-year validity term following its issuance. Moreover, the Swiss Federal Act of 11 April 1889 on debt enforcement and bankruptcy does not establish any limits to the enforceability of promissory notes issued in Switzerland.

Under Article 14 of Law 31 May 1995 No 218, the judge shall seek for the sources of law, including the provisions of foreign law. To this aim, in addition to the instruments laid down in international conventions and to the information acquired through the Ministry of justice, the judge can avail himself of the information attained through experts or specialized institutions, because he may also draw upon informal measures, enhancing the active role of the parties with a view to acquiring such information.

Under Article 16 of Law No 218/1995, the effects of Swiss law on the right to filling out a blank promissory note do not conflict with public policy because Article 14, second paragraph of Royal Decree No 1669/1933 – allowing the holder to fill in the note, but to do so within the time limit of three years – while considered by the Italian legal system as a provision that may not be derogated from, is not part of the founding principles of international public policy, also in light of Article 10 of the Geneva Convention of 1930 on the uniform law on bill of exchanges and promissory notes.

Similarly, Article 14, second paragraph of Royal Decree No 1669/1933 may not be construed as an overriding mandatory rule under Article 17 of Law No 218/1995 given that such provision introduces an exception to the general rule laid down at Article 10 of the uniform law on promissory notes and is only relevant when, pursuant to the conflict of law provisions laid down in the Geneva Convention of 7 June 1930, Italian law is the applicable law, and not regardless those provisions.

4. *Turin Tribunal (company law division), order of 13 May 2013* 567

Under Article 31 of Regulation (EC) No 44/2001 of 20 December 2000, application for provisional measures may be filed with the courts of a Member State where such measures shall be enforced, even if, under the Regulation, the courts of another Member State have jurisdiction as to the substance of the matter. Italian courts do not have jurisdiction over an application for attachment of property made against a company having its seat in the Czech Republic that is to be enforced in that same country if, as in the case at hand, the sale contract makes reference to the standard contractual clauses posted on the buyer's Internet website, where a clause confers jurisdiction to the Czech courts and thus satisfiying the condition laid at Article 23 of Regulation No 44/2001 that such agreement be in writing.

5. *Corte di Cassazione, 8 August 2013 No 18978* 434

With respect to international adoption, the decision in chambers (*in camera*) with which a Court of Appeal rules on the claim brought against the decree of a juvenile court which denies the declaration of eligibility and suitability to adopt foreign minors under Articles 6 and 30 of Law 4 May 1983 No 184 may not be appealed in Cassation pursuant to Article 111 of the Constitution. In fact: such decision ends a voluntary jurisdiction proceeding, therefore has no res judicata effects and does not preclude new petitions on the same issue; also it does not affect the rights or the status of the petitioners and finally, it does not solve a contrast between conflicting interests.

6. *Corte di Cassazione (plenary session), order of 20 September 2013 No 21589* 570

Because the purchase of bonds issued by a foreign State falls in the category of consumer contracts regulated by section 4 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction under Article 16 of said Regulation, as recalled by Article 3(2) of Law 1 May 1995 No 218, over a claim brought by a consumer domiciled in Italy against a bank having its seat in San Marino, for the declaration of nullity (or the resolution) of orders for the purchase of bonds issued by Argentina, the restitution of the amounts paid, and damages.

Under Article 17 of Regulation (EC) No 44/2001, as recalled by Article 3(2) Law No 218/1995 which prevails over Article 4(2) of the same Law, the exclusive jurisdiction clause in favour of the courts of San Marino entered into by the parties in the deed of transfer of the bonds is invalid.

7. *Corte di Cassazione, order of 18 November 2013 No 25873* 186

Forcing a woman into marriage amounts to a serious violation of her dignity. As such, pursuant to Article 14(b) of Legislative Decree of 19 November 2007 No 251 such conduct is to be considered as a degrading treatment which purports a serious offense with a view to the recognition of subsidiary protection.

8. *Milan Tribunal, 21 November 2013* 366

Pursuant to Article 3 of Regulation (EC) No 2201/2003 of 31 March 2003, Italian courts have jurisdiction over an action for the legal separation brought in Italy by the Cuban wife who has re-instated in Italy her habitual residence further to a matrimonial crisis occurred less than two years after the celebration of the wedding in Italy with an Italian national with whom she previously lived in Switzerland.

Under Article 31 of Law 31 May 1995 No 218, Swiss law governs the action for the legal separation (including the financial issues related to maintenance obligations) between two spouses having different nationality, Italian and Cuban, whose matrimonial life was primarily located in Switzerland (as Regulation (EU) No 1259/2010 is not applicable *ratione temporis*).

9. *Rome Tribunal, 29 November 2013* 370

The action brought by a liquidator against a seller further to the resolution, pursuant to Article 72 of the Italian Insolvency Law Act, of an instalment sales contract with reservation of ownership, aiming at determining the fair amount due to the seller for the use of machinery by the insolvent company and at bringing within the liquidation the price previously received by the seller and exceeding the fair amount due for the use of the machinery is strongly related to the insolvency proceedings. In fact, said action has a "direct link" with the insolvency of the debtor and with the effects of the insolvency itself on the contracts ongoing at the moment the insolvency is opened. Ac-

cordingly, under Article 4(1) of Regulation (EC) No 1346/2000 of 29 May 2000 – rather than under Regulation (EC) No 44/2001 of 22 December 2000 – Italian courts have jurisdiction over said claims when insolvency proceedings were opened in Italy.

10. *Corte di Cassazione, 4 December 2013 No 27102* 435

The reference made at Article 6(3) of the Treaty on the European Union to the European Convention of Human Rights does not allow national courts to directly apply the provisions of the Convention in matters to which EU law is not applicable, not even through the reference made at Article 11 of the Constitution: in fact also after the entry into force of the Treaty of Lisbon, the position of the Convention in the system of the sources of law has not been modified.

11. *Venice Tribunal, 6 December 2013* 375

In the light of a valid jurisdiction clause in favour of an Italian court pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, the Italian court has jurisdiction over an action for the ascertainment of a breach of contract and for the payment of the contract price against the curator of the debtor who was declared insolvent in Belgium.

Pursuant to Articles 4 and 15 of Regulation (EC) No 1346/2000 of 29 May 2000, the effects of insolvency proceedings on a lawsuit pending over an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending. Accordingly, the action for the ascertainment of the breach of contract and for the payment of the contract price brought against the curator of the debtor who was declared insolvent in Belgium may not proceed for the lack of legal standing which stems from the insolvency proceedings, unless the creditor expressly declares that he intends to use the decision on the merits rendered by the Italian court after the closure of the insolvency proceedings in order to lodge an application for an enforcement action against the insolvent debtor who, in the meantime, has returned in good standing.

If the creditor has lodged a claim in the insolvency proceedings opened in Belgium for the satisfaction of his credit, under the *ne bis in idem* principle he may not simultaneously proceed with his claim in Italy unless he proves that he was precluded from filing his claim in the insolvency proceedings or that his request was declined.

12. *Brescia Juvenile Court, 23 December 2013* 573

Under Articles 9 and 40 of Law 31 May 1995 No 218, Italian courts have jurisdiction over the application filed by Italian nationals residing in Italy for the adoption, by means of the procedure for adoption in special cases laid down at Article 44 of Law 4 May 1983 No 184, a minor entrusted to them in *kafalah* and residing in Italy.

Because the purpose of a *kafalah* is to establish custody (and not parental linkage) over a minor, a *kafalah* issued by a tribunal in Morocco may not be a ground for adoption under Article 44 litt. *d* of Law No 184/1983.

Pursuant to Article 66 of Law No 218/1995 on the recognition of foreign decisions relating to voluntary jurisdiction in (inter alia) family and personal matters, a *kafalah* issued by a tribunal in Morocco may be recognized in Italy.

13. *Corte di Cassazione, 24 December 2013 No 28652* 436

The decision with which a Court of Appeal finds it lacks jurisdiction to decide on the request for recognition in Italy of a judgment on the adoption of minors rendered by a foreign court may be appealed only by means of the spe-

cial proceedings for a ruling on venue (*regolamento di competenza*) laid down at Article 42 of the Code of Civil Procedure.

14. *Corte di Cassazione (plenary session), order of 21 January 2014 No 1134* 143
Under Article 5(1)(b), first indent of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a payment claim in an international contract for the sale of goods. In fact, the place of delivery of the goods, to be identified – unless the parties have agreed otherwise – with the place where the physical transfer of the goods took place, as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at the final destination of the sales transaction – and not, rather, with the place where the goods were delivered under the substantive provision of the applicable law – is situated in Germany. Accordingly, the manner of transport, the place of delivery to the carrier, the fact that the carrier was hired by the buyer, the presence of "Frei Haus/Free of Charge/Départ usine" clauses are irrelevant, lacking an explicit and joint will of the parties as to the modification of the place of actual delivery.

15. *Corte di Cassazione (plenary session), 21 January 2014 No 1136* 577
Pursuant to Article 3 of Law 14 January 2013 No 5, which implements the judgment rendered on 3 February 2012 on State immunities by the International Court of Justice in the case Germany v. Italy, and namely pursuant to para. 1 of such provision, Italian courts do not have jurisdiction over a pending dispute brought against the German Federal Republic by an Italian citizen taken captive in Italy by the German armed forces during World War II and subsequently deported to Germany to serve as forced worker. Furthermore, such provision is constitutional in that it represents the adaptation of the Italian legal system to the international legal system as provided under Article 11, para. 2 of the Constitution, as its adoption pursues the aims of Article 94 para. 1 of the Statute of the United Nations which may be characterized as a "secondary provision" of international law.

16. *Corte di Cassazione (criminal), 28 January 2014 No 3747* 188
The European Convention on extradition of 13 December 1957, by providing at Article 9, in partial recognition of the *ne bis in idem* principle, that extradition shall not be granted if final judgment has been passed by the competent authorities of the requested State upon the person claimed in respect of the offence for which extradition is requested, does not contemplate the case where such judgment was rendered in a third State.

17. *Corte di Cassazione, 30 January 2014 No 2075* 189
With regard to contracts for the international carriage of goods by road, Article 13 of the Geneva Convention of 19 May 1956 ("CMR"), similar to Article 1689 of the Civil Code, grants a right to compensation by reason of the relevance of the damage occurring from the loss or the deterioration of the goods. Thus, liabilities under the contract of carriage are transferred to the consignee only as of the moment when, once the goods have reached their destination or the period for the delivery has expired, the consignee demands or takes delivery of the goods.

18. *Padua Tribunal, 31 January 2014* 190
Pursuant to Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a contractual dispute on the payment for the printing and binding of books performed by a company having its seat in Italy and commissioned by a company having its seat in France be-

cause said activity qualifies as a provision of services, and the place of provision of such service is Italy.

19. *Milan Tribunal, 11 February 2014* 379

With regard to custody rights after divorce – and in line with the doctrine of *forum non conveniens* which grants the seized court discretion to refer the case to another court – under Article 15 of Regulation (EC) No 2201/2003 of 27 November 2003 the court of a Member State having jurisdiction as to the substance of the matter may refer the case to the court of another Member State if it considers that such court would be better placed to hear the case, if the child has a "particular connection" as in the case of a certain habitual residence, and this is in the best interests of the child. The place of the child's habitual residence is to be construed as the place where the child is particularly integrated in the social and family environment in light of the duration, stability, conditions and reasons for the child's presence in the territory of the Member State.

Pursuant to paragraphs 1 litt. *a* and *b* and 3 of Article 15 of Regulation No 2201/2003, neither of the parties to the proceedings on the merits pending in front of a court of a Member State has legal standing to file an application directly before the court of a different Member State that it deems "better placed to hear the case" to request it assume jurisdiction. In fact it is only for the court of the Member State where the proceeding is pending, or for the court of another Member State with which the child has a particular connection, to file such an application.

Pending a proceeding brought before an English court by a father who requests exclusive custody rights of his daughter who is habitually resident in the United Kingdom and reports domestic violence perpetrated by the mother entitled to joint custody, if the court seized has proceeded with the case pending before it and it has examined the merits of the case, the mother lacks legal standing to apply for a transfer of proceeding directly to the Italian court, which she considers "better placed to hear the case" because in this State the daughter has now her new registered residence.

20. *Corte di Cassazione, 5 March 2014 No 5237* 580

In the Italian legal system, the importance of the hearing of the child has progressively increased also in cross-border context so that no room is left to ascribe to such hearing a merely cognitive function when the child is in a position to express his/her own will, having reached a full capacity of understanding which is proportionate to his/her age. When, pursuant to Article 13(2) of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction, a child who has attained an age and degree of maturity at which it is appropriate to take account of its views is heard, such opinion shall be taken into account also in the context of an international child abduction.

As the child's right to be heard qualifies as one of his/her fundamental rights, the child's best interest, implying a physical, psychological and emotional harmonious development, is pursued also through the adequate consideration of his/her opinions with respect to the decisions concerning him/her, thus allowing his/her full involvement in the proceedings, in accordance to his/her being a party "in a substantial way".

If the child expressly objects to being returned and he/her has attained an age and degree of maturity at which it is appropriate to take account of its views, the court deciding on the substance of the matter may under Article 13(2) of the 1980 Hague Convention refuse to order its return. The child's objection to the return is to be assessed autonomously and not to be absorbed in the assessment of the risk of physical or psychological harm to which he/she

would be exposed as a result of its return. In fact the child's objection is not to be construed as evidence of potential risks in the return but, rather, as showing his/her own aspirations towards a project of life, which includes existential and affective aspects, and which is supported by a strong will.

21. *Corte di Cassazione, 12 March 2014 No 5708* 191

The duty cast upon the court to seek for the sources of law is to be construed as encompassing also the legal provisions of a foreign State. However, it does not imply the duty for the court to acquire case-law or doctrine that support the possible different interpretations of the foreign provisions.

22. *Corte di Cassazione, 13 March 2014 No 5924* 146

Under Article 43(5) of Regulation (EC) No 44/2001 of 22 December 2000, read in conjunction with Article 42(2) of the same Regulation, the opposition against the exequatur of a Belgian money judgment raised beyond the thirty-day term from the notification of the decree with which the judgment was declared enforceable in Italy is admissible if the party was not legally informed of the judgment for which recognition is being sought. In such case, to compute the day on which the time-limit begins to run, reference shall be made to the subsequent date on which the decree was notified together with the foreign judgment for which recognition is sought regardless of the fact that useful elements to that effect may be drawn from the application of the opposing party which was notified together with the decree. In fact, such latter notification does not appear to satisfy the needs underlying the mentioned Article 43(5) – stemming from the necessity to assess the opposition and the defences raised with it – that may only be fulfilled by the notification of the foreign judgment whose enforcement is sought.

23. *Vercelli Tribunal, order 17 March 2014* 148

Under Article 23(1)(a) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over the garnishment of bank checks issued by the petitioner in partial execution of a sub-contract, entered into by the petitioner with a German company, which encompasses a choice of court agreement in favour of a German court. In fact, Article 1341, second paragraph of the Civil Code is not applicable because the requirement that the clause be in writing is satisfied by the joint underwriting of the whole contract governed by Article 23 of the Regulation. Moreover, because the forum provided at Article 23 of the Regulation is to be construed as exclusive, unless the parties have agreed otherwise, it prevails over the forum laid down at Article 5(1)(a) of the same Regulation: accordingly, in the case at hand the latter provision is irrelevant.

Finally, because the bank checks that are the object of the writ of garnishment are situated in Germany, Italian courts do not have jurisdiction under Article 31 of the Regulation.

24. *Corte di Cassazione, 18 March 2014 No 6205* 152

In the proceedings concerning the recognition of an individual's status as national, the constitutional ranking of the object of such proceedings dictates that the court will on its own motion collect all evidence that is necessary to verify the conditions required by the law.

With respect to an application for the recognition of the Italian nationality filed by the children of a former national – married to a Lebanese national – who has lost her nationality on a voluntary basis pursuant to Article 8 of Law 13 June 1912 No 555, the conditions and mode of acquisition of the foreign nationality by the woman must be strictly ascertained.

25. *Corte di Cassazione, 20 March 2014 No 6503* 437

The comparative analysis of the conditions for the recognition of the status of political refugee, on one side, and for the recognition of subsidiary protection, on the other side show a different degree of the risk to be ascertained. In fact, with regard to the recognition of the status of political refugee, Article 14 Legislative Decree 19 November 2007 No 251tt requires a weaker causal link between the individual circumstances and the likely risk than the one required for the subsidiary protection. On the one hand, with respect to the hypothesis laid down at litt. *a* and *b*, although the exposure of the foreigner to the risk of death or of inhumane and degrading treatments embodies a certain degree of individualization, it is not necessary that it meets the higher standards of the likelihood of persecution (*fumus persecutionis*). On the other hand, with respect to the hypothesis put forth at litt. *c* of the same provision, the situation of indiscriminate violence and of armed conflict in the State of origin may justify the lack of an individual involvement in the situation of danger.

26. *Corte di Cassazione, order of 24 March 2014 No 6862* 192

The referral for preliminary ruling is not a relief automatically granted upon party motion as it is only for the court to assess whether it is necessary or not.

The national court of last instance is not subject to the duty to refer when it is apparent that such a request seeks a decision on the compatibility of the effects produced by the concrete application of national provisions with the EU principles of effectiveness and loyal cooperation, rather than on the general and abstract interpretation of a national provision.

27. *Corte di Cassazione, 31 March 2014 No 7479* 585

Under Article 13(2) of the Hague Convention of 25 October 1980, in international child abduction proceedings the hearing of the child aims at assessing, inter alia, the child's potential objection to being returned when it has attained an age and degree of maturity at which it is appropriate to take account of its views.

The child's right to be heard, laid down in several international conventions (*inter alia*, the New York Convention on the rights of the child of 20 November 1989 at Article 12, and the Strasbourg Convention of 25 January 1996 on the exercise of children's rights at Articles 3 and 6), does not rule out the pre-emptive assessment of the potential harm and prejudice arising from the hearing, also in light of the urgency that generally characterizes the proceedings on international child abduction. However, the reasons underlying the refusal to hear the child and showing the potential harm for him/her must be expressed. The lack of such reasoning and of such justification violate the child's right to be heard and may ground an appeal pursuant to Article 161 of the Code of Civil Procedure. The proceeding for the opposition against the return of a child in Hungary, brought before the Italian court against the father that wrongfully retains the child in Italy lacking consent of the other parent with whom he has joint custody, may not decide claims *de potestate*, concerning right to custody or modifications to access rights and even less so it may decide on the suspension or the loss of parental responsibility. The Italian court shall restrain itself and only assess the wrongful retention as its decision is predicated solely on the assessment that the decision to retain the child could not be made unilaterally by the applicant in light of the fact that if wrongfully constrains the other parent's right to joint custody.

28. *Corte di Cassazione, 4 April 2014 No 7909* 158

Under Article VIII, para. 5 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 jurisdiction over a claim brought against Italy by the spouse of a citizen of the United States for the damages suffered as a result of an improper medical treatment performed by health care facilities owned by the U.S. government but situated on the Italian territory. In fact, the substitutive liability of the receiving State laid down in the said provision covers all claims arising out of acts or omissions of members of a force or civilian component done in performance of official duty, with the only exception of contractual claims.

Pursuant to Articles 31-33 of the Vienna Convention on the Law of Treaties of 23 May 1969, medical liability may not be characterized as contractual as the characterization given by national courts is irrelevant when interpreting an international treaty.

29. *Milan Tribunal (criminal), 8 April 2014* 384

Because family law is inherently characterized by the disconnection of the forms of procreation from the natural component of procreation and by progressive contractualization – a phenomenon that is differently regulated in the national legal systems and that creates a debate over the same definition of motherhood – the attribution of motherhood and fatherhood is no longer related to nature; rather, it depends on the choices made by the national legislator.

Although the recording in the Italian civil registry of the Indian birth certificate of a child born in India subsequent to a surrogacy arrangement entered into by Italian spouses appears as a unitary document, it may nevertheless be divided into two separate deeds: one replicating the data contained in the birth certificate, and the other replicating the declaration of the parents' biographical information. This latter deed does not amount to the crime of alteration of status under Article 567 of the Criminal Code. Rather, it amounts to false declarations or statements as to one's personal identity under Article 495(2) No 1 of the Criminal Code, although the transcription in Italy of a birth certificate from surrogate motherhood is not, *per se*, in conflict with public policy.

30. *Corte di Cassazione, 9 April 2014 No 8399* 439

The threat put forth by an armed group, which aims at the secession of part of the national territory, to forcefully recruit young residents amounts to an actual threat of persecution for reason of political opinion pursuant to Article 8(1)(e) of Legislative Decree 19 November 2007 No 251 even when it refers to events that have occurred in the past, as its persistence may not be ruled out. Moreover, the right to the recognition of the status of political refugee (or of the different measure of subsidiary protection) may not be excluded in light of the reasonable possibility that the petitioner could move to a different part of the territory of his State of origin where he has no founded reasons to fear persecution, since such exclusion, laid down at Article 8 of Directive 2004/83/EC, has not been implemented by Legislative Decree 19 November 2007 No 251.

31. *Milan Tribunal, order of 16 April 2014* 162

In a proceeding for the legal separation of spouses, the issue of jurisdiction over status, parental responsibility and maintenance of the wife and children shall be assessed by the court on its own motion. Such assessment must be referred to the moment the claims were filed before the court. Therefore, facts and actions taken by the parties subsequently to the filing of the claims are irrelevant with a view to establishing jurisdiction.

Under Article 3(1)(b) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the action for legal separation be-

tween an Italian and a Italian-Moroccan as both spouses are Italian nationals: the fact that the habitual residence of the spouses – to be identified in the place where they have intentionally and stably established the permanent or habitual centre of their interests – is situated in Switzerland is irrelevant because the different objective alternative criteria that are laid down at Article 3(1) are not hierarchically ranked.

Pursuant to Article 19(3) of the Regulation, the conflict of jurisdiction that arises as a result of the proceeding pending on the same object and between the same parties before a Swiss court shall be solved on the grounds of which proceeding was commenced first, i.e. in favour of the Italian court which, pursuant to Article 16, was seized before the Swiss court.

Under Article 8 of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction over the claim on parental responsibility over minors whose habitual residence is in Switzerland, nor does it apply the prorogation of jurisdiction pursuant Article 12 of the Regulation because the spouses have not expressed their acceptance of such jurisdiction.

Pursuant to Article 3(c) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts have jurisdiction over the maintenance action filed by the wife, as such claim is ancillary to the action concerning status, i.e. the action for legal separation. Pursuant to Article 12 of said Regulation, the proceeding in Italy prevails as it was filed prior to the proceeding brought before the courts in Switzerland.

With respect to the claim for maintenance in favour of the children, Italian courts do not have jurisdiction because this claim is inherently connected to the one on parental responsibility and thus requires to be decided together. Accordingly, the criterion of the child's habitual residence – laid down at Article 3(d) of Regulation (EC) No 4/2009 – shall prevail as it "absorbs" every other criterion.

Pursuant to Article 9(a) of Regulation (EU) No 1259/2010 of 20 December 2010, Swiss law governs the legal separation of an Italian and a Italian-Moroccan citizen habitually residing in Switzerland.

Under Article 3 of the Hague Protocol of 23 November 2007, recalled by Article 15 of Regulation (EC) No 4/2009, the maintenance claim in favour of the wife is governed by Swiss law as the law of the State of the creditor's habitual residence.

Pursuant to Article 20 of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction for the adoption of provisional measures in matters of parental responsibility when the minors are not present in Italy. Likewise, under Article 14 of Regulation (EC) No 4/2009 Italian courts do not have jurisdiction over the maintenance claim in favour of the children because the proceeding before the Swiss court was commenced first.

32. *Corte di Cassazione (plenary session), order of 18 April 2014 No 9034* 169

Under Article 11(2)(c) of the New York Convention of 2 December 2004 on jurisdictional immunities of States and their property, which, although not yet in force and not applicable retroactively, reflects in this part the development of international customary law, Italian courts do not have jurisdiction over a claim brought by an Australian employee, whose tasks comprised working at the archives, making translations and typewriting, against the Spanish embassy at the Hole See for the reinstatement in her former position.

33. *Corte di Cassazione, 7 May 2014 No 9862* 175

A power of attorney authenticated by a Belgian public notary with a view to a proceeding taking place in Italy is valid when it may be assumed, in light of the

unity of the document embodying both the power of attorney and the authentication, that, while from a formal standpoint the activity concretely performed by the notary may be traced back to the so-called "minor certification" provided by Belgian law, it is nonetheless tantamount to the one provided by Italian law. In fact, pursuant to Article 12 of Law 21 May 1995 No 218 the power of attorney is subject to the conditions for validity laid down by the Italian law of civil procedure; however, in the part where said law allows the use of an authentic act or a private deed, it refers to substantial law and thus subjects the formal validity of the power of attorney to the *lex loci actus* as long as this does not conflict with the fundamental principles of the Italian legal system.

Because under Article 49 of Regulation (EC) No 44/2001 of 22 December 2000 foreign judgments which order a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin, the judgment that orders the payment of interest on arrears, which is rendered against a company domiciled in Belgium and only indicates the effect of such interests without specifying their nature and amount, conflicts with the principle of effectiveness of European Union law and shall be reformulated as such omission precludes its enforcement in Belgium.

34. *Corte di Cassazione, 8 May 2014 No 9997* 180

With respect to an action for the dissolution of the contracts entered into between an Italian company and a Swiss company – on which two parallel proceedings are pending in Italy and in Switzerland – the final decision with which the Swiss judge rules that the court first seized pursuant to Article 21 of the Lugano Convention of 16 September 1988 is the Italian court shall be construed as a decision on jurisdiction. Accordingly, the Italian judge – who previously suspended the proceedings before his court because he considered the Swiss court as the court first seized under Article 21 – shall resume the proceeding pending before his court in order to decide on the claim or decline his jurisdiction.

The order with which the Italian court declines to resume the proceedings because it considers that the final decision rendered by the Swiss court fails to meet the requirements for the suspension of the proceeding pursuant to Article 21 of the Convention is clearly decisory in nature because it entails a paralysis in the proceeding and can thus be assimilated to an order of dismissal of the case. Such order is effective also for the Swiss legal system as it precludes the filing of the same claim in Switzerland lacking a decision of the Italian judge on jurisdiction: thus, said order may be appealed, regardless of the form of the measure taken.

35. *Bologna Court of Appeal, 13 May 2014* 394

The judgment order rendered by an English court against a defendant who, by his own free will, did not enter an appearance regardless of the admonition that, by failing to appear in court, he exposed himself to a judgment in favour of the plaintiff, may be declared enforceable in Italy. In fact, pursuant to Article 34 of Regulation (EC) No 44/2001 of 22 December 2000 the violation of the right to be heard only occurs (and the grounds that preclude the recognition of the ensuing judgment only arise) when the defendant was not objectively informed of the fact that proceedings have been commenced against him or he was in any other way prevented from exercising his right to defence. The recognition of a judgment rendered in favour of the plaintiff on the sole grounds that the defendant did not enter an appearance, and that

such behaviour may be deemed to have evidentiary consequences, does not conflict with public policy.

36. *Corte di Cassazione (plenary session), order of 16 May 2014 No 10823* 399

A declaration of insolvency rendered after the request for a ruling on jurisdiction (*regolamento di giurisdizione*) has been lodged does not preclude the decision on jurisdiction because it does not extinguish the petitioner's interest in such a decision.

Given that, pursuant to Article 3 of Regulation (EC) No 1346/2000 of 29 May 2000, the presumption under which the centre of main interest of a company coincides with the company's legal seat is rebuttable and as such may be refuted with evidence to the contrary, the transfer of the company's seat in another Member State, although it occurred before the request for the declaration of insolvency was filed, does not rule out the jurisdiction of the Italian courts if such transfer appears fictitious in light of the fact that economic activities in the new seat have not ensued.

37. *Corte di Cassazione, 16 May 2014 No 10853* 440

Articles 32 and 33 of Regulation (EC) No 44/2001 of 22 December 2000 govern the recognition of a foreign decision by making an implied reference to the provisions of the Member State of origin. Accordingly, the court of the State where recognition is sought shall define the scope of the *res judicata* effects exclusively on the grounds of such provisions as it is precluded from applying the provisions laid down on this issue by its national law. Consequently, where the judgment for which recognition is sought has ruled on the merits of a preliminary question, in order to establish which parts of the holding are res judicata the court addressed shall not apply Article 34 of the Code of Civil Procedure nor any other national provision and, rather, it shall apply the provisions of the State of origin.

38. *Bologna Court of Appeal, 21 May 2014* 405

The transfer abroad of a company's seat does not preclude the declaration of insolvency of the company in Italy in the event that the transfer proves to be fictitious. In such circumstances, Italian courts retain jurisdiction to decide on the application for insolvency also in case the seat was transferred prior to the filing of such application, if there is evidence that no economic activity is actually performed in the new seat, nor that the company's centres of direction, administration or organization has been transferred there.

Italian courts have jurisdiction over the application for insolvency filed against a company incorporated in Italy which, subsequent to its crisis, transferred its legal seat abroad in the event that the partners, the person who represents the administration or the person that has mainly operated on behalf of the corporation are Italian nationals who lack any meaningful connection with the foreign State. In fact, these circumstances point to the assumption that the decision to transfer the seat abroad clearly aimed at saving the corporation from an impending and probable declaration of insolvency.

39. *Corte di Cassazione, 26 May 2014 No 11680* 657

Under the repealed Article 25(2) of the Preliminary Provisions to the Civil Code, English law governs the claim for compensation of the damages suffered as a result of a hunting accident occurred in England because the damages alleged by the plaintiff, albeit arisen in Italy, are the expression of the progressive evolution of one single damage that purportedly occurred in the place of the original event. Article 62(2) of Law 31 May 1995 No 281 is irrelevant – also for construction purposes – as, *ratione temporis*, it is not appli-

cable to the dispute, which was commenced in May 1994. The English provision establishing that compensation for loss of amenity – but not for biological damages – may be awarded does not conflict with public policy provided that the non-monetary damage has found substantial redress.

40. *Parma Tribunal, 9 June 2014* 408

Pursuant to Articles 5 and 7 of Regulation (EU) No 1259/2010 of 20 December 2010, Spanish law governs the dissolution of a marriage when it is the law chosen by the spouses, one of which is a Spanish national, and such choice has been expressed by means of a private deed.

41. *Corte di Cassazione (plenary session), order of 20 June 2014 No 14041* 409

Under Articles 2 and 6(1) of Regulation (EC) No 44/2001 of 22 December 2000 and of the corresponding provisions of the Lugano Convention of 30 October 2007, Italian courts have jurisdiction over an action (which may not be characterized as an inheritance claim) brought against a plurality of defendants domiciled in Italy, in a different Member State and in Switzerland, for the declaration of invalidity of a trust and of the deeds of transfer, by means of which shares directly or indirectly owned by the deceased were transferred into the trust. In fact, an action against multiple defendants may be lodged with the court of the place where one of the defendants is domiciled provided the claims are so closely connected that it is expedient to hear and determine them together.

Accordingly, the clause which prorogates the jurisdiction in favour of the courts of the United Kingdom is ineffective every time rights and obligations stemming from the trust and its functioning are disputed. When such clause is inserted in the deed of trust pursuant to Article 23(5) of Regulation (EC) No 44/2001 (and of the corresponding provisions of the 2007 the Lugano Convention) it shall be binding not only for the trust settlor but also for the trustees and the trust beneficiaries regardless of the fact that they have not personally agreed to the clause; it shall however not bind those individuals that are in a position of third parties with respect to the trust and to whom the paternity of the clause may not, in any way, be associated.

The fact that the trust is situated in the United Kingdom is also irrelevant provided that the ground for jurisdiction of the courts of the Member State in which the trust is domiciled, laid down at Article 5(6) of the Regulation, is alternative to the general forum of the defendant's domicile.

The request for provisional measures, filed during the proceeding on the merits and declined on the grounds of lack of *fumus boni iuris* on the issue of jurisdiction, does not preclude a request for a ruling on jurisdiction (*regolamento di giurisdizione*). In fact, a ruling on provisional measures does not amount to a judgment, not even when a question of jurisdiction has been contextually decided, unless it is indisputable that the question of jurisdiction only referred to the proceedings for the provisional measures.

42. *Bologna Tribunal (intellectual property division), 23 June 2014* 592

Jurisdiction over a declaratory action that aims to establish that the non-Italian portions of a European patent were not infringed shall be established under Article 22 of Regulation (EC) No 44/2001 of 20 December 2000 and not under Article 5(3) of the same Regulation, when it is brought together with an action to assess *incidenter tantum* (purely incidentally) the invalidity of the foreign portions of the patent at issue.

Under Article 22(4) of Regulation (EC) No 44/2001, Italian courts do not have jurisdiction over an action to establish that the non-Italian portions of a European patent were not infringed, when such action entails the assessment,

incidenter tantum (purely incidentally), of the lack of the patentability requirements and consequently of the invalidity of such portions. In fact, jurisdiction on such claim rests with the national courts of the States in which each portion was registered.

43. *Trieste Juvenile Court, decree 25 June 2014* 601
The common interpretation given of Article 27 of Law 4 May 1983 No 184, which regulates adoption and fostering of minors, pursuant to which the paternal family name shall be attributed to the foreign adopted minor automatically and without any possibility for derogation on behalf of the adopting spouses leads to a result which is not in compliance with the principles laid down in the Constitution, in the European Union and in international laws as it violates the right to equality of man and woman in the context of marriage.

44. *Corte di Cassazione, 26 June 2014 No 14561* 609
With respect to international child abduction, under Article 13 of the Hague Convention of 25 October 1980, for a return order to be issued it is necessary that, at the moment of the child's removal, the custody rights were actually exercised by the person seeking for the return of the child, and the causes and reasons why such rights were not actually exercised are irrelevant.

45. *Corte di Cassazione, 30 June 2014 No 14792* 611
The notion of "habitual residence", which is the place to which, under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction, the minor has to be returned in case of wrongful removal or retention, is a question of fact because it is to be construed as the place where the minor has established, in light of its durable and prolonged (also factual) presence, the centre of affective – not only parental, but also of its daily life – relations. The assessment of such facts falls within the exclusive competence of the court that decides on the substance of the matter, and it may not be appealed before the Court of Cassation if it is sufficiently and consistently motivated.
Under Article 13 of the 1980 Hague Convention, the return order requires not only that the child is habitually resident abroad, but also that custody rights are actually exercised in that same place by the parent who is entitled to those rights. Nonetheless, the exclusive cohabitation of the child with the abducting parent subsequent to the child's transfer, which has taken place absent the authorization of the other parent who had the right to joint custody, is not a valid ground to oppose to the return of the child, as return aims at restoring the status quo ante regardless of any subsequent event, except where the child's return would expose him/her to a grave risk of physical or psychological harm or an unbearable situation.

46. *Milan Tribunal, decree 2 July 2014* 616
In light of the case-law of the Constitutional Court, the Court of Cassation and the European Court of Human Rights a marriage concluded in Argentina by two individuals, one of which has undergone gender change, shall not be recorded in the Italian civil registry because the deed of marriage between individuals of the same gender is not apt to produce legal effects in the Italian legal system under the legislation currently in force.

47. *Rome Tribunal, 9 July 2014* 620
Pursuant to Articles 18, 19, and 60(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action brought for the annulment of a disciplinary measure against the Italian Ministry for For-

eign Affairs by an Italian employee hired by the Italian embassy in Santo Domingo. The provisions of Regulation No 44/2001 apply notwithstanding Article 154 of Presidential Decree 5 January 1967 No 18 as amended by Legislative Decree 7 April 2000 No 18. Under Article 21 of the Regulation, the clause in the employment contract to derogate from the jurisdiction of the Italian courts is invalid both because it was entered into prior to the arisal of the dispute and because it creates an obligation upon the employee to lodge his claim before a court other than the one provided under the Regulation.

48. *Corte di Cassazione, order of 10 July 2014 No 15782* 660

As regards international protection, under Article 3(5) of Legislative Decree 17 November 2007 No 251 the evidentiary gaps in the account of the applicant for asylum do not necessarily entail lack of compliance with the rules on the burden of proof as such gaps may be overcome by the assessment of the circumstances laid out at litt. *a-e* of said provision that the court shall perform.

49. *Corte di Cassazione (plenary session), order of 14 July 2014 No 16065* 623

Jurisdiction is assessed on the grounds of the plaintiff's pleas as set out in its claim, and namely with respect to the cause of action, i.e., the legally protected subjective situation in question as identified with regard to the facts alleged and the legal relationship which they represent.

Italian courts have jurisdiction under Articles 2 and 6(1) of Regulation (EC) No 44/2001 of 22 December 2000 and under the corresponding provisions of the Lugano Convention of 30 October 2007 over an action brought by a group of professional investors aimed at assessing the non-contractual liability of banks having their seat in Italy, England, Germany and Switzerland, allegedly liable of having financed an industrial group on the verge of insolvency at the sole purpose of making a profit while transferring the financial risk of the financial operations on investors and savers, and as such taking advantage of them, aiming at compensation for the loss of value of the shares and bonds issued by members of the group (a situation which is comparable to prospectus liability), because the one brought against the defendants is indisputably one single action and it may be ruled out that the connection of claims is not fictitious because it is self-evident from the statement of claim that each defendant may not maintain to be extraneous and unrelated to the claim.

Italian courts also have jurisdiction over the same claim under Article 5(3) of Regulation (EC) No 44/2001 and the corresponding provision of the 2007 Lugano Convention because the alleged tort, in its genesis, was planned in Italy; the industrial group was Italian; the extraordinary administration proceedings of the companies of the group, further to their insolvency, were opened in Italy; a criminal proceeding was brought as to the liability of the corporate offices for the group's insolvency; and an evidentiary and factual link exists between the cause of action and the factual allegations.

50. *Corte di Cassazione, 16 July 2014 No 16272* 629

Under Article 34(1) and (2) of Regulation (EC) No 44/2001 of 22 December 2000, a Spanish judgment may be recognized in Italy when the defendant – who did not appear before the court of the State of origin and claims that, together with the notification of the judgment, he was not notified with the Italian translation of document which instituted the Spanish proceeding – has failed to submit evidence on the manner and time of reception, occurred at a later time, of the document in Italian although the opposite appears to be true on the grounds of the request for service of documents performed pursuant to Regulation (EC) No 1348/2000 of 29 May 2000.

Under Article 19(4) of Regulation (EC) No 1348/2000, the defendant who did not enter an appearance in the proceedings before a foreign court may file an application for relief beyond the five-day term provided by the *lex fori*, but only within a reasonable time after he has knowledge of the judgment which shall in no case be less than one year following the date of the judgment.

Under Article 34(1) and (2) of Regulation (EC) No 44/2001, the lack of sufficient time to arrange a defence before the court in a different State and to challenge the subsequent decision may not be invoked before the Court of Cassation as a ground for refusing recognition of a decree that declares a Spanish judgment enforceable. In fact, such assessment must be performed on a case-by-case basis with reference to the facts of the specific case and may be appealed only on the grounds of inadequate reasoning in the ruling of the lower court.

51. *Milan Tribunal, decree 16 July 2014* 634

Under Article 19(2) of Regulation (EC) No 2201/2003 of 27 November 2003, the Italian court shall suspend on its own motion the proceedings pending before it for the modification of the father's access rights, that have been laid down in a Spanish judgment, when a proceeding involving the same child and having the same object (i.e. parental responsibility) is pending between the same parties in Spain, although before the Court of Appeal and on the question of jurisdiction. In the case at hand, the same party (the mother) has chosen to commence proceedings in Spain before the Court of Appeal to challenge jurisdiction although the decision of the Spanish tribunal on the question of jurisdiction would have not precluded the jurisdiction of the Italian court over a novel and autonomous proceeding for the revision of the father's access rights aiming at a different regulation of parental responsibility.

Under Article 20 of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction to issue provisional and urgent measures limiting the exercise of the father's access rights that have been granted by the Spanish court of first instance as the adoption of such provisions would prevent the enforcement in Italy of the measures decided by the Spanish judge.

In light of the fact that Regulation (EC) No 2201/2003 does not rule on domestic procedural aspects, the suspension order, issued by the court on its own motion, shall be notified by the claimant to the defendant in accordance with the provisions laid down in Regulation (EC) No 1393/2007 of 13 November 2007.

52. *Lazio Regional Administrative Tribunal (division III-*ter*), 21 July 2014 No 7795* . 639

Kafalah is an institution aimed at ensuring material and affective care to a minor, and it does not entail any parental linkage or legal representation of the child. It is not subject to a date of termination, and the powers of the custodian are set out in the judicial order that established the right to custody.

The refusal by the Italian embassy in Nairobi to issue a tourist visa in favour of a minor who is in the custody of an Italian national as established with *kafalah*, on the grounds that *kafalah* conflicts with public policy, that it lacks a term for the duration of the rights of custody and that the custodian's duties are not clearly stated, is illegitimate.

53. *Milan Tribunal, order of 29 August 2014* 661

Article 4, para. 1-*bis* of Legislative Decree 27 June 2003 No 168, introduced by Legislative Decree 23 December 2003 No 145, concentrates venue in a limited number of court divisions, specialized in company law and identified by the provision itself, for all disputes to which a company having its seat

abroad is a party, regardless of whether the company's procedural position is that of the plaintiff or of the defendant.

54. *Corte di Cassazione, 10 September 2014 No 19004* 642

The decision whereby the court of first instance declares its "lack of competence" in favour of a foreign court pursuant to Articles 3, 16 and 19 of Regulation (EC) No 2201/2003 of 27 November 2003 cannot be challenged with an extraordinary appeal in Cassation (*ricorso straordinario in Cassazione*) nor with a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) but only with an appeal, as such decision relates to a question of jurisdiction.

55. *Corte di Cassazione, 12 September 2014 No 19283* 662

Articles 67 and 68 of Law 31 May 1995 No 218 are not applicable to an enforcement order issued by the financial agency of an EU Member State – such order being different from a judgment and thus constituting an administrative and not a judicial act – of which execution in Italy is sought by the State of origin under the provisions of European Union law on mutual assistance for the recovery, by means of an administrative procedure, of claims arisen as a result of unpaid value added tax.

56. *Corte di Cassazione (plenary session), order of 18 September 2014 No 19674* 644

Article 11 of the New York Convention of 2 December 2004 on jurisdictional immunities of States and their property, although not yet in force, reflects the development of international customary law and may be referred to in order to assess the compatibility of the defendant State's jurisdictional immunity with the due process guarantees. Under such provision Italian courts lack jurisdiction over the claim brought by a former employee of the Académie de France à Rome, who performed tasks in support of the activity of the Secretary General, to establish the nullity and/or the wrongfulness of the termination of her employment contract and for the reinstatement of the employee in her former position. However, Italian courts have jurisdiction over the claims for compensation of damages and for payment of social security and welfare as these claims exclusively involve monetary issues and do not affect the foreign entity's sovereign powers.

57. *Corte di Cassazione (plenary session), order of 18 September 2014 No 19675* 653

Under Article 5(3) of Regulation (EC) No 44/2001of 22 December 2000, Italian courts have jurisdiction over an action for the non-contractual liability in matters of financial intermediation for the violation of the duties to inform a client and to execute properly the operations brought by an Italian municipality against an Irish bank and an Italian company.

Because under Article 60 of the Regulation one of the defendants is a company domiciled in Italy, Italian courts have jurisdiction under Article 2 of the same Regulation over the action for contractual liability against the same parties with respect to an investment advisory relationship performed with wilful misconduct or gross negligence on the grounds that the risk profiles were not sufficiently illustrated to the plaintiff. Italian courts have jurisdiction over the same claim also under Article 6(1) of the same Regulation given that the fact that the defendants have cooperated in creating the harmful event satisfies the requirement that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. In the same subject matter, Italian courts also have jurisdiction under Article 5(1)(b) of the Regulation because the advisory relationship may be construed as a contract for the provision of services, and under this contract such services were or should have been provided in Italy. Under

Article 23 of the Regulation, the jurisdiction clause in favour of the English courts provided at Article 13 of the ISDA Master Agreement, which regulates the ensuing contracts entered into by the plaintiff with the defendant Irish bank, is irrelevant given that such clause concerns only the disputes "relating to this Agreement" and shall be narrowly construed by the court.

58. *Varese Tribunal, 8 October 2014* 415

The fact that an Italian couple requests the transcription in Italy of the birth certificate of their children, who were born abroad as a result of an international surrogacy arrangement, and they omit to declare having made recourse to such technique, does not amount to the offence of alteration of status under Article 567(2) of the Criminal Code, as the certificate was validly formed abroad pursuant to the lex loci, nor does it amount to false declarations or statements as to one's personal identity under Article 495(2) No 1 of the Criminal Code. Although all material elements of the offence are actually integrated, the offence itself does not occur following some decisions of the European Court of Human Rights which – giving priority, under Article 8 of the European Convention of Human Rights, to the child's main interest in defining his own identity – impacted, on the one hand, on the attribution of parental status (in any case identified on the basis of the child's national law under Article 33 of Law No 218/1995) and, on the other hand, on the unlawfulness of such conduct, ruling it out.

59. *Corte di Cassazione, 15 October 2014 No 21847* 663

The registrar of a Korean trademark, after having trade marketed his product and having put it on the market, or after having agreed that such activities be performed by a dealer, may not object to the circulation in Italy of the product marketed in a Member State of the European Union by himself or by others authorized by him prior to the registration of the trademark in Italy because this would amount to the so-called "trademark exhaustion". However, subsequent to the registration, he may object to the import from a third State of products marked, even legitimately, with his registered trademark, provided that he, or others authorized by him, have not given consent to the introduction of those goods in the market of the European Union.

60. *Corte di Cassazione (plenary session), 17 October 2015 No 22035* 987

According to the combined provision of Articles 4 and 11 of Law 31 May 1995 No 218 (on acceptance and derogation of jurisdiction and on motion to dismiss for lack of jurisdiction, respectively), the defendant who is in default of appearance may file a motion to dismiss for lack of jurisdiction at any stage and in any instance of a proceeding, as long as the motion is raised in its first statement of defence and it is not precluded by *res judicata*.

Under Article 28(1) (which lays down a provision on jurisdiction and not on venue) of the Warsaw Convention of 12 October 1929 for the unification of certain rules relating to international carriage by air, as amended by the Hague Protocol of 28 September 1955, an action for damages may be brought before the court of the place where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.

Under Article 28(1) of the 1929 Warsaw Convention (applicable *ratione temporis*), Italian courts do not have jurisdiction over an action for the damages arising from the carriage by air of goods brought by an Italian insurance company, subrogated to the rights of the Italian carrier insured by it, and by the purchaser, a United States company, if the principal place of business of the air carrier and the place of destination are situated in the United States.

61. *Corte di Cassazione (plenary session), order 23 October 2014 No 22554* 995

With regard to jurisdiction over an action brought before the Regional Administrative Court (*Tribunale Amministrativo Regionale*) by two Italian financial institutes against a municipality, with which they entered in a series of interest rate swaps, for the annulment of the deliberations with which said municipality annulled "in self-protection" (*autotutela*: the power accorded to the public administration aimed to re-examine the legality of its own acts with a view to validating, amending, or annulling them) the administrative decisions starting the process that led to the conclusion of said investment contracts, it is first necessary to assess the grounds that assign jurisdiction to, respectively, the judiciary and the administrative courts. Such assessment entails the preliminary exact identification of the claim (*petitum*), which is to be identified not only on the basis of the concrete decision that is sought from the court, but rather on the basis of the cause of action (*causa petendi*), i.e. of the inherent nature of the right invoked and identified by the court with regard to the facts alleged and to the underlying legal relationship.

In case of "self-protection" measures adopted against administrative preparatory acts that led to the conclusion of contracts with private parties, the administrative judge has the power to decide of the legality of said acts solely provided that they were actually preparatory to the ensuing negotiation, and it lacks such power if – to the contrary – the dispute concerns defects in the contract. In the case at hand, the administrative judge lacks jurisdiction because the acts performed by the municipality in the negotiating phase and in the conclusion of the contracts are to be characterized as private in nature (*iure privatorum*): in fact, no inherently administrative preparatory activity was involved in the formation of the will of the municipality. Accordingly, given that the above mentioned contracts contain a jurisdiction clause in favour of the courts of the United Kingdom, Article 23 of Regulation (EC) No 44/2001 of 22 December 2000 (as the dispute concerns civil and commercial matters) – according to which if the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, such jurisdiction is exclusive – is applicable.

62. *Corte di Cassazione (plenary session), 27 October 2014 No 22744* 1101

Italian courts do not have jurisdiction over an action brought by an Italian national employed at the Embassy of the United Arab Emirates in Rome against its employer seeking for a declaration that he was tasked with functions greater than those depicted in its job obligations and for unused accrued leave if – although only patrimonial matters (i.e., alleged differences in pay) are in dispute and thus the claim is not covered by State immunity – parties have agreed in writing to derogate the jurisdiction of the Italian courts in regard of claims on alienable rights (*diritti disponibili*) pursuant to Article 4, paragraph 2 of Law 31 May 1995 No 218.

63. *Corte di Cassazione (criminal), 3 November 2014 No 45266* 1115

The question of the constitutional legitimacy of Article 574-*bis* of the Criminal Code on child abduction and wrongful retention abroad, raised with reference to Articles 25 (principle of legality) and 3 (principle of equality) of the Constitution, is manifestly unfounded because said provision lays down the elements of the offence in a rational and unambiguous manner.

64. *Florence Court of Appeal, 5 November 2014* 1115
Under Article 23 of Regulation (EC) No 44/2001 of 22 December 2000 (which, in the case at hand, was applicable in lieu of Article 4 of Law 31 May 1995 No 218), Italian courts do not have jurisdiction over an action concerning an agency contract and seeking, inter alia, payment of the severance package if the parties to the contract have agreed to the jurisdiction of the courts of England and Wales by means of a clause that fulfils all the conditions laid down at said Article. It is irrelevant that said clause be specifically approved pursuant to Article 1341 of the Civil Code.

65. *Bologna Juvenile Court, order 10 November 2014* 1005
It is not manifestly unfounded the question of the compliance of Articles 35 and 36 of Law 4 May 1983 No 184 on adoption with Articles 2, 30, 31 (overall establishing the child's fundamental right to a family), Article 3 (principle of equality), and Article 117 (attribution of legislative powers) of the Constitution, in the part where Articles 35 and 36 of Law No 184/1983 do not grant the judge with the power to assess whether the recognition of a decision delivered by a United States court and granting full adoption of a child to a woman married abroad to the child's biological mother, serves the child's best interests.

66. *Corte di Cassazione, 11 November 2014 No 24001* 427
Under Article 18 of Presidential Decree of 3 November 2000 No 396 and Article 16 of Law 31 May 1995 No 218, both the Ukrainian birth certificate – which certifies the parentage of a child to two Italian spouses as a result of an international surrogacy arrangement, notwithstanding the lack of biological link between the spouses and the child – and the Ukrainian law on surrogacy conflict with public policy. Such conflict is not incompatible with the protection of the child's best interest because such interest is safeguarded by attributing the maternity rights to the woman who delivered the child and by leaving, on an exclusive basis, to the rules on adoption the realization of parentage dissociated from a biological link. Such conflict is also not incompatible with the recent case law of the European Court of Human Rights which, after having recognized a wide margin of discretion to the single States in this matter, has considered that a State exceeds such a discretion if it refuses to recognize the parentage between a child and the intended father when the latter is also the biological father.

67. *Corte di Cassazione (plenary session), order 28 April 2015 No 8571* 1012
Under Article 5(3) of the Brussels Convention of 27 September 1968, Italian courts do not have jurisdiction over the action for extra-contractual liability and damages arising out of the illegitimate request of payment of a first demand guarantee made by the defendant, a Turkish company, further to an alleged breach of contract purportedly perpetrated by a Russian company controlled by the plaintiff, an Italian company, and arising out of the subsequent action brought by the guarantor banks against the Italian company, which in turn is counter-guarantor of said banks, because the allegedly harmful event occurred abroad, where the payment of the first demand guarantee and of the sub-guarantees was performed, partly by means of seizure of assets in other banks. It is irrelevant that the action of the banks against the plaintiff company was brought in Italy, as said action seeks a consequential damage and, as such, it is not suitable to ground the jurisdiction of the Italian courts.

EU CASE-LAW

Competition: 1.

Consumer protection: 26, 32.

Contracts: 4, 8.

External Relations: 17.

EC Regulation No 1346/2000: 16, 28, 34.

EC Regulation No 44/2001: 6, 12, 23, 24, 29, 30, 31.

EC Regulation No 2201/2003: 9, 11, 15, 21, 22.

EC Regulation No 1896/2006: 3, 5.

EC Regulation No 1393/2007: 33.

EC Regulation No 4/2009: 20.

EU Citizenship: 19.

EU Law: 4, 6, 7, 8, 27.

External Relations: 17.

Freedom of movement of persons: 18.

Freedom to provide services: 25.

Insolvency: 14.

Judicial proceedings before the Court of Justice: 5.

Preliminary ruling on interpretation: 10.

Prohibition of discrimination: 14, 19.

Protection of employees: 14.

Rome Convention of 1980: 13.

Treaties and general international rules: 2

1. *Court of Justice, 5 June 2014 case C-557/12* 204
Article 101 TFEU must be interpreted as meaning that it precludes the interpretation and application of domestic legislation enacted by a Member State which categorically excludes, for legal reasons, any civil liability of undertakings belonging to a cartel for loss resulting from the fact that an undertaking not party to the cartel, having regard to the practices of the cartel, set its prices higher than would otherwise have been expected under competitive conditions.

2. *Court of Justice, 17 July 2014 case C-481/13* 203

In the case of international agreements, it is settled that such agreements concluded by the European Union form an integral part of its legal order and can therefore be the subject of a request for a preliminary ruling. On the other hand, the Court does not, in principle, have jurisdiction to interpret, in preliminary ruling proceedings, international agreements concluded between Member States and non-member countries. It is only where and in so far as the European Union has assumed the powers previously exercised by the Member States in the field to which an international convention not concluded by the European Union applies and, therefore, the provisions of the convention have the effect of binding the European Union that the Court has jurisdiction to interpret such a convention.

Although several pieces of EU legislation have been adopted in the field to which the 1951 Geneva Convention on the status of refugees applies as part of the implementation of a Common European Asylum System, it is undisputed that the Member States have retained certain powers falling within that field, in particular relating to the subject-matter covered by Article 31 of that Convention. Therefore, the Court does not have jurisdiction to interpret directly Article 31, or any other article, of that Convention.

3. *Court of Justice, 4 September 2014 joined cases C-119/13 and C-120/13* 452

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure must be interpreted as meaning that the procedures laid down in Articles 16 to 20 thereof are not applicable where it appears that a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of that Regulation.

Where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability.

4. *Court of Justice, 4 September 2014 case C-452/13* 463

Articles 2, 5 and 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council 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 must be interpreted as meaning that the concept of "arrival time", which is used to determine the length of the delay to which passengers on a flight have been subject, refers to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

5. *Court of Justice, order 9 September 2014 case C-488/13* 461

In a situation in which the facts of the case fall outside the scope of the provisions of EU law referred to the Court for interpretation, the Court has jurisdiction to give a preliminary ruling, if the domestic law makes a reference to the content of those provisions of EU law in order to determine the rules applicable to a situation purely internal to the Member State concerned.

Indeed, it is clearly in the European Union's interests that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, when, in regulating situations outside the scope of the EU measure concerned, national legislation seeks to adopt the same solutions as those adopted in that measure, in order to ensure that internal situations and situations governed by EU law are treated in the same way, irrespective of the circumstances in which the provisions or concepts taken

from EU law are to apply. Such is the case when the provisions of EU law at issue have been made directly and unconditionally applicable by national law to such situations.

On the other hand, that is not the case when the provisions of national law allow the national court to depart from the rules of EU law, as interpreted by the Court of Justice. If Article 46(2) of the ZNA in Bulgaria, read in conjunction with Article 5(4) of the Bulgarian Constitution, refers in general terms to general principles of law in order to fill a legal vacuum, it is not apparent from the order for reference that the provisions of Regulation No 1896/2006 have been made applicable, as such, directly and unconditionally by those provisions of Bulgarian law to a situation not falling within the scope of the provisions of that Regulation whose interpretation is sought. Rather, it appears that those provisions of Bulgarian law merely authorise the court before which the application has been brought to fall back on general principles, national legislation and EU law to fill the lacuna found, by means of the decision it is to adopt and in accordance with its own evaluation of the guidance offered by those rules and principles. In those circumstances, it cannot be considered that the provisions of Regulation No 1896/2006, cited in the questions referred, have been made applicable, as such, directly and unconditionally by national law to a situation not falling within the scope of the provisions of that Regulation.

Consequently, it must be held, on the basis of Article 53(2) of the Rules of Procedure, that the Court clearly lacks jurisdiction to answer the questions referred by the Bulgarian judge.

6. *Court of Justice, 11 September 2014 case C-112/13* 197

EU law and, in particular, Article 267 TFEU must be interpreted as precluding national legislation under which ordinary courts hearing an appeal or adjudicating at final instance are under a duty, if they consider a national statute to be contrary to Article 47 of the Charter, to apply, in the course of the proceedings, to the constitutional court for that statute to be generally struck down, and may not simply refrain from applying that statute in the case before them, to the extent that the priority nature of that procedure prevents – both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question – all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, EU law and, in particular, Article 267 TFEU must be interpreted as not precluding such national legislation to the extent that those ordinary courts remain free to make a reference to the Court at whatever stage of the proceedings they consider appropriate, and even at the end of the interlocutory procedure for the review of constitutionality, in respect of any question which they consider necessary; to adopt any measure necessary to ensure *interim* judicial protection of rights conferred under the EU legal order; and to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to EU law. It is for the referring court to ascertain whether the national legislation at issue before it can be construed in such a way as to meet those requirements of EU law.

Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, if a national court appoints, in accordance with national legislation, a representa-

tive *in absentia* for a defendant upon whom the documents instituting proceedings have not been served because his place of domicile is not known, the appearance entered by that representative does not amount to an appearance being entered by that defendant for the purposes of Article 24 of that Regulation.

7. *Court of Justice, 11 September 2014 case C-291/13* 202

Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") must be interpreted as meaning that the concept of "information society services", within the meaning of that provision, covers the provision of online information services for which the service provider is remunerated, not by the recipient, but by income generated by advertisements posted on a website.

In a case such as that at issue in the main proceedings where the services do not originate in a Member State other than the forum State, but are supplied by a provider established in that State, Directive 2000/31 does not preclude the application of rules of civil liability for defamation.

The limitations of civil liability specified in Articles 12 to 14 of Directive 2000/31 do not apply to the case of a newspaper publishing company which operates a website on which the online version of a newspaper is posted, that company being, moreover, remunerated by income generated by commercial advertisements posted on that website, since it has knowledge of the information posted and exercises control over that information, whether or not access to that website is free of charge.

The limitations of civil liability specified in Articles 12 to 14 of Directive 2000/31 are capable of applying in the context of proceedings between individuals relating to civil liability for defamation, where the conditions referred to in those articles are satisfied.

Articles 12 to 14 of Directive 2000/31 do not allow information society service providers to oppose the bringing of legal proceedings for civil liability against them and, consequently, the adoption of a prohibitory injunction by a national court. The limitations of liability provided for in those articles may be invoked by the provider in accordance with the provisions of national law transposing them or, failing that, for the purpose of an interpretation of that law in conformity with the directive. By contrast, in a case such as that in the main proceedings, Directive 2000/31 cannot, in itself, create obligations on the part of individuals and therefore cannot be relied on against those individuals.

8. *Court of Justice, 18 September 2014 case C-487/12* 463

Article 22(1) of Regulation No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community must be interpreted as precluding a national law that requires air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him, provided that the baggage complies with certain requirements as regards, in particular, its weight, for the price of the plane ticket and without it being possible to charge any price supplement to carry such baggage.

9. *Court of Justice, 1 October 2014 case C-436/13* 199

Where jurisdiction in matters of parental responsibility, in accordance with Article 12(3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judg-

ments in matrimonial matters and the matters of parental responsibility, has been prorogued in favour of a court of a Member State before which proceedings have been brought by mutual agreement by the holders of parental responsibility, such a jurisdiction comes to an end, in favour of the court benefiting from a general jurisdiction under Article 8(1) of that Regulation, following a final judgment in those proceedings from which the prorogation of jurisdiction derives.

10. *Court of Justice, 9 October 2014 case C-222/13* 462

A national body such as the Teleklagenævnet (Danish Telecommunications Complaints Board) does not meet the criteria of independence established by the case-law of the Court for it to qualify as a court or tribunal for the purposes of Article 267 TFEU. In fact, firstly, under Danish legislation it does not appear that the dismissal of members of the Teleklagenævnet is subject to specific guarantees which would dispel any reasonable doubt as to the independence of that body; secondly, the structuring of the legal remedies against a decision of the Teleklagenævnet emphasises the non-judicial nature of the decisions delivered by that body, since when it adopts that decision, the Teleklagenævnet is not acting as a third party in relation to the interests at stake and does not possess the necessary impartiality, as it is proven by the fact that in appeal proceedings against a decision of the Teleklagenævnet before the ordinary courts such body has the status of a defendant. It follows that the Court does not have jurisdiction to answer the questions referred by such a body.

11. *Court of Justice, 9 October 2014 case C-376/14 PPU* 200

Articles 2(11) and 11 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility must be interpreted as meaning that where the removal of a child has taken place in accordance with a judgment which was provisionally enforceable and which was thereafter overturned by a judgment which fixed the residence of the child at the home of the parent living in the Member State of origin, the court of the Member State to which the child was removed, seised of an application for the return of the child, must determine, by undertaking an assessment of all the circumstances of fact specific to the individual case, whether the child was still habitually resident in the Member State of origin immediately before the alleged wrongful retention. As part of that assessment, it is important that account be taken of the fact that the judgment authorising the removal could be provisionally enforced and that an appeal had been brought against it.

Regulation (EC) No 2201/2003 must be interpreted as meaning that, in circumstances where the removal of a child has taken place in accordance with a court judgment which was provisionally enforceable and which was thereafter overturned by a court judgment fixing the child's residence at the home of the parent living in the Member State of origin, the failure to return the child to that Member State following the latter judgment is wrongful and Article 11 of the Regulation is applicable if it is held that the child was still habitually resident in that Member State immediately before the retention. If it is held, conversely, that the child was at that time no longer habitually resident in the Member State of origin, a decision dismissing the application for return based on that provision is without prejudice to the application of the rules established in Chapter III of the Regulation relating to the recognition and enforcement of judgments given in a Member State.

12. *Court of Justice, 23 October 2014 case C-302/13* 449

Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, comes within the notion of "civil and commercial matters" within the meaning of that provision and, therefore, falls within the scope of that Regulation.

Article 22(2) of Regulation No 44/2001 must be interpreted as meaning that an action seeking legal redress for damage resulting from alleged infringements of European Union competition law, does not constitute proceedings having as their object the validity of the decisions of organs of companies within the meaning of that provision.

Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that neither the detailed rules for determining the amount of the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are requested, in the case where it is possible to follow the line of reasoning which led to the determination of the amount of those sums, and even where legal remedies were available which were used to challenge such methods of calculation, nor the mere invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought which would permit the refusal of recognition and enforcement in that Member State of such a judgment given in another Member State.

13. *Court of Justice, 23 October 2014 case C-305/13* 195

The last sentence of Article 4(4) of the 1980 Convention on the Law applicable to Contractual Obligations must be interpreted as applying to a commission contract for the carriage of goods solely when the main purpose of the contract consists in the actual transport of the goods concerned, which it is for the referring court to verify.

Article 4(4) of the Convention must be interpreted as meaning that, where the law applicable to a contract for the carriage of goods cannot be fixed under the second sentence of that provision, it must be determined in accordance with the general rule laid down in Article 4(1), that is to say, the law governing that contract is that of the country with which it is most closely connected.

Article 4(2) of the Convention must be interpreted as meaning that, where it is argued that a contract has a closer connection with a country other than that the law of which is designated by the presumption laid down therein, the national court must compare the connections existing between that contract and, on the one hand, the country whose law is designated by the presumption and, on the other, the other country concerned. In so doing, the national court must take account of the circumstances as a whole, including the existence of other contracts connected with the contract in question.

14. *Court of Justice, 5 November 2014 case C-311/13* 677

Council Directive 80/987/EEC of 20 October 1980 relating to the protection of employees in the event of the insolvency of their employer must be interpreted as precluding national legislation on the protection of employees in the event of the insolvency of their employer under which a third-country national who is not legally resident in the Member State concerned is not to be regarded as an employee with the right to an insolvency benefit – on the basis, in particular, of claims relating to unpaid wages – in the event of his employer's insolvency, even though that third-country national is recognised under

the civil law of the Member State as having the status of an "employee" with an entitlement to pay which could be the subject of an action against his employer before the national courts.

15. *Court of Justice, 12 November 2014 case C-656/13* 451

Article 12(3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as allowing, for the purposes of proceedings in matters of parental responsibility, the jurisdiction of a court of a Member State which is not that of the child's habitual residence to be established even where no other proceedings are pending before the court chosen.

Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that it cannot be considered that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been "accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings" within the meaning of that provision where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of that court.

16. *Court of Justice, 4 December 2014 case C-295/13* 447

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State in the territory of which insolvency proceedings regarding a company's assets have been opened have jurisdiction, on the basis of that provision, to hear and determine an action brought by the liquidator in the insolvency proceedings against the managing director of that company for reimbursement of payments made after the company became insolvent or after it had been established that the company's liabilities exceeded its assets.

Article 3(1) of Regulation (EC) No 1346/2000 must be interpreted as meaning that the courts of the Member State in the territory of which insolvency proceedings regarding a company's assets have been opened have jurisdiction to hear and determine an action brought by the liquidator in the insolvency proceedings against the managing director of that company for reimbursement of payments made after the company became insolvent or after it had been established that the company's liabilities exceeded its assets, where the managing director is domiciled not in another Member State but in a contracting party to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008.

17. *Court of Justice, opinion 18 December 2014 case C-2/13* 456

The agreement on the accession of the European Union to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.

18. *Court of Justice, 18 December 2014 case C-202/13* 676

Both Article 35 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC and Article 1 of the Protocol (No 20) on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland must be interpreted as not permitting a Member State to require, in pursuit of an objective of general prevention, family members of a citizen of the European Union who are not nationals of a Member State and who hold a valid residence card, issued under Article 10 of Directive 2004/38 by the authorities of another Member State, to be in possession, pursuant to national law, of an entry permit, such as the EEA (European Economic Area) family permit, in order to be able to enter its territory.

19. *Court of Justice, 18 December 2014 case C-354/13* 676

EU law must be interpreted as not laying down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the obesity of a worker constitutes a "disability" within the meaning of that directive where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. It is for the national court to determine whether, in the main proceedings, those conditions are met.

20. *Court of Justice, 18 December 2014 joined cases C-400/13 and C-408/13* 454

Article 3(b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as precluding national legislation which establishes a centralisation of judicial jurisdiction in matters relating to cross-border maintenance obligations in favour of a first instance court which has jurisdiction for the seat of the appeal court, except where that rule helps to achieve the objective of a proper administration of justice and protects the interests of maintenance creditors while promoting the effective recovery of such claims, which is, however, a matter for the referring courts to verify.

21. *Court of Justice, 9 January 2015 case C-498/14 PPU* 673

Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility must be interpreted as not precluding, as a general rule, a Member State from allocating to a specialised court the jurisdiction to examine questions of return or custody with respect to a child in the context of the procedure set out in those provisions, even where proceedings on the substance of parental responsibility with respect to the child have already, separately, been brought before a court or tribunal.

22. *Court of Justice, order 13 January 2015 case C-489/14* 674

According to Article 105(1) of the Rules of Procedure of the Court of Justice, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rap-

porteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of the Rules of Procedure.

The request by the High Court of Justice of England & Wales, Family Division (United Kingdom), that the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice be applied to a case on the interpretation of article 19 of Regulation (EC) No 2201/2003 of 27 November 2003 with regard to a separation proceeding brought by the husband before the French judge and a separation proceeding commenced by the wife in the UK is refused, since it is evident from the order for reference that issues of parental responsibility, the children's residence or rights of custody or access significantly affecting the children's well-being are also in dispute between the parties. Moreover, the file available to the Court does not contain anything to indicate that the children are in a situation that is particularly precarious and would necessitate an urgent reply to the questions referred. In any event, the referring court refers to the possibility of its ordering interim measures in that respect. Accordingly, the legal uncertainty affecting the children is not capable of constituting an exceptional circumstance that would justify the application of an expedited procedure.

23. *Court of Justice, 22 January 2015 case C-441/13* 667

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an allegation of infringement of copyright and rights related to copyright guaranteed by the Member State of the court seised, that court has jurisdiction, on the basis of the place where the damage occurred, to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction. That court has jurisdiction only to rule on the damage caused in the Member State within which the court is situated.

24. *Court of Justice, 28 January 2015 case C-375/13* 669

Article 15(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an applicant who, as a consumer, has acquired a bearer bond from a third party professional, without a contract having been concluded between that consumer and the issuer of the bond, which it is for the national court to verify, may not invoke jurisdiction under that provision for the purposes of an action brought against the issuer of the bond on the basis of the bond conditions, breach of the information and control obligations and liability for the prospectus.

Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that an applicant who has acquired a bearer bond from a third party, without the issuer thereof having freely assumed an obligation towards that applicant, which it is for the referring court to verify, may not invoke jurisdiction under that provision for the purposes of an action brought against the issuer and based on the bond conditions, breach of the information and control obligations and prospectus liability.

Article 5(3) of Regulation No 44/2001 must be interpreted as applying to an action seeking to put in issue the liability of the issuer of a certificate on the basis of the prospectus relating to it and of breach of other legal information obligations binding on the issuer, in so far as that liability is not based on a matter relating to a contract, within the meaning of Article 5(1) of the Regula-

tion. Under Article 5(3) of Regulation No 44/2001, the courts where the applicant is domiciled have jurisdiction, on the basis of the place where the loss occurred, to hear and determine such an action, particularly when the damage alleged occurred directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.

In the context of the determination of international jurisdiction under Regulation No 44/2001, it is not necessary to conduct a comprehensive taking of evidence in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the claim. It is, however, permissible for the court seised to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant.

25. *Court of Justice, 12 February 2015 case C-396/13* 675

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, prevents a rule of the Member State of the seat of the undertaking that has posted workers to the territory of another Member State – under which the assignment of claims arising from employment relationships is prohibited – from barring a trade union, such as the Sähköalojen ammattiliitto, from bringing an action before a court of the second Member State, in which the work is performed, in order to recover for the posted workers, pay claims which relate to the minimum wage, within the meaning of Directive 96/71, and which have been assigned to it, that assignment being in conformity with the law in force in the second Member State.

Article 3(1) and (7) of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that:

it does not preclude a calculation of the minimum wage for hourly work and/or for piecework which is based on the categorisation of employees into pay groups, as provided for by the relevant collective agreements of the host Member State, provided that that calculation and categorisation are carried out in accordance with rules that are binding and transparent, a matter which it is for the national court to verify;

a daily allowance such as that at issue in the main proceedings must be regarded as part of the minimum wage on the same conditions as those governing the inclusion of the allowance in the minimum wage paid to local workers when they are posted within the Member State concerned;

compensation for daily travelling time, which is paid to the workers on condition that their daily journey to and from their place of work is of more than one hour's duration, must be regarded as part of the minimum wage of posted workers, provided that that condition is fulfilled, a matter which it is for the national court to verify;

coverage of the cost of those workers' accommodation is not to be regarded as an element of their minimum wage;

an allowance taking the form of meal vouchers provided to the posted workers is not to be regarded as part of the latter's minimum salary; and

the pay which the posted workers must receive for the minimum paid annual holidays corresponds to the minimum wage to which those workers are entitled during the reference period.

26. *Court of Justice, 12 February 2015 case C-567/13* 677

Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it does not

preclude a national procedural rule pursuant to which a local court which has jurisdiction to rule on an action brought by a consumer seeking a declaration of invalidity of a standard contract does not have jurisdiction to hear an application by the consumer for a declaration of unfairness of contract terms in the same contract, unless declining jurisdiction by the local court gives rise to procedural difficulties that would make the exercise of the rights conferred on consumers by the European Union legal order excessively difficult. It is for the national court to carry out the necessary verifications in that respect.

27. *Court of Justice, 26 March 2015 case C-556/13* 1027

Article 2 of the Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as meaning that a premium which varies according to whether the insured vehicle is to be used only in the territory of the Member State in which that vehicle is normally based or in the entire territory of the European Union does not fall within the concept of "single premium", within the meaning of that Article.

28. *Court of Justice, 16 April 2015 case C-557/13* 665

Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as applying to a situation in which a payment, challenged by an insolvency administrator, of a sum of money attached before the opening of the insolvency proceedings was made only after the opening of those proceedings.

Article 13 of Regulation No 1346/2000 must be interpreted as meaning that the defence which it establishes also applies to limitation periods or other time-bars relating to actions to set aside transactions under the law governing the act challenged by the liquidator.

The relevant procedural requirements for the exercise of an action to set a transaction aside are to be determined, for the purposes of the application of Article 13 of Regulation No 1346/2000, according to the law governing the act challenged by the liquidator.

29. *Court of Justice, 13 May 2015 case C-536/13* 672

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State, since that Regulation does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State.

30. *Court of Justice, 21 May 2015 case C-322/14* 1024

Article 23(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the method of accepting the general terms and conditions of a contract for sale by "click-wrapping", such as that at issue in the main proceedings, concluded by electronic means, which contains an agreement conferring jurisdiction, constitutes a communication by electronic means which provides a durable record of the agreement, within the meaning of that provision, where that method makes it

possible to print and save the text of those terms and conditions before the conclusion of the contract.

31. *Court of Justice, 21 May 2015 case C-352/13* 1019

Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the rule on centralisation of jurisdiction in the case of several defendants, as established in that provision, can apply in the case of an action for damages, and for disclosure in that regard, brought jointly against undertakings which have participated in different places and at different times in a single and continuous infringement, which has been established by a decision of the European Commission, of the prohibition of anti-competitive agreements, decisions and concerted practices provided for under EU law, even where the applicant has withdrawn its action against the sole co-defendant domiciled in the same State as the court seised, unless it is found that, at the time the proceedings were instituted, the applicant and that defendant had colluded to artificially fulfil, or prolong the fulfilment of, that provision's applicability.

Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the case of an action for damages brought against defendants domiciled in various Member States as a result of a single and continuous infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992, which has been established by the European Commission, in which the defendants participated in several Member States, at different times and in different places, the harmful event occurred in relation to each alleged victim on an individual basis and each of the victims can, by virtue of Article 5(3), choose to bring an action before the courts of the place in which the cartel was definitively concluded or, as the case may be, the place in which one agreement in particular was concluded which is identifiable as the sole causal event giving rise to the loss allegedly suffered, or before the courts of the place where its own registered office is located.

Article 23(1) of Regulation No 44/2001 must be interpreted as allowing, in the case of actions for damages for an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992, account to be taken of jurisdiction clauses contained in contracts for the supply of goods, even if the effect thereof is a derogation from the rules on international jurisdiction provided for in Article 5(3) and/or Article 6(1) of that Regulation, provided that those clauses refer to disputes concerning liability incurred as a result of an infringement of competition law.

32. *Court of Justice, 4 June 2015 case C-497/13* 1027

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as meaning that a national court before which an action relating to a contract which may be covered by that Directive has been brought, is required to determine whether the purchaser may be classified as a consumer within the meaning of that directive, even if the purchaser has not relied on that status, as soon as that court has at its disposal the matters of law and of fact that are necessary for that purpose or may have them at its disposal simply by making a request for clarification.

Article 5(3) of Directive 1999/44 must be interpreted as meaning that it must be regarded as a provision of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy and that the

national court must of its own motion apply any provision which transposes it into domestic law.

Article 5(2) of Directive 1999/44 must be interpreted as not precluding a national rule which provides that the consumer, in order to benefit from the rights which he derives from that Directive, must inform the seller of the lack of conformity in good time, provided that that consumer has a period of not less than two months from the date on which he detected that lack of conformity to give that notification, that the notification to be given relates only to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively difficult for the consumer to exercise his rights.

Article 5(3) of Directive 1999/44 must be interpreted as meaning that the rule that the lack of conformity is presumed to have existed at the time of delivery of the goods:

applies if the consumer furnishes evidence that the goods sold are not in conformity with the contract and that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods. The consumer is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller;

may be discounted only if the seller proves to the requisite legal standard that the cause or origin of that lack of conformity lies in circumstances which arose after the delivery of the goods.

33. *Court of Justice, 11 June 2015 joined cases C-226/13, C-245/13, C-247/13, C-578/13* 1025

Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council 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 Council Regulation (EC) No 1348/2000, must be interpreted autonomously as meaning that legal actions for compensation for disturbance of ownership and property rights, contractual performance and damages brought by private persons who are holders of government bonds against the issuing State, fall within the scope of that Regulation in so far as it does not appear that they are manifestly outside the concept of civil or commercial matters.

34. *Court of Justice, 11 June 2015 case C-649/13* 1017

Articles 3(2) and 27 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State in which secondary insolvency proceedings have been opened have jurisdiction, concurrently with the courts of the Member State in which the main proceedings have been opened, to rule on the determination of the debtor's assets falling within the scope of the effects of those secondary proceedings.

The debtor's assets that fall within the scope of the effects of secondary insolvency proceedings must be determined in accordance with Article 2(g) of Regulation No 1346/2000.

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