# INDEX

## *ARTICLES*

P. Bertoli, "Brexit" and Private International and Procedural Law ..... 599

C. Campiglio, The Regulation of Cross-Border Registered Partnerships and Foreign Same-Sex Marriages ..... 33

M. Frigo, Methods and Techniques of Dispute Settlement in the International Practice of the Restitution and Return of Cultural Property (in English) 569

C. Honorati, The Proposal for a Recast of the Brussels IIa Regulation: More Protection for Children and More Effectiveness in the Enforcement of Decisions ..... 247

P. Ivaldi, Civil Liability for Health Damages and Uniform Rules of Private International Law (in English) ..... 857

F. Mosconi, C. Campiglio, Effects of EU Regulations on Domestic Private International Law Provisions: The Case of Foreign Divorces ..... 5

P. Kindler, The Law Applicable to Agreements as to Successions According to Regulation (EU) No 650/2012 ..... 12

L. Sandrini, New Perspectives for a More Effective Judicial Cooperation in Civil Matters: Regulation (EU) No 655/2014 ..... 283

## *REVIEWS*

F. Marchetti, The Rome II Regulation in Italian and Other National Courts (in English) ..... 882

## *SHORT ARTICLES, NOTES AND COMMENTS*

Z. Crespi Reghizzi, Succession and Property Rights in EU Regulation No 650/2012 (in English) ..... 633

D. Damascelli, Brief Remarks on the Evidentiary Effects of the European Certificate of Succession in the Succession of a Spouse or a Partner in a Relationship Deemed to Have Comparable Effects to Marriage ..... 67

C. de Stefano, Arbitrability of International Embargo Put to the Test by the Plenary Session of the *Corte di Cassazione* (in English) ..... 975

S. Faccio, International Investment Treaties and the Reciprocity Requirement 693

F. Falconi, Transfer of Jurisdiction in the Child's Best Interests in Light of the Interpretation by the Court of Justice ..... 662

C. TUO, (EC) No 1346/2000 and Legal Acts Detrimental to the Creditors: Protection of Legitimate Expectations and the Law Governing the Relationship 908

F. VISMARA, Applicable Law in the Absence of a Choice and Exception Clause Pursuant to Regulation (EU) No 2016/1103 in Matters of Matrimonial Property Regimes ..... 356

G. ZARRA, Constitutionality Review of Foreign Law: The Relevance of Substantive Concerns (in English) ..... 940

## *CASES IN ITALIAN COURTS*

*Adoption*: 36.

*Civil proceedings*: 5, 7, 11, 14, 23, 27, 31, 32, 41, 44, 45, 47, 48, 50, 53, 54, 60, 69, 72, 74.

*Contracts*: 8, 15, 16, 51, 69.

*Divorce and legal separation*: 13, 28, 67.

*EC Regulation No 1346/2000*: 12.

*EC Regulation No 44/2001:* 1, 2, 3, 5, 7, 11, 25, 30, 32, 33, 55, 59, 60, 71, 73.

*EC Regulation No 2201/2003*: 13, 28, 35, 39, 40, 41, 43, 48, 64.

*EC Regulation No 805/2004*: 14.

*EC Regulation No 1896/2006*: 11.

*EC Regulation No 864/2007*: 12.

*EC Regulation No 4/2009*: 28, 40, 48, 50, 64.

*EU Regulation No 1259/2010*: 13, 43, 64.

*EU Regulation No 1215/2012*: 52, 61, 73.

*Foreigner*: 17, 18, 20, 21, 56.

*Foreign judgments and administrative acts*: 3, 10, 26, 32, 39, 46, 48, 50, 53, 56, 63, 67, 71, 75, 77.

*Foreign law*: 53, 69.

*Form of deeds*: 57.

*International abduction of children*: 41, 65.

*Jurisdiction*: 1, 2, 4, 5, 6, 7, 9, 11, 13, 19, 24, 25, 28, 30, 31, 33, 35, 37, 40, 43, 44, 45, 48, 50, 52, 54, 55, 58, 59, 60, 61, 64, 72, 73.

*Overriding mandatory rules*: 43, 50, 64.

*Maintenance obligations*: 28, 48, 50, 64.

*Marriage*: 29, 34, 42, 57, 68, 74.

*Nationality*: 66, 70, 76.

*Non-contractual obligations*: 1, 2, 62.

*Protection of minors*: 64.

*Public policy*: 32, 46, 48, 50, 53, 57, 64, 71, 75, 77.

*Relations between parents and children*: 43.

*Social security*: 49.

*Treaties and general international rules*: 2, 4, 8, 10, 15, 16, 22, 26, 28, 31, 37, 38, 41, 42, 44, 48, 49, 50, 55, 59, 64, 65, 69, 72, 75, 76.

1. *Bologna Tribunal, 17 March 2014* ..... 126

Under Articles 11(2) and 9(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action for the compensation of the damages suffered by a child during a traffic accident occurred on 21 July 2009 in Romania – brought by the parent domiciled in Romania against an Italian insurance company and which may be characterized as a direct action brought by the person who suffered the damages against the insurer – since the domicile of the insurer is in Italy and such forum is alternative to that of the insured.
Under Article 4(1) of Regulation No 864/2007 of 11 July 2007, Romanian law governs an action for the compensation of the damages suffered by a child during a traffic accident occurred on 21 July 2009 in Romania between the Romanian victim and a Romanian citizen residing in Italy. Romanian law is, in fact, the law of the place where the event giving rise to the damage occurred. In fact, on the one side, the exception clause at Article 4(3) of Regulation No 864/2007 does not apply in the instant case because the harmful event occurred in Romania to the detriment of a Romanian citizen residing in Romania, as a result of an allegedly negligent conduct of another Romanian citizen and the fact that the perpetrator resides in Italy, where the vehicle is also registered and the insurance policy was concluded do not signify a manifestly closer connection with Italy; and on the other side, acceptance by the insurance company's Italian subsidiary – where the medical assessment of the damages took place – of out-of-court negotiations of the accident may neither be construed as a tacit and subsequent acceptance of Italian law, nor this may be demonstrated with reasonable certainty by the circumstances of the case in accordance with Article 14 of the same Regulation.

2. *Milano Tribunal, 17 April 2014* ..... 128

Under Article 31(1) of the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road (CMR) – which, being a convention 'on a particular matter', is applicable pursuant to Article 71 of Regulation (EC) No 44/2001 of 22 December 2000 – Italian courts do

not have jurisdiction over an action brought on the basis of subrogation by an insurance company against a German company for the compensation of both contractual and non-contractual damages arising from damage to goods carried by road from Germany to Italy since, on the one hand, the consignment note issued by the defendant and undersigned by the insured and the consignee of the goods includes a jurisdiction clause – to be construed as exclusive, absent a different agreement between the parties in accordance with Article 23(1) of Regulation (EC) No 44/2001 – in favour of German courts; on the other hand, with respect to the further grounds for jurisdiction under Article 31(1) of the Convention, the place where the defendant has its seat is located in Germany, whereas the place where the goods were taken over by the carrier (located in Germany) and the place designated for delivery (located in Italy) could become relevant only in case it were not possible to seize the chosen court (Germany). As regards the non-contractual liability, Italian courts do not have jurisdiction pursuant to Article 5(3) of Regulation (EC) No 44/2001, either, absent allegations by the plaintiff on the place where the harmful event occurred.
Under Articles 31 and 32 of Regulation (EC) No 864/2007 of 11 July 2007, a subrogation action brought by an insurance company against a German company for the compensation of damages arising from damage to goods carried by road from Germany to Italy does not fall within the temporal scope of application of the Regulation since the facts that gave rise to the alleged damages occurred in April 2007, i.e. before 11 January 2009, date from which the Regulation is applicable.

3. *Corte di Cassazione, 30 June 2014 No 14791* ..... 131

Under Articles 33 ff. of Regulation (EC) No 44/2001 of 22 December 2000, applicable ratione temporis to the recognition and enforcement of a German judgment rendered in 1999, the appeal against the decision of a Court of Appeal which held inadmissible, under the statute of limitations, the appeal against a decree which declared the foreign judgment enforceable as a result of the fact that such appeal was lodged after the expiration of the term of one month from the service of the decree provided by Article 42(2) of the Regulation. Moreover, the fact that the enforceability was declared in the context of an ex-parte proceeding does not amount to a ground for appeal since the Regulation provides for an ex-parte declaration of enforceability, while enabling the party against which such declaration was issued to appeal against it.

4. *Corte di Cassazione (plenary session), order of 1 April 2015 No 6603* ..... 372

Under the rule of international customary law stating the so-called restricted immunity, the Federal Republic of Brazil may not claim immunity from the jurisdiction of the Italian courts with respect to the action brought against it by an Italian company on the basis of a warranty, given as a matter of law (ex-lege) by the Brazilian State, for the obligations undertaken by a Brazilian public company in favour of the plaintiff under a contract with which the plaintiff was tasked with designing a railroad to be built in Brazil. Both the principal obligation, undertaken by the Brazilian company, and the obligation of guarantee fall within the scope of private law, since such relationships neither involve any public function nor are characterized by any iure imperii

activity.
Under Article 3(2), first sentence of Law 31 May 1995 No 218, in the part where it recalls the criterion at Article 5(1) of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over the above mentioned action since the monetary obligation in question should have been performed in Italy.

5. *Corte di Cassazione (plenary session), 1 April 2015 No 6604* ..... 85

Pursuant to Article 5(1, *editor's note*) of Regulation (EC) No 44/2001 of 2 December 2000, Italian courts have jurisdiction over an action for termination of a contract for breach and for the compensation of the contractual (or, alternatively, for the pre-contractual) damages suffered as a result of such breach brought by an Italian company and its shareholders against a French company with regards to the negotiations between the two companies with a view to the acquisition, by the French company, of the majority of the shares of the Italian company by means of a final offer accepted by the Italian company and subjected to a series of stipulated conditions which, if met, would have allowed the parties to further carry on the negotiations (which, eventually, was not the case). A summary assessment of the claim as brought by the plaintiffs (i.e., in a manner that does not appear to be fictitious or purporting to influence the establishment of the jurisdiction) shows that such claims are grounded in a relationship – the final contract of which the plaintiffs seek the termination and on the basis of which compensation is sought – which qualifies as a contract, and not as a pre-contractual negotiation.

6. *Corte di Cassazione (plenary session), 18 May 2015 No 10088* ..... 376

Italian courts have jurisdiction over an action brought by an Italian account holder against an Italian bank – in whose subsidiary in Luxembourg the plaintiff opened a bank account from which funds were used for the purchase of Argentinean bonds – for the purpose of ascertaining the unfair nature of the choice of law and jurisdiction clauses in the security deposit contract in favour of, respectively, Luxembourgish law as the applicable law and the jurisdiction of the Luxembourgish courts, as well as of declaring the nullity of the orders and operations performed since such subsidiary lacks a proper structure and management autonomy which would make it a separate legal entity. As stated in Directive 77/780/EEC of 12 December 1977 and at Article 1(e) of Legislative Decree 1 September 1993 No 385 (Consolidated bank law – *Testo unico bancario*), the activity performed is to be ascribed to the credit institution from which the subsidiary originates: accordingly, the immunity of the defendant bank from the jurisdiction of the Italian courts is to be ruled out. Article 15(1)(c) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction over consumer contracts is applicable and prevails over the jurisdiction clause in the deposit contract, regardless of the fact that the bank account holder specifically agreed to it. In this context, the fact that the financial services were managed in the Luxembourgish subsidiary, and therefore outside Italy, is irrelevant.

7. *Corte di Cassazione (plenary session), 27 May 2015 No 10878* ..... 87

Under Article 5(1)(a) of the Regulation (EC) No 44/2001, Italian courts have jurisdiction over an action brought against a Spanish company and an individual domiciled in Germany for the payment of twice the earnest money deposit for a contract concluded between an Italian promissory purchaser and the two defendants in view of the subsequent sale of a boat. In fact, in accordance with the law which, under the conflict of law rules of the forum, governs the disputed obligations (in the case at hand, Italian law) the place of performance of the disputed obligations – to be identified, on the one hand, in the conclusion of an agreement in writing, with a notarized signature and recorded in the appropriate registers and, on the other hand, in the payment of the full amount by the promissory purchaser at the time and place of such agreement – is in Italy.
Such dispute does not fall within the scope of Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000 since the contract, in the instant case, is to be characterized as a preliminary contract and not as a sales contract: in fact, the characteristic obligations of the contract for the sale of a boat are to be identified, on the one hand, in an agreement in writing, with a notarized signature and recorded in the appropriate registries and, on the other hand, in the payment of the full amount by the promissory purchaser at the time and place of the stipulation of the contract.
Pursuant to Article 342 of the Code of Civil Procedure – in accordance with Article 54(1)(a) of Legislative Decree 22 June 2012 No 83, applicable *ratione temporis* – the appeal for lack of jurisdiction and for the erroneous characterization of the contract is inadmissible since the plaintiffs, in alleging a procedural flaw, failed to refer in their appeal to the legal reasoning of the court of first instance as regards the characterization of the contract and the subsequent identification of the obligations undertaken by the parties. As such, the appellants have failed to challenge the reasons that led the court of first instance to qualify the contract entered into by the parties as a preliminary contract and, rather, they limited their objections to the conclusion that the contract at hand should have been characterized as a contract of sale.

8. *Trento Tribunal, 29 May 2015* ..... 132

Under Article 1 of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, the Convention applies to a dispute over a contract for the sale of food products between a company having its seat in Italy and a company having its seat in Chile, because the parties' places of business are in different States.
Under Article 39 of the 1980 Vienna Convention, the moment the lack of conformity of the goods was notified to the seller by telephone – and not the moment, occurred two months later, in which such notification was given in writing – counts towards the term for the notification of the lack of conformity of the goods.

9. *Corte di Cassazione (plenary session), 8 June 2015 No 11770* ..... 416

Italian courts do not have jurisdiction over an action brought by an attorney

for the compensation of damages allegedly arising from the deletion from the website of the Italian Consulate in Switzerland of the law firms accredited with the Consulate to offer assistance to Italian citizens in Switzerland. In fact, such decision falls within the discretion of the public administration and, as such, under the exclusive jurisdiction of the administrative courts.

10. *Consiglio di Stato, 11 June 2015 No 2866* ..... 418

The judgments of the European Court of Human Rights do not amount to a title for the enforcement with respect to which an action for compliance under Article 112 of the Code of Administrative Procedure may be lodged not only because, on the grounds of historical and systematic reasons, the notion which may be inferred from Article 112(2)(d) of such code is not susceptible of being extended (with regard to the judgments that have *res judicata* effects and other equivalent decisions with respect to which an action for compliance is not an available remedy), but especially because the tools for the adaptation to judgments of foreign courts are thoroughly regulated in other sectors of the legislation (and, in general, in Law 31 May 1995 no 218 and in the international conventions in force for Italy).

11. *Corte di Cassazione (plenary session), order of 15 June 2015 No 12308* ..... 378

Under Article 23 of Regulation (EC) No 44/2001, Italian courts have jurisdiction when both the contracts entered into by the parties contain an express and undisputed jurisdiction clause in favour of Italian courts and no other court has jurisdiction (on the grounds of the defendant's tacit acceptance of jurisdiction) in accordance with Article 24 of the same Regulation. Moreover, the allegation – in the context of the opposition – whereby, as a result of a subsequent agreement, the parties regulated their agreement on jurisdiction in a different manner shall not affect the validity of the prorogation – since – as appears from the decision adopted by the judge who decided on the opposition, the documents filed with the court did not portray agreements suitable to revoke the agreements on jurisdiction existing between the parties. In fact, it is not likely that the content of a cross-border contract concluded in writing and of substantial monetary value could be modified by means of a verbal agreement, which, inter alia, would be the object of a declaration of ineffectiveness since the first contract explicitly provided for that any subsequent amendment of the clauses contained therein should be in writing.

12. *Milan Tribunal, 18 June 2015* ..... 133

Article 42(2) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings on the language regime of the lodgement of the claim is not applicable in the context of a domestic proceeding internal to one Member State only where the only cross-border element or, in any event, the only element which is foreign with respect to the State of the opening of the proceedings is the fact that some creditors have their domicile, residence or seat abroad.

13. *Treviso Tribunal, 1 July 2015* ..... 136

Once the jurisdiction of the Italian courts has been established pursuant to Article 3 of Regulation (EC) No 2201/2003 of 27 November 2003 in a dispute on the dissolution of a marriage between an Italian citizen and an Algerian citizen, both residing in Italy, Italian law applies as the law of the State in which the matrimonial life is mainly located pursuant to Article 31 of Law 31 May 1995 No 218, since, pursuant to Article 18 of Regulation (EU) No 1259/2010, such Regulation is not applicable to proceedings instituted before 21 June 2012.

14. *Mantova Tribunal, 10 July 2015* ..... 420

Under Article 3(1) of Regulation (EC) No 805/2004 of 21 April 2004, a claim may not be regarded as "uncontested" if the debtor, a company with its seat in the United Kingdom, contested in detail the creditor's allegations as to the existence of the claim in the course of the proceeding for the opposition to the enforcement of an injunction that has been declared provisionally enforceable because opposition was not grounded on an evidence in writing or readily available.

15. *Corte di Cassazione, 14 July 2015 No 14666* ..... 420

Under Article 17 of the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air – to be interpreted, pursuant to Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties, in good faith, in accordance with (i) the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, (ii) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation, as well as (iii) any relevant rules of international law applicable in the relations between the parties, and ensuring its uniform application in accordance with Article 2(2) Law 31 May 1995 No 218 – the "accident which caused the death or injury" must be construed as referring solely to the external accident which occurred to the passenger, and uncommon and unforeseeable compared to the ordinary operative conditions of the carriage.
Under Articles 20 and 21 of the Convention, the burden of proving such event is always placed on the plaintiff and its ascertainment places on the carrier the burden of proving that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger or, if the damages exceed 100,000 Special Drawing Rights that "such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents".

16. *Corte di Cassazione, 14 July 2015 No 14667* ..... 422

Under the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air, if the carrier is liable for the damage occasioned by delay in the delivery of baggage to the passenger (Article 19 of

the Convention), the limits of liability of the carrier, laid down at Article 22(2) of the Convention, apply to any damages suffered by the passenger, including both monetary and non-monetary damages. Under Article 2059 of the Civil Code – which is applicable in the instant case – non-monetary damages are to be compensated when they arise as a consequence of the violation of an individual's inviolable rights, protected under the Constitution.

17. *Corte di Cassazione, 16 July 2015 No 14998* ..... 425

For the recognition of subsidiary protection, under Article 14(b)-(c) of Legislative Decree 19 November 2007 No 251 the burden to provide a precise legal qualification of the type of measure sought is not placed on the applicant: rather, it is for the court to verify, by means of ex officio powers of investigation and information, granted under Article 8(3) of Legislative Decree 28 January 2008 No 25, whether the risks of physical injury, alleged by the applicant and in theory falling within the scope of the subsidiary protection, is actually existing in the State to which the applicant should be relocated at the time the decision is rendered.

18. *Corte di Cassazione, 20 July 2015 No 15192* ..... 774

The right to subsidiary protection may not be excluded by the fact that the serious damage for the foreign citizen arises from private individuals (criminal groups), absent in the State of origin a public authority which can warrant him an effective protection. Consequently, the judge shall verify on his own motion the current situation in that State and, as such, the possible ineffectiveness of an application for the protection of the local authorities under Article 8 Legislative Decree 26 January 2008 No 25.

19. *Corte di Cassazione (plenary session), 21 July 2015 No 15208* ..... 775

Unlike similar judgments of the plenary session of the Corte di Cassazione – which, on the basis of its institutional function as the entity which regulates jurisdiction, has the power to render decisions having external efficacy (so-called panprocedural effect) – the judgments rendered by courts deciding on the merits, such as administrative courts, ruling on jurisdiction only, are not eligible to acquire (external) *res judicata* effect and hence to produce effects outside of the proceeding in the context of which they were rendered. In fact, the judgments of such courts are eligible to acquire (external) *res judicata* effect also with respect to jurisdiction and to produce their effects also outside of the proceeding in which they were rendered only provided that the ruling on the question of jurisdiction – even when it is tacit – is connected to a ruling on the merit.

20. *Corte di Cassazione, order of 30 July 2015 No 16201* ..... 777

For the purposes of an application for international protection, Article 3(5) of

Legislative Decree 19 November 2007 No 251 requires that the judge does not take into consideration merely the degree of specificity of the account given by the petitioner and, to the contrary, it also mandates the court to assess whether (i) the petitioner took every reasonable step to substantiate his petition, (ii) all the relevant elements in his possession were submitted, and (iii) the lack of other meaningful elements was properly justified.

21. *Corte di Cassazione, order of 30 July 2015 No 16202* ..... 778

As concerns subsidiary international protection, under Article 14(c) of Legislative Decree 19 November 2007 No 251 the requirement of an individualized serious threat to the petitioner's life or physical integrity does not entail that the petitioner give specific proof of particular aspects in his personal situation to ground his request. The degree of indiscriminate violence in the ongoing armed conflict in the petitioner's State of origin, from which it may be concluded that returning to his State of origin would pose an actual threat to the petitioner's life, may be construed as satisfying the requirement at Article 14(c) of Legislative Decree No 251/2007.

22. *Udine Tribunal, 17 August 2015 No 1148* ..... 779

A trust set up abroad and purporting to become the tool for the management of a broad group of companies, in which those at the top are foreign companies and the designated trustees are foreigners and not merely domiciled abroad, is eligible for recognition in Italy. On the one hand, such trust does not qualify as a domestic trust under Article 13 of the Hague Convention of 1 July 1985 on the recognition of trusts. On the other hand, its "actual cause" does not conflict with the principles and mandatory provisions of the Italian legal system merely because the regulation of trusts differs from the regulation of a separate and different institute (namely, a mandate to bestow), or because the trustee made use of the trust to evade or preclude the application of Italian principles or mandatory provisions such as forced heirship.

23. *Corte di Cassazione, 31 August 2015 No 17307* ..... 781

It is incumbent on the party who, whilst notifying a judicial act, has knowledge of the fact that the recipient of the notification has transferred his residence abroad, to carry out the necessary researches with the Consulate before proceeding with the notification in accordance with Article 143 of the Code of Civil Procedure, regardless of the fact that such transfer was not recorded in the civil registry. However, the omission of performing such research entails the inexistence of the notification only if the notification was performed in a place which lacks any connection with the recipient. Otherwise, such omission only triggers the nullity of the notification, which shall be raised by means of an opposition against enforceable acts to be filed, under Article 617 of Code of Civil Procedure, within twenty days from the first act of the enforcement proceeding of which the party had legal knowledge, under penalty of inadmissibility of the opposition.

24. *Rimini Tribunal, 16 September 2015 No 1104* ..... 782

Italian courts have jurisdiction over a claw-back action filed by the curator of a limited liability company declared insolvent in Italy and having its legal seat in the Republic of San Marino both under (i) the joint reading of Article 3(2), last part of Law 31 May 1995 No 218 and Article 20 Code of Civil Procedure if the place of performance of the restitution obligation claimed is at the place of domicile of the curator, and (ii) the joint reading of the same Article 3(2), last part of Law No 218/1995 and Article 24 of the Insolvency Law, whereby the court which issued the insolvency declaration has jurisdiction over each and every action arising from the same insolvency.

25. *Corte di Cassazione (plenary session), 12 October 2015 No 20412* ..... 783

Under Article 5(1)(b), second indent of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a dispute on a contract for the provision of services concluded between a company having its legal seat in Italy and one having its legal seat in Germany, when, under the contract, the services were to be provided in Italy, regardless of the fact that the claim is on the payment for the services and not on the performance of such services.

26. *Corte di Cassazione (plenary session), 28 October 2015 No 21946* ..... 382

Article 10(1) of the Constitution, according to which the Italian legal system conforms to the commonly recognized international provisions on State immunity from jurisdiction, does not preclude the recognition in Italy of a default judgment rendered by the United States District Court for the District of Columbia against the Islamic Republic of Iran and its Ministry of intelligence and security, ordering the compensation of damages, including punitive damages, suffered by the heirs of a United States citizen deceased as a result of a terrorist attack perpetrated in the Gaza Strip for which the foreign State was found responsible. As clarified by the Italian Constitutional Court in judgment of No 238/2014, the customary law provision which states the immunity of foreign States from jurisdiction may not, in and of themselves, be traced back to the scope of the iure imperii acts, in the part where it extends such immunity to the actions on damages arising from acts that qualify as war crimes and crimes against humanity.
Under Article 64(1)(a) of Law 31 May 1995 No 218, such judgment is not, however, eligible for recognition in Italy because it was not rendered by the judge that would have had jurisdiction in accordance with the principles of Italian law. Given that the subject matter does not fall within the material scope of application of the Brussels Convention of 27 September 1968 (since the liability ascertained with the foreign judgment falls in the scope of *iure imperii acts*), the jurisdiction of the Italian courts would have to be assessed on the grounds of the criteria on venue. Among these criteria, however, in the instant case those under Article 18 and 19 of the Code of Civil Procedure – which, in addition to ascribing a purely residual character to the plaintiff's home court (*forum actoris*), assume that, where an action is brought against a foreign State, such foreign State has appointed in the forum State a repre-

sentative with power of attorney to represent it in court – are not applicable. Similarly, the objective ground of jurisdiction under Article 20 of the Code of Civil Procedure – according to which the place of the event (*forum delicti*) is to be identified in the place where the event that gave rise to the damage occurred and, if the harmful event did not occur in the same place where the unlawful conduct took place, including the place where the fact that gave rise to the damage directly produced its effects *vis-à-vis* the alleged direct victim, to the exclusion of the place where the other victims suffered the additional damages arising from the unlawful conduct – is also not applicable. Moreover, in the case at hand, the criminal action, connected to the tort which is the object of the civil claim, was not brought in the foreign State (United States).

27. *Corte di Cassazione, 4 November 2015 No 22559* ..... 784

Under Article 12 of Law 31 May 1995 No 218, a power of attorney, used in a proceeding in Italy, is governed by Italian procedural law notwithstanding the fact that it was issued abroad.

28. *Treviso Tribunal, 4 November 2015* ..... 391

Under Article 3(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the action for legal separation brought by a Moroccan citizen against her husband, a citizen of Ghana, since the last habitual residence of the spouses was located in Italy.
Under Article 8(d) of Regulation (EU) No 1259/2010 of 20 December 2010, the law applicable to such dispute is the law of the State where the spouses were habitually resident at the time the court was seized, i.e., Italian law. The first three connecting factors laid down in such provision do not apply since the husband's registration in the registry of the place of his last residence in Italy was cancelled, as a result of the fact that he had proven to be unreachable under the given address for over three years at the time the court was seized.
Under Article 37 of Law 31 May 1995 No 218, Italian courts have jurisdiction over the action for exclusive custody of the spouses' child, brought in the context of the action for legal separation of the spouses, since the child resides in Italy; under Article 36-*bis* of Law 218/1995 – in accordance to which, regardless of the foreign applicable law, the provisions of Italian law granting to both parents the parental responsibility for their child and establishing, for both parents, the obligation to provide for their child shall apply – such matter is governed by Italian law.
Under Article 3(a) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts have jurisdiction over a child maintenance claim governed by Italian law under Article 15 of such Regulation, which refers to the Hague Protocol of 23 November 2007, as a result of the fact that the maintenance creditor resides in Italy.

29. *Milan Court of Appeal (family division), 6 November 2015 No 2286* ..... 784

The obstacle that prevents the registration in Italy of a marriage concluded

abroad between same-sex individuals arises from the current domestic legal system which, by not recognizing this type of union, makes such union unsuitable to produce legal effects. Such unsuitability qualifies as (simple) inefficacy – and it does not arise from a different kind of legal defect. It signifies the reaction of the Italian legal system to a legal institute the inherent need of which is recognized – with reference both to the legislative and jurisprudential frame of the European Union and to the social standpoint – but whose core effects are precluded in Italy as a result of the absence of a legislative framework regulating same-sex marriages.

30. *Bologna Court of Appeal, order of 12 November 2015* ..... 789

Italian courts do not have jurisdiction over an action concerning an international contract for the sale of goods brought by a company with its legal seat in Italy against a company with its legal seat in France either under Article 23 of Regulation (EU) No 44/2001 of 22 December 2000 (given the absence of an agreement on prorogation of jurisdiction) or under Article 24 of such Regulation since the defendant company contested jurisdiction at the first available defence, or – again – under Article 5(1)(b), first indent of the same Regulation since the goods should have been delivered in France. The fact that the claim is over the payment of the price is irrelevant since, under the provision at hand, the relevant aspect is not the obligation which is the object of the plaintiff's claim but the characteristic obligation of the contract, which – in contracts for the sale of goods – is the delivery of the goods.

31. *Corte di Cassazione (plenary session), 24 November 2015 No 23893* ..... 1001

With regard to an action for the resolution of a contract for the purchase of helicopters containing a conciliation and arbitration clause brought in 1991 by an Italian company (seller) against the Government and the Ministry of Defence in Iraq, as well as against an Iraqi bank and an Italian bank, joined by the helicopters co-suppliers, Italian courts have jurisdiction on the grounds that: (i) failure to resort to the conciliation procedures contemplated in the contract, such as the informal arbitration (*arbitrato irrituale*), does not affect jurisdiction; (ii) the defendants have not objected to jurisdiction; (iii) State immunity from jurisdiction does not apply to disputes concerning an ordinary contract of private law, entered into with a company operating under a free-supply-and-demand regime: the fact that the goods in question (military helicopters) were purchased to be used in an international conflict is not sufficient to characterize the contract as a sovereign act, nor is it sufficient to that purpose the fact that the contract aims to pursuing defence purpose by the State or other policies by international organizations with respect to the conflict.
Despite the arbitration clause in the contract, Italian courts have jurisdiction based on the following grounds. On the one hand, the embargo imposed against Iraq with the resolutions of the United Nations Security Council and European Regulations imposes an external prohibition on the performance of contracts concluded with that country, so that the assessment of the validity of the arbitration clause shall not be referred to private judges unrelated to the judicial organization of the States bound by the embargo. On the other hand, the same resolutions constitute a supervening coercive law (*ius super-*

*veniens*) – the effects of which must be assessed by the national court on the basis of the *lex fori* – both in relation to the agreement to arbitrate and the obligations arising from the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. This conclusion is in line with Article II(1) and (3) of the 1958 New York Convention, which allows the judge to deny the effectiveness of an arbitration clause if he finds that the said agreement is null and void. Furthermore, the lifting of the embargo does not affect the arbitrability of the dispute since an embargo amounts to a sanction aimed at making recourse to arbitration immediately inadmissible and the action brought before the competent court according to the *lex fori* irreversible under Article 5 of the Code of Civil Procedure.

32. *Corte di Cassazione, 24 November 2015 No 23974* ..... 395

Under Articles 37(1) and 43 of Regulation (EC) No 44/2001 of 22 December 2000, the claim brought by an Italian company seeking the stay of the recognition proceeding and/or the suspension of the decree on recognition as well as of the enforceability of a monetary French judgment and, alternatively, seeking to subject the judgment's enforceability to the provision of a security, is inadmissible. Absent conclusions on the merit in the opposition act, a mere incidental reference made in the preamble to the reform of the decree does not suffice for the purpose of introducing in the claim the plea for withdrawal. In fact, the stay of the decree on the enforceability of the foreign judgment which, under Article 37(1) of Regulation (EC) No 44/1002, may be granted by the judge of the Member State before which recognition of a foreign judgment is sought if said judgment was appealed, has – by analogy with Article 337 of the Code of Civil Procedure – peremptory effect and, in general, a protective nature. Therefore, it may not amount, per se, to a claim in the opposition to the declaration of enforceability of a foreign judgment, unless it is accompanied by the request for the withdrawal of the decision on the enforceability, to which it is instrumental. Moreover, in case the opposition raised in the State of origin of the judgment for which recognition is sought is cancelled from the court docket, the logical premises which support the application for the stay of a pending proceeding of imminent solution – which correspond to the interest of the party to a swift definition of the matter – cease to exist.
(Under Article 34(1) of Regulation (EC) No 44/2001, *editor's note*) a French monetary judgment, which is provisionally enforceable pending an appeal against it, does not conflict with public policy either (i) with regard to the prohibition of the *solve et repete* mechanism ("settle first, appeal later") which is drawn from Article 24 of the Constitution, given that its repeated declaration of unconstitutionality under the Italian Constitution is limited to the area of tax law, or (ii) with regard to the principles of fair trial and of the effectiveness of legal protection under Articles 6 and 13 of the European Convention on Human Rights, in the instant case purportedly infringed as a result of the cancellation of the appeal ordered by the President of the French *Cour de cassation* in accordance with Article 1009-1 *et seq.* of the French Code of Civil Procedure, since such order does not amount to an automatic or final decision and it is consistent with the nature of the appeal as an extraordinary measure in the French legal system, or (iii) on the ground of a theoretical incompatibility of compound interest awarded in the French judgment with a principle of economic public policy, since compound interest is not, by way of

principle, illicit in the Italian legal system and, rather, it is simply subjected to limitations (Article 1283 of the Civil Code).

33. *Corte di Cassazione (plenary session), 27 November 2015 No 24244* ..... 91

Under Article 5(1)(b), first indent of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over the action brought against a French company, to ascertain the inexistence of any contractual obligations or, subordinately, to declare the nullity, inexistence, invalidity of a contract for the supply of goods concluded between an Italian buyer and a French seller. On the one hand, the place of delivery contractually agreed by the parties is situated in France; on the other hand, the court that has jurisdiction to decide of the actions for nullity, inexistence, invalidity of the contract is the same which has jurisdiction over the actions for the performance of the contract since such actions – which imply a voluntary, express or tacit, undertaking of those same obligations that the instant actions seek to have declared void – fall within the definition of contractual obligations.

34. *Milan Tribunal, decree 1 December 2015* ..... 1063

In spite of the fact that Article 116 of the Civil Code makes the celebration in Italy of the marriage of a foreigner conditional to the submission of a permit issued by the national authorities of the foreigner's State of origin, if fulfilment of such requirement is rendered impossible by the actual circumstances existing in such State or by a legislation that provides for conditions for the marriage that are contrary to public policy, such foreigner must be allowed to prove with any means the existence of the conditions for contracting marriage according to the laws of his State of origin, with the exception, if any, of those that conflict with public policy.

35. *Cagliari Tribunal, decree 12 December 2015* ..... 1064

A measure sought under Article 20 of Regulation (EC) No 2201/2003 of 27 November 2003 by the mother of a child who has a dual – Italian and Dutch – nationality and is in Italy with her mother in accordance with the authorization of a Dutch court seized by her parents at the end of their relationship, does not qualify as a provisional and protective measure if it appears that, on the one hand, the request, if accepted, would essentially imply the definition of a new arrangement of the right of access of the non-cohabiting parent, derogating from what was established by the Dutch court, and, on the other hand, the urgency is not supported by the facts. Therefore, the conditions for the application of Article 20 of Regulation No 2201/2003 are not satisfied and, consequently, in the absence of other suitable grounds, Italian courts do not have jurisdiction.

36. *Rome Family Court, 23 December 2015* ..... 1067

An interpretation of Article 44(1)(d) of Law 4 May 4 1983 No 184 which, once the child's best interests have been concretely assessed, excludes the adoption 'in special cases' of a child by same sex couples, at the same time granting access to that same kind of adoption to heterosexual couples, conflicts with Articles 3 and 2 of the Constitution, as well as with Article 14 read in conjunction with Article 8 of the European Convention on Human Rights, also in the light of the jurisprudence of the respective Courts.

37. *Milan Tribunal (company law division), order 11 January 2016* ..... 1070

Pursuant to Article 10 of Law 31 May 1995 No 218, Italian courts have jurisdiction over the request for provisional injunctions aimed at inhibiting US companies from using – in their capacity as assignee – a valid trademark in Italy. In fact, jurisdiction over the merits exists on the grounds of the reference made in Article 3(2) of Law No 218/1995 to the Brussels Convention of 27 September 1968 – superseded by Regulation (EC) No 44/2001 of 22 December 2000, now Regulation (EU) No 1215/2012 of 12 December 2012) – and of the treatment of related proceedings provided therein, given the relationship between this claim and the claim over the same right brought against the transferor company established in Italy in the context of which provisional measures were requested with an instrumental role in the dispute over the ownership of the trademark; the criterion of enforcement of the measure in the State is also satisfied, since the provisional injunction is meant to have effect in Italy where the allegedly illicit activities that are to be prevented occur or would occur.

38. *Constitutional Court, 14 January 2016 No 2* ..... 82

The deference that domestic legislators must pay to the obligations arising from an international convention – in the instant case, the United Nations Convention on the Rights of Persons with Disabilities adopted in New York on 13 December 2006 – amounts to an obligation to achieve results. International conventions commonly define the objectives, while leaving it to the contracting States to concretely identify, in connection with the characteristics of each legal order and the related and undisputed discretion stemming therefrom, the means and manners to implement such objectives.
The question of the constitutional legitimacy of Article 18 of Law 27 July 2007 No 13 of the autonomous province of Trento on welfare policies where it holds that the individuals that benefit from welfare must co-pay the services they receive in proportion to their family's assets and financial situation, as opposed to having to co-pay in proportion to their income as single individuals, raised with respect to Articles 38(1) of the Constitution and 4 of Presidential Decree 31 August 1972 No 670 (Consolidated text of the constitutional laws on the special status of Trentino-Alto Adige) is unfounded.

39. *Corte di Cassazione, 1 February 2016 No 1863* ..... 94

The recognition in Italy, pursuant to Regulation (EC) No 2201/2003 of 27 November 2003, of a Czech divorce judgment which does not rule on finan-

cial questions, does not preclude that a maintenance claim be subsequently brought, in accordance with Article 5 of Law 1 December 1970 No 898, in a separate proceeding before the Italian judge. On the one hand, the necessary concomitant ruling on the dissolution of the marriage, on the custody rights of the children and on maintenance claims does not reflect a constitutional principle. On the other hand, the recognition of a foreign judgment in accordance with Regulation (EC) No 2201/2003 entails the reception of the specific content of such decision and not its assimilation into a judgment having the same object rendered in the requested State. Therefore, in the instant case, the fact that the Czech judgment only ascertained the conditions for the dissolution of the marriage and declared the marriage dissolved does not preclude a separate action for maintenance.

40. *Corte di Cassazione (plenary session), order of 5 February 2016 No 2276* 97

In light of the interpretation given by the Court of Justice in judgment 16 July 2015, case C-184/14, A. v. B., Article 3(c)-(d) of Regulation (EC) No 4/2009 of 18 December 2008 must be construed in the sense that, if the court of a Member State was seised with an action for the legal separation or dissolution of the marriage between the parents of a child and the court of another Member State was seized with an action on parental responsibility for such child, the claim for the maintenance of the child is ancillary only to the action on parental responsibility, in accordance with Article 3(d) of the Regulation. Under Article 3(d) of Regulation (EC) No 4/2009, Italian courts do not have jurisdiction over the claims for custody and maintenance of the children, born from two Italian spouses, who were born and always resident in London. Such claim is ancillary to the dispute on parental responsibility – which, in the instant case, falls under the jurisdiction of the English courts pursuant to Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003 – rather than to the dispute over the legal separation of the spouses (over which Italian courts have jurisdiction pursuant to Article 3(1)(b) of the same Regulation).

41. *Corte di Cassazione (plenary session), 8 February 2016 No 2417* ..... 1010

With regard to international child abduction, the Italian judge is not allowed to ground its decision on the issue of return on any inconvenience for the child, connected to the prospected return, which does not reach the degree of grave risk of physical or psychological harm or of intolerable situation, since these (and exclusively these) are the conditions laid down at Article 13(1)(b) of the Hague Convention of 25 October 1980 under which the court is not bound to order the return of the child.

The ascertainment of such inconveniences requires an investigation on the facts which does not fall within the control of legitimacy on appeal before the *Corte di Cassazione*, provided that the assessment of the lower judge is supported by a reasoning which is devoid of logical and/or legal fallacies.

The decision rendered by a family court rejecting the application of a Hungarian national for the return of his youngest daughter, unlawfully removed and retained in Italy by the mother, should therefore be upheld, since the lower judge's assessments appear to be cogent and widely motivated with respect to the fact that returning the child to her father would expose her to a serious, concrete and grave risk of psychological harm, such as to com-

promise the child's harmonious and healthy growth, in violation of Article 11 of Regulation (EC ) No 2201/2003, all the more since it was not proven that returning the child to her father in Hungary would guarantee greater protection.
The appeal before the *Corte di Cassazione* against the decree issued by a family court rejecting the application of a Hungarian national for the return of his youngest daughter, unlawfully removed and retained in Italy by the mother, is not admissible when the applicant complains about the lower court's failure to examine documents if the same applicant fails to produce such documents, omits to reproduce the documents' content, even only in summarized form, and also fails to indicate in which court records the documents are available. The appeal is equally inadmissible in the part in which the appellant challenges the lower court's allegedly incomplete assessment of the statements made by the child, absent an indication of which are the child's statements which the judges, in his opinion, should have taken into account.

42. *Milan Tribunal, of 22 February 2016* ..... 99

Pursuant to Law 8 March 1989 No 101 on the relationship between Italy and the Union of Italian Jewish Communities, the marriage celebrated according to Jewish tradition may produce legal effects *ex-tunc* (i.e. from the outset) in the Italian legal system provided it is communicated to the civil registry within five days from the celebration and registered therein.
While a late registration performed, per the spouses' request, in accordance with Article 8 of the Agreement between Italy and the Holy See of 18 February 1984 is not applicable to the marriage celebrated according to Jewish tradition, an ex-tunc registration – i.e., a procedure which purports to emend defects or errors made by the organ in charge of the communication to the civil registry – shall nevertheless be considered admissible, provided that the responsibility for such flaws may not be ascribed to the spouses, and provided that, at the moment the application for the late registration is made, the requirements for the celebration of the marriage are still fulfilled and that proof is given that, from the beginning, the spouses intended to enter in a marriage with legal effects. The effects of a late registration may not, in any event, prejudice the rights of third parties, who therefore retain their acquired rights.

43. *Mantova Tribunal, 24 February 2016* ..... 101

Under Article 32 of Law 31 May 1995 No 218, Italian courts have jurisdiction over the divorce between two Chinese citizens, provided that the marriage was concluded in Italy.
Under Article 8(a) of Regulation (EU) No 1259/2010 of 20 December 2010 – which is applicable to the instant case, regardless of the fact that the parties are both Chinese citizens, and which, in accordance with its universal character (as may be inferred from the Regulation and notably recital 12 and Article 4) supersedes Article 31 of Law No 218/1995 – the divorce is governed by Italian law as the law of the State where the spouses had their habitual residence at the time the court was seized.
Under Article 37 of Law No 218/1995, according to which Italian courts have jurisdiction, inter alia, when at least one of the parents has his or her habitual

residence in Italy, Italian courts have jurisdiction over the maintenance and parental responsibility claims between a child – a Chinese citizen relocated from Italy to China per his father's unilateral decision – and his parents, Chinese citizens, since both parents had their habitual residence in Italy at the time the action was lodged. Regulation (EC) No 2201/2003 is not applicable to the instant case, since the child is a Chinese citizen.
Under Article 36-*bis*(b)-(c) of Law No 218/1995 – notwithstanding the fact that, in accordance with Article 36, Chinese law governs the child's personal and financial relationship with his parents, since the child is Chinese – the Italian provisions on personal and financial relationship between a child and his parents shall be applied to the instant case where they establish the parents' duty to provide for their child's maintenance (and in accordance with Article 337-ter of the Civil Code), as well as those provisions that grant the court the power to issue decisions which limit or remove the parental responsibility as a result of harmful conducts (such as the father's unilateral decision to remove the child and relocate him in China, placing him with third parties).

44. *Corte di Cassazione (plenary session), 18 March 2016 No 5418* ..... 105

The principle established by Regulation (EC) No 2201/2003 of 27 November 2003 with regard to jurisdiction on parental responsibility is of general nature and is therefore applicable also with respect to Article 1 of the Hague Convention of 5 October 1961 on the protection of children. According to such principle, to establish the jurisdiction of a Member State, it suffices to consider the habitual residence of the child at the time the court is seized, such place to be construed as the place where the individual established, in a stable manner, the principal and permanent centre of his interests and relationships, on the grounds of a substantial and not merely formal assessment, since, in establishing an individual's habitual residence, the place where an individual carries on his personal life in an actual and stable manner at the time the court is seized is paramount and not, rather, the place which results from a purely arithmetical calculation of the individual's life.
The decision with which the Court of Appeal declared the lack of jurisdiction over the claim, brought by the father, pursuant to Articles 317-*bis* of the Civil Code and 710 of the Code of Civil Procedure, to seek the amendment of a previous decision on the right to custody based on the overall assessment of the time spent by the child in Italy and abroad, respectively, and ruling that the short time spent in Italy could not be construed as signifying a stable settlement since the child spent from the age of three to six in Brazil, was relocated to Italy for a period of six months, and then relocated back to Brazil, must be upheld. The reasoning of the Court, while brief, is correct since it points to the fact that, in the period between the age of three and six, the child built emotional, cognitive and social bonds and it is fair to assume that the place where the child spent that time is the place where he established his interests and relations.
Appeal by means of ordinary recourse in Cassation or by means of the special proceedings for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) against the decision with which a Court of Appeal declined jurisdiction is inadmissible, notwithstanding the possibility – provided at Article 42 of the Code of Civil Procedure – to file a petition for the conversion of the appeal into a motion for the transfer of the case to a different venue, provided that

the preconditions for such transfer are satisfied and that such petition is filed within thirty days from the notification of the Court of Appeal's decision per the request of one of the parties or by the registrar, on its own motion.

45. *Corte di Cassazione (plenary session), order of 18 March 2016 No 5420* ..... 713

Article 7 of Law 31 May 1995 No 218 dealing with international *lis pendens* is applicable when, in the context of a proceeding instituted in Italy seeking the adoption of measures limiting parental responsibility, a lis pendens exception is raised in regard of a divorce action pending abroad (in the United States) between the parents of the child in question, in the framework of which motions for ancillary measures on the child's custody were filed. The suspension ordered in accordance with Article 7 of Law No 218/1995 in case of international *lis pendens* does not amount to a case of mandatory suspension but, rather, to a question of jurisdiction.
Italian courts do not have jurisdiction over the motion for measures limiting parental responsibility if, at the time the proceeding was instituted, the child's habitual residence was not in Italy.

46. *Naples Court of Appeal, order of 5 April 2016* ..... 398

Under, respectively, Articles 65, 66 and 67 of Law 31 May 1995 No 218, two foreign decisions on the adoption by two same-sex spouses of their respective non-biological children are eligible for recognition and, accordingly, for registration in the civil registry. In light of the legislation and case-law on human rights, the public policy exception does not apply once it is assessed that, in the case at hand, the recognition of adoption, and consequently of all the rights and obligations arising therefrom, reflect the best interests of the child in maintaining a family life with both parents.

47. *Corte di Cassazione (plenary session), order of 14 April 2016 No 7450* ..... 109

The motion against the stay of a proceeding on the infringement of a Community design/model, governed by Regulation (EC) No 6/2002 of 12 December 2001 and on unfair competition ordered by the court deciding on the merits after the defendant, who filed a counterclaim seeking a declaration of invalidity of the same registered rights, per the court's request pursuant to Article 86(3) of such Regulation, lodged a direct action before the Invalidity Division of the Office for Harmonization in the Internal Market (OHIM) is unfounded. On the one hand, with respect to the infringement, under Article 91 of the Regulation the proceeding may be resumed where particular questions arise the decision of which pertain to the court seised with the claim, so that – where there are special grounds for continuing the hearing – no room is left to dispute the stay of the proceeding. On the other hand, the unfair competition claim does not fall within the scope of Regulation (EC) No 6/2002: rather, is governed by Article 295 Code of Civil Procedure and, accordingly, by the consolidated principle whereby a proceeding shall necessarily be stayed when the inexistence or invalidity of the title are in dispute in a separate proceeding between the same parties, since a separate judgment

ruling in favour of the claims based on the title could be opposed against the one which ascertains the invalidity of the same title.

48. *Belluno Tribunal, decree of 28 April 2016* ..... 113

Under Articles 17 ff of Regulation (EC) No 2201/2003 of 23 November 2003 and 10 of Regulation (EC) No 4/2009 of 18 December 2008, before examining the merit of the claim brought, in accordance with Article 9 of Law 1 December 1970 No 898, by a Romanian citizen residing in Italy to seek maintenance from her husband, an Italian and Romanian citizen, subsequent to the divorce judgment issued by a Romanian court without ruling on financial issues, the court shall verify on its own motion its jurisdiction over the action, since the issue has cross border elements (in the instant case, the Romanian citizenship of the claimant, the dual citizenship of the respondent, the foreign divorce judgment).
Under Article 21(1) of Regulation (EC) No 2201/2003, a divorce judgment rendered in Romania is automatically recognized in the other Member States, and as such, in Italy; the fact that the judgment only ruled on the dissolution of the marriage without ruling on the patrimonial relationship does not entail a conflict with public policy pursuant to Article 22(a) of such Regulation.
A maintenance action may be brought before the Italian judge during the proceeding for the revision-integration of a divorce judgment under Article 9 of Law 1 December 1970 No 898, subsequent to the ruling, issued in another Member State, on the dissolution of the marriage. In fact, Article 5 of Law No 898/1970 does not prescribe that the decision on status and that one on maintenance be rendered at the same time. Furthermore, the fact that the divorce judgment was issued in a legal system, such as the Romanian, which provides for the possibility of lodging the two claims separately, does not entail the preclusion of the further proceeding.
In an action seeking the revision of the conditions laid down in a divorce or legal separation judgment (in accordance with Article 710 of the Code of Civil Procedure and Article 9 of Law No 898/1970, respectively), jurisdiction is not governed by Regulation (EC) No 2201/2003 – which, with respect to matrimonial matters, concerns exclusively the questions on status, which, as such, may not undergo revision since they have res judicata effect (unlike the decision on custody and financial matters, which are susceptible to changes). Instead, jurisdiction is governed by the provisions on jurisdiction in the specific matters that are the object of the claim seeking the revisions: that is by Articles 8-15 of Regulation (EC) n. 2201/2003, with respect to parental responsibility claims and by the rules of Regulation (EC) No 4/2009 with respect to the maintenance obligations towards the other spouse and the children.
Under Article 3(a)-(b) of Regulation (EC) No 4/2009, Italian courts have jurisdiction over the maintenance action brought by a Romanian citizen against her ex-husband since both ex-spouses reside in Italy where they have established, in a stable manner, the principal and permanent centre of their interests and relationships, as the place for the actual and continuous pursuance of their personal and professional life; Italian courts also have jurisdiction under Article 5 of Regulation No 4/2009 since the ex-husband (respondent), while he did not file an appearance, he nevertheless appeared in court at the hearing and did not challenge the jurisdiction
Under Article 3 of the Hague Protocol of 23 November 2007 on the law

applicable to maintenance obligations, referred to by Article 15 of Regulation (EC) No 4/2009, the maintenance claim filed by a foreign citizen residing in Italy is governed by Italian law as the law of the State where the maintenance creditor is habitually resident, since the exceptions at Article 5 of the Regulation do not apply to the case at hand.
Article 14 of the 2007 Hague Protocol applies to determine the amount of maintenance towards the other spouse: according to this provision, even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor shall be taken into account in such determination.

49. *Corte di Cassazione, order of 5 May 2016 No 9086* ..... 121

Pursuant to Article 21-bis of the Convention between Italy and Switzerland of 14 December 1962 on social security, implemented in Italy with Law 31 October 1963 No 1781, the Swiss insurer that, in accordance with Swiss law, compensated the Swiss citizen who suffered damage as a result of a traffic accident in Italy, has the right of subrogation to the claims that the victim has pursuant to Italian law.

50. *Belluno Tribunal, decree of 24 May 2016* ..... 715

An Albanian divorce judgment between two Albanian nationals is eligible for recognition under Article 65 of Law 31 May 1995 No 218. However – in accordance with Article 67(3) of the same Law – its effects shall be limited to the proceeding brought in Italy by the former wife seeking for the amendment of the child maintenance measures contained in the foreign judgment. In fact, the instant judgment was rendered by the authorities of the State whose law is applicable under the Italian conflict-of-law provisions and namely Article 8(c) of Regulation (EU) No 1259/2010 of 20 December 2010 or of the State of common nationality of the spouses at the time when the court was seized. Furthermore, the part in the Albanian judgment which orders the dissolution of the marriage is not contrary to public policy for the lack of adequate rulings with respect to the children's maintenance or for the absence of a previous ruling on legal separation of the spouses. Further, the fact that the plaintiff was granted the opportunity to partake in the divorce proceeding brought in Albania satisfies the fundamental right to defence.
In the context of the proceeding for the revision-integration of the measures adopted in the divorce judgment under Article 9 of Law 1 December 1970 No 898, a child maintenance claim may be filed subsequent to the judgment rendered abroad on the dissolution of the marriage since: (i) under Article 5 of Law No 898/1970, the decision on status and the decision on maintenance do not need to be rendered at the same time, and (ii) the fact that the judgment on divorce was rendered in a legal system – such as the Albanian – which allows to bring two separate actions for the two claims does not amount to estoppel. In fact, the foreign judgment on divorce may not be considered neither as tantamount to an implicit assessment of the lack of preconditions to award maintenance rights or as an estoppel against a subsequent maintenance claim based on the financial situation of the former spouses, regardless of the fact that such situation is the same as it was at the time the divorce judgment was rendered.
In regard of a proceedings for the revision of the economic conditions deci-

ded by a judgment on legal separation or divorce (under, respectively, the proceedings at Article 710 of the Code of Civil Procedure and Article 9 of Law No 898/1970), jurisdiction is not governed by Regulation (EC) No 2201/2003 of 23 November 2003; rather, it is governed by the provisions on jurisdiction over the specific matters for which revision is sought, and – therefore – Articles from 8 to 15 of Regulation (EC) No 4/2009 of 18 December 2008 with respect to maintenance obligations.
Under Article 3(b) of Regulation (EC) No 4/2009, Italian courts have jurisdiction over the maintenance claim in favour of the two children of the couple since the plaintiff resides with the children in Italy, where she established her principal and permanent centre of interests and relations, as the place where she concretely and stably pursues her personal and professional life. In the instant case, Italian courts have jurisdiction also under Article 5 of Regulation (EC) No 4/2009 given that the defendant, who filed an appearance, has not contested the jurisdiction of the court.
Under the joint reading of Articles 15 of Regulation (EC) No 4/2009 and 3 of the Hague Protocol of 23 November 2007, the maintenance claim in favour of the children is governed by the law of the State of habitual residence of the maintenance creditor and, as such, by Italian law since none of the exceptions at Article 4(3) of the Hague Protocol apply in the instant case and since – in any event – such exceptions would lead to the same result.
Under Article 18 of the Hague Protocol of 23 November 2007, the Hague Convention of 2 October 1873 on the law applicable to maintenance obligations is not applicable: on the one hand, Article 15 of Regulation (EC) No 4/2009, when making reference to the Hague Protocol of 23 November 2007, does not limit its application to the relationships between Member States and, on the other hand, Article 36-bis litt. b of Law 31 May 1995 No 218 – pursuing to which both parents share the responsibility for their children's maintenance – is a mandatory rule overriding any applicable law.
In determining the amount of maintenance in favour of the children, Article 14 of Regulation (EC) No 4/2009 applies whereby, even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor shall be taken into account.

51. *Corte di Cassazione, 27 May 2016 No 11027* ..... 1015

In an action for the resolution of a sale contract governed by French law brought by an Italian company against the Government and the Ministry of Defence of Iraq for failure to perform payment obligations, allegedly caused by national and supranational measures of embargo adopted in response to the aggression of Kuwait, Law 9 July 1990 No 185 (which establishes the invalidity of contracts for the sale of arms lacking authorization or license) and the restriction to the trade resulting therefrom amount, according to the clause of the contract relating to the excusable delay, to an external impediment. Such impediment is relevant with respect to the functional moment of the performance and does not directly affect the contract; however, it gives the parties the right to annul the contract once the period established from the genesis of the impediment has expired. On the other hand, the embargo imposed by the United Nations Security Council and the European Community cannot constitute a cause of *force majeure* excluding the Iraqi Government's responsibility for breach of contract: in fact, the contractual provision which, according to international practice, qualifies embargos and restrictions

on trade as a cause of *force majeure* refers to events unrelated to the contracting parties and not imputable to them, while in this case the embargo measures adopted result from an international war crime perpetrated by the same Iraqi State.

52. *Bologna Tribunal (company law division), 10 June 2016* ..... 404

Under Articles 4(1) and 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts do not have jurisdiction in the action brought against an individual and a publishing company, both domiciled in Spain, for the ascertainment of a copyright infringement and the compensation of damages arising from the publication of a book reproducing the content of the plaintiff's doctoral thesis, while also seeking an injunction against the diffusion, reproduction and use of such work. On the one hand, the place of the event that gave rise to the damage, i.e. the place where the publisher has its seat, is in Spain; on the other hand, the place where the damages arising from the alleged infringement actually occurred may not be identified in Italy, since the plaintiff has not met the burden to prove or produce that the work that was illegitimately reproduced by the defendant was marketed, circulated or even just made accessible in Italy. Similarly, the place of the infringement of the moral rights of the author is also not in Italy since the work is in Spanish, the seat of the publisher is in Spain and it was not claimed that the work was circulated outside Spain.

53. *Corte di Cassazione, order of 15 June 2016 No 12364* ..... 408

Under Article 64(g) of Law 31 May 1995 No 218, a judgment rendered in the Principality of Monaco ordering the restitution of a loan lawfully entered into and used to gamble does not conflict with public policy, and is therefore eligible for recognition in Italy, since the Italian legal system does not display a bias against gambling as such, provided it is controlled by State entities and therefore free from criminal infiltration.
The interpretation of the foreign law falls under the competence of the Corte di Cassazione: accordingly, if a foreign law governs the object of the dispute, it is admissible to seize this court against the violation of such law.
The interpretation of French law adopted by the Corte di Cassazione, also by means of the interpretation provided by the French Cour de cassation, does not apply to the law of the Principality of Monaco unless the two laws display a common content or a similarity which goes beyond the mere fact that both laws are in French.

54. *Corte di Cassazione (plenary session), order of 4 July 2016 No 13569* ..... 410

Under Articles 37 and 41 of the Code of Civil Procedure, a reference for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*), which has an exceptional nature, may not be lodged in the context of the proceeding on the merit if all or part of the defendants have their residence or domicile in Italy, not even if such defendants claimed immunity from jurisdiction in their capacity as organs of a foreign State, since any question on

jurisdiction, other than those that fall within the scope of the above mentioned provisions, is to be examined by the judge deciding on the merit and may be the object of an ordinary appeal, without any negative consequences on the right to fair trial with regard to the question of jurisdiction.

55. *Corte di Cassazione (plenary session), 4 July 2016 No 13570* ..... 726

In the context of an action seeking to establish the joint proprietorship of an Italian mark, Italian courts have jurisdiction over the claim on the alleged joint proprietorship of a registered Community trade mark registered in the name of one proprietor only brought in accordance with Article 106 of Regulation (EC) No 207/2009 of 26 February 2009 (Article 102 of former Regulation (EC) No 40/1994 of 20 December 1993), which allows to bring before the national court which has jurisdiction under Regulation (EC) No 44/2001 of 22 December 2000 all the actions that do not fall within the jurisdiction of the Community courts for trade marks in accordance with Article 96 of Regulation (EC) No 207/2009 (Article 92 of Regulation (EC) No 40/1994). In fact, such claim is not an application for revocation of the rights of the proprietor of a Community trade mark or for a declaration that the trade mark is invalid within the meaning of Article 56 of Regulation (EC) No 207/2009 (Article 55 of Regulation (EC) No 40/1994) nor can it be proposed in the opposition proceedings. Under Articles 6, 8-*bis*, 9 and 9-*bis* of the Madrid Agreement concerning the international registration of marks, as revised in Stockholm on 14 July 1967, Italian courts also have jurisdiction over the similar action on the international trade mark, since the registration of the national trade mark is a prerequisite to the registration of the international trade mark.
The Italian judgment on the joint proprietorship of an Italian trade mark may have external effects which, however, do not derive immediately from the judgment but, rather, from the use which the parties will make of it before the competent Community or international authorities; in fact, under the principle of territoriality, any extension of a judgment on the joint proprietorship of an Italian trade mark to foreign, non-Community and non-international trade marks is to be excluded.
The appeal before the *Corte di Cassazione* for the infringement and misapplication of Articles 55 and 92 of Regulation (EC) No 40/1994 (Articles 56 and 96 of Regulation (EC) No 207/2009) is inadmissible where it raises a question of jurisdiction, brought for the first time on appeal, as the jurisdiction of Italian courts is to be considered accepted since the defendant did not enter an appearance to contest it, as foreseen at Article 4(1) of Law 31 May 1995 No 218 and Article 24 of Regulation (EC) No 44/2001.
In the dispute on the joint proprietorship of a trade mark, with regard to the effects that such joint proprietorship has on the joint proprietorship of the trade mark's international registration, the five-year term laid down in Article 6(2) of the Madrid Protocol of 27 June 1989 concerning the international registration of marks is irrelevant since that provision only regulates the rejection, revocation, cancellation or invalidation of the mark.

56. *Corte di Cassazione, order of 7 July 2016 No 13829* ..... 414

With respect to an application for the status of refugee and, in alternative, for

the recognition of subsidiary or humanitarian protection, while the burden of proving the facts grounding the application are on the applicant, the provisions that govern such burden must be interpreted in accordance with the provisions of Directive 2004/83/EC of 19 April 2004, whereby the administrative authority examining the application and the court must have an active role in the processing of the application, cooperating in the ascertainment of the facts by means of ex officio powers.
Under Article 2700 of the Civil Code, the nature of public act of a foreign civil status certificate is limited to the information contained therein which match the information registered in the civil registry of the State that issued the certificate and does not extend to the correspondence of such information with the actual facts or to their connection to the individual in whose favour the certificate was issued.

57. *Corte di Cassazione, 25 July 2016 No 15343* ..... 732

A foreign law's compatibility with public policy (*ordre public*) is to be assessed making reference to the core and fundamental values of the Italian legal system, to be identified in those values which may never be amended, not even by the Italian legislator, since they embody overriding constitutional principles.
The application of a foreign law that provides for the celebration of a wedding in forms other than those established under Italian law does not conflict with public policy provided that the forms, as regulated under the foreign applicable law, properly represent the consent of the parties contracting marriage.
Under Article 28 of Law 31 May 1995 No 218, the marriage concluded, in accordance with Pakistani law, by electronic means between an Italian national who expressed her consent in Italy in the presence of witnesses and a Pakistani national who contextually expressed his consent in Pakistan in the presence of witnesses and of the officiant, is valid.

58. *Corte di Cassazione (plenary session), 29 July 2016 No 15812* ..... 735

Italian courts have jurisdiction over an action for the compensation of damages brought against the Federal Republic of Germany by Italian citizens, made prisoner in Italy and deported in Germany to be subjected to forced labour during World War II, or by their heirs. Indeed, in light of the judgment of the *Corte Costituzionale* of 22 October 2014 No 238, the defendant State's claim for immunity from civil jurisdiction may not be upheld.

59. *Corte di Cassazione (plenary session), order of 7 September 2016 No 17675* 739

Italian courts do not have jurisdiction over an action for the compensation of damages suffered for the theft of goods occurred during their multimodal transport from Nicaragua to Italy, brought by an Italian company (buyer) against a Swiss company (carrier of the goods), since the general terms and conditions attached to the back of the bill of lading – signed only by the carrier – included a jurisdiction clause granting exclusive jurisdiction to the

High Court of Justice of London, such clause being valid pursuant to Article 17(c) of the Brussels Convention of 27 September 1968 and Article 23 of Regulation (EC) 44/2001 of 22 December 2000. Such clause was, in fact, entered into in the framework of "international trade, in a form acceptable for such use which the parties" – the carrier and the consignee – "knew or ought to have known" – using the ordinary diligence concerning information on current trade practices – "and a use which in this field" – especially in international transport where, for reasons of simplicity and speed, it is a well established practice that the bill of lading be signed only by the carrier and delivered to the loader – is widely recognized and commonly implemented by the parties to this type of contract in the context of this trade branch. Such jurisdiction clause also satisfies Article 4(2) of Law 31 May 1995 No 218, which applies residually, since the recipient of the bill of lading accepted the clause without reservations, performed his obligation to pay the goods and used the same bill of lading in court, hence expressing his consent to all the clauses contained therein, including the clause whereby the acceptance of the bill of lading implies acceptance and consent to all its terms and conditions "as if they were all signed by the consignee".

60. *Corte di Cassazione (plenary session), 30 September 2016 No 19471* ..... 744

Under Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a dispute, between parties domiciled in Italy, seeking a negative declaratory judgment on the validity of a trust over an apartment located in London and the declaration of nullity or inexistence of any other acts, deeds or titles over the same real estate property. On the one hand, the criterion of the place of situation of the real estate property (forum rei sitae) at Article 22(1) of Regulation (EC) No 44/2001 does not apply to actions seeking to ascertain the quality of trustee of a property the actual legal ownership of which is in dispute. On the other hand, for the purposes of establishing jurisdiction the focus is to be placed on the claim (the invalidity or inexistence of the trust and other deeds) and not on the object of the legal action (the apartment).
With respect to the separation of the two actions ordered by the Court of Appeal on the grounds of lack of jurisdiction of Italian courts over the second action under Article 22(1) of Regulation (EC) No 44/2001, Article 27 thereof – which does not prohibit a separation of the proceedings – is irrelevant.

61. *Corte di Cassazione (plenary session), order of 30 September 2016 No 19473* 746

Under Article 26 of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over a contractual claim brought by an Italian company against a Slovenian company, where the latter claimed, in its opposition against an injunction, the existence between the parties of an arbitration agreement in favour of Slovenian arbitrators without however contesting expressly and unequivocally the jurisdiction of Italian courts. Such opposition may not be considered as equivalent to or overlapping with a motion to contest jurisdiction, which is a procedural challenge whose effects are regulated by law and which is not replaceable by a different procedural behaviour of the party.

62. *Corte di Cassazione, 7 October 2016 No 20206* ..... 748

In an action for the compensation of the damage arising from the death of a relative in a traffic accident brought by the heirs – some of which Senegalese citizens – against two Italian insurance companies, the determination of the amount of the damage must be performed only on the basis of the kind and content of the specific ties between the deceased and his relatives (*i.e.*, on the basis of the loss of affection and of family unity), except for single and peculiar situations that justify a separate treatment. The fact that, in the State where some of the beneficiaries reside, the value of the amount granted for the compensation of the moral damages suffered by the relatives of the deceased is higher than the value that said amount has in Italy, is irrelevant.

63. *Corte di Cassazione, 27 October 2016 No 21741* ..... 751

Under Article 64(e) of Law 31 May 1995 No 218, a Cuban divorce judgment is effective in Italy limited to the part ruling on the status of the spouses and notwithstanding the further assessments, performed by the requested court, in accordance with the other points at Article 64 of Law No 218/1995. The existence of a previous Italian judgment ordering the conversion of the proceeding from a proceeding for judicial legal separation into one for legal separation by mutual consent is not an obstacle to the recognition of the above mentioned Cuban divorce judgment since the two judgments differ as to the underlying legal issue (*causa petendi*), the claim and the effects as regards both the wedlock and the financial issues therein settled.
The clause – contained in an agreement for separation by mutual consent homologated by the court, and reproduced in the operative part of an Italian divorce judgment having *res judicata* effects – which records the decision of the spouses to relinquish the divorce proceeding commenced in Cuba, does not have an impact on the provision at Article 64(e) of Law No 218/1995 since such recording does not amount to a court assessment and, rather, it merely reproduces the expression of the parties' will, which is not comparable to a judicial decision.

64. *Belluno Tribunal, 27 October 2016* ..... 755

Under Article 17 of Regulation (EC) No 2201/2003 of 23 November 2003 and Article 10 of Regulation (EC) No 4/2009 of 18 December 2008, before examining the merits of an action for the dissolution of the marriage of two Albanian nationals, the Italian court shall verify its jurisdiction by its own motion since the case shows a cross-border element given by the foreign nationality of the spouses.
Under Article 3(a), fourth indent of Regulation (EC) No 2201/2003 – which is applicable irrespective of the Albanian nationality of the parties and irrespective of the rules on jurisdiction provided by the national law – Italian courts have exclusive jurisdiction over an application for divorce jointly filed by two Albanian spouses who reside in the province of Belluno, where they lived with their two daughters for about twenty years at the time the court was seized and are engaged in work.
Under Article 5(1)(c) of Regulation (EU) No 1259/2010 of 20 December

2010, the law applicable in an application for divorce jointly filed by two Albanian nationals is Albanian law if the parties so agreed, such agreement being properly finalized regardless of the underlying reasons that led to such designation, such as the parties' wrong assumption that Albanian Law was applicable under Article 31(1) of Law 31 May 1995 No 218. The fact that the applicable law is not the law of a Member State is irrelevant. Such an agreement also meets the requirements as to form prescribed at Article 7(1)-(2) of Regulation (EU) No 1259/2010, since the will was expressed in the parties' application, Italian law does not prescribe additional requirements as to form, and the choice of law was made at the time the court was seized and thus within the deadline provided at Article 5(3) of said Regulation.

Under both Article 16 of Law No 218/1995 and Article 12 of Regulation (EU) No 1259/2010, the absence of a previous judgment on legal separation, which is not required under the law applicable to the dissolution of the marriage, does not preclude that a divorce judgment be rendered whose effects shall therefore not be considered contrary to public policy as for the purposes of taking such decision it is sufficient to establish that reconstituting the spiritual and material communion between the spouses is impossible.

Under Article 8 of Regulation (EC) No 2201/2003, Italian courts have jurisdiction over custody of minors and access claims filed in the context of the parents' application for divorce since the daughters, who are still minors, have their habitual residence in Italy, where they live with their parents. With respect to such claims Italian jurisdiction is however also given pursuant to Article 12(1) of Regulation (EC) No 2201/2003, because the parties brought joint proceedings before the Belluno Tribunal, thus expressing their prorogation of jurisdiction of the Italian court.

Under Articles 16 and 17 of the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, applicable in Italy since 1 January 2016, according to which the law of the State of the child's habitual residence governs the attribution and the exercise of parental responsibility, Italian law governs the questions of parental responsibility over the couple's children, since the children's habitual residence is in Italy. However, Italian law also applies under Article 36-*bis* of Law No 218/1995, which is an overriding mandatory provision mandating the application of the principles of Italian law – notwithstanding the applicable foreign law – to matters of parental responsibility and establishes an obligation for both parents to provide for their children.

A maintenance claim in favour of the children of two Albanian spouses falls within the scope of Regulation (EC) No 4/2009 of 18 December 2008 since the notion of maintenance obligations is to be construed as an autonomous notion of European Union law, characterized by the aim of ensuring support to the maintenance creditor and therefore encompassing all of the different notions of maintenance to be found under Italian law.

Pursuant to Regulation (EC) No 4/2009 Italian courts have jurisdiction over maintenance claims brought in favour of the couple's daughters under multiple headings of such Regulation. Under Article 3(a)-(b) since the two spouses reside (with their daughters) in Italy; under Article 3(c)-(d), which provides that the ancillary maintenance claims fall under the jurisdiction of the court which has jurisdiction over the principal claim on status or parental responsibility, except where such jurisdiction is based solely on the nationality of one of the spouses; and finally under Article 5, as the spouses, filing a joint petition for divorce, accepted the jurisdiction of the Italian courts.

Under Article 3 of the Hague Protocol of 23 November 2007 on the law

applicable to maintenance obligations, referred to in Article 15 of Regulation (EC) No 4/2009, maintenance claims in favour of children are governed by the law of the State of the habitual residence of the creditor and therefore, in the instant case, by Italian law, since the couple's daughters reside in Italy. Article 4(3) of the 2007 Hague Protocol – according to which, as to maintenance obligations in favour of children, if the creditor has seised the competent authority of the State where the debtor has his habitual residence, the law of the forum shall apply – is not an obstacle to this conclusion, since in the instant case the law of the State of the creditor's habitual residence (Article 3 of the 2007 Hague Protocol) coincides with the *lex fori*.

65. *Bologna Family Court, decree of 31 October 2016* ..... 767

Under Article 3 of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction, the removal or the retention of a child is wrongful if: a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention, and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. For the purposes of the Convention, "habitual residence" is to be construed as the place where the child, as a result of a durable and stable – also factual – stay, has the centre of his emotional (not only parental) ties, arising from the fact that his daily life relations occur in that place. Such assessment is for the court deciding on the merit and, as a finding on the facts, it may not be appealed before the *Corte di Cassazione*, provided it is consistently and rationally substantiated. The application brought by a parent (father) for the return to England of a child who is habitually resident in Italy with his mother must be rejected as unfounded, because (i) the father had initially consented to the transfer of the child in Italy, (ii) actual custody was exercised by the mother since the child was born, and (iii) after the child's transfer to Italy, the father was inactive for a long time.

66. *Corte di Cassazione, 3 November 2016 No 22271* ..... 1020

Articles 17-*bis* and 17-*ter* of Law 5 February 1992 No 91, introduced by Law 8 March 2006 No 124, have made it possible for individuals who used to be Italian (and for their children or descendants in a direct line) and resident in the former Republic of Yugoslavia to be granted the Italian nationality by submitting an application, accompanied by documents proofing the existence of the requirements laid down at Article 19 of the Treaty of Paris and Article 3 of the Treaty of Osimo. Descendants are also required to prove the relationship of descent and knowledge of the Italian language and culture. Accordingly, such provisions are not applicable to a woman who timely exercised the right to retain her Italian nationality, pursuant to Article 19 of the Treaty of Paris.
In light of the different legislative choices in regard of the loss of nationality made by the Italian legislator in 1992, in a proceeding deciding on the merits under Article 384, last paragraph, of the Code of Civil Procedure and pursuant Article 8(1) of Law 13 June 1912 No 555 a woman's acquisition, of her

own will, of the Australian nationality subsequent to having transferred her residence to Australia does not entail the loss of her Italian nationality. Therefore, in compliance with the ruling of the Constitutional Court of 9 February 1983 No 30, her child is entitled to the Italian nationality.

67. *Corte di Cassazione, 1 December 2016 No 24542* ..... 1026

Under Article 67(3) of Law 31 May 1995 No 218, the Italian judge, seized with an application for legal separation between two Albanian nationals, has to verify, with effectiveness limited to the case at hand (*incidenter tantum*), the existence of the conditions for the recognition of the foreign divorce decision submitted by the defendant to dismiss the proceedings.
Under Article 64(f) of Law No 218/1995, the fact that the divorce proceeding held in Albania, according to the national law of the spouses, was commenced after the Italian court was seized with a proceeding for legal separation, does not preclude the recognition of the foreign divorce decision. While the parties in the two proceedings are the same and the proceeding in Italy was commenced before the one in Albania, the Italian action for legal separation and the Albanian action for divorce may not be construed as having the same object, since an action for legal separation is not suitable for determining the dissolution and the loss of marital status. Although, in general terms, the criterion of the identity of the proceedings referred to in Article 64(f) can be met also by the criteria of equivalence and assimilability of the legal situation deduced in court and of the decision sought, in light of the crucially different effects that the two decisions produce, the decision on legal separation may not be considered as comparable to that of divorce.
Under Article 31(1) of Law No 218/1995, the law applicable to the dissolution of the marriage of two Albanian citizens is the common national law of the spouses, thus preventing the applicability of the subordinate criterion envisaged in the same paragraph of the provision (the prevalent localization of married life of the spouses).
Article 31(2) of Law No 218/1995, according to which legal separation and dissolution of marriage shall be governed by Italian law if they are not provided for under the applicable foreign law, applies only in those cases where the foreign law does not provide for any form of dissolution of the marriage or it provides for forms of dissolution which are contrary to the principle of equality between the spouses.

68. *Consiglio di Stato, 1 December 2016 No 5047* ..... 136

Pursuant to Articles 95, 98, 100 and to other provisions of Presidential Decree 3 November 2000 No 396 on the Registry Office and to Article 453 of the Civil Code, there appear to be no provisions which grant the power to order the annulment of an act which has been registered, either in a context of self-protection by the organ that issued the act, or by a separate organ such as the Ministry of Interior or the prefect. Consequently, the circular of the Ministry of Interior 7 October 2014 bestowing on prefects the power to annul the acts of registration of same-sex marriages concluded abroad, performed by Mayors, is illegitimate.

69. *Corte di Cassazione, 29 December 2016 No 27365* ..... 1031

In an action for the resolution of an international sale contract brought by an Italian company (buyer) against a South African seller, the Italian court has to identify on its own motion the rules applicable to the merits. It follows, on the one hand, that the allegation made by one party to object to what, according to the party, is an incorrect identification of the applicable rule does not qualify as a defence but, rather, as a solicitation addressed to the judge for the fulfilment of the court's duties in accordance with the *iura novit curia* principle (whereby the parties to a legal dispute do not need to plead or prove the law that applies to their case), and as such it is removed from any preclusions; on the other hand, if follows that challenge before the *Corte di Cassazione* for violation of the law is admissible to state the incorrect application of the foreign law applicable to the relationship in question.
The Vienna Convention of 11 April 1980 on the international sale of goods does not apply to the aforementioned contract concluded in 1997. On the one hand, under Article 1(a) of the Convention, one of the parties' place of business is not in a Contracting State, since the place of business of the seller is in South Africa, a non-Contracting State; on the other hand, pursuant to Article 1(b) of the Convention, the law applicable to the contract, as identified according to the conflict-of-law rules in force in the forum State, is not that of a Contracting State. Under Article 4 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, in fact, the contract is governed by South African law, as this is the law of the country with which the contract is most closely connected in light of the presumption according to which the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract (in the case at hand, the seller) has, at the time of conclusion of the contract, his habitual residence.
Under Article 14 of Law 31 May 1995 No 218, it is the duty of the judge to ascertain the content of the applicable foreign (in the case at hand, South African) law and to ensure its correct application, making use of any useful, even informal means, enhancing the active role of the parties in finding the law itself.

70. *Corte di Cassazione, 17 January 2017 No 969* ..... 1039

Also in light of the amendments made to Article 5 of Law 5 February 1992 No 91 – introduced by Article 1(11) of Law 15 July 2009 No 94, which, for the purposes of acquiring citizenship, mandates that there be no "personal separation" (as opposed to the "legal separation" envisaged by the former text) between the spouses – the fact that between the individual applying for citizenship and the Italian spouse there has been a factual (*de facto*) separation is irrelevant; in fact, the law must be construed so that conditions for the refusal of citizenship shall be of an exclusively legal nature, predetermined by the legislator, and not deferred to a factual assessment by the administrative authority.

71. *Corte di Cassazione, order 18 January 2017 No 1239* ..... 1041

Under Regulation (EC) No 44/2001 of 22 December 2000, to preclude the

recognition and enforcement of a judgment rendered in a Member State of the European Union, the conflict with public policy must be manifest and only applies in exceptional cases when, for instance, the recognition or enforcement of the foreign judgment would violate the most basic procedural guarantees of the requested State.
Where the public policy exception is invoked on the grounds of the absence, in the foreign judgment, of an express and specific reasoning concerning the denial of a preliminary motion, the Italian principle which applies is that according to which the reasoning must not necessarily result from a specific ruling of the foreign court, since the rationale underlying the court's decision on the merit may, in and of itself, serve as implicit denial of the motion.

72. *Corte di Cassazione (plenary session), 19 January 2017 No 1310* ..... 1043

For the purposes of jurisdiction and identification of the applicable law, measures concerning children must be assessed in relation to the function performed; therefore the measures which, while having an impact on parental responsibility, pursue the goal of protecting the child, fall within the scope of Article 42 of Law 31 May 1995 No 218, which refers to the Hague Convention of 5 October 1961, whose Article 1 provides that the judicial and administrative authorities of the country of habitual residence of a child have jurisdiction, subject to Articles 3, 4 and 5(3) of the same Convention, to adopt measures aimed at the protection of the child or his property. However, in the case of a child with dual – Italian and Brazilian – nationality, Article 4 of the Convention, according to which the measures adopted by the national court of which the child is a national supersede those adopted in the place of habitual residence, cannot be applied: accordingly, jurisdiction lies with the courts of the State with the closest connection with the child, which must be identified with the State in which the child has his habitual residence. Article 19 of Law No 218/1995 – according to which, if a person has more than one nationality, one of which is the Italian one, the Italian nationality shall take priority – only concerns questions of applicable law and does not apply to the case at hand.
Pursuant to Articles 5 of the Code of Civil Procedure and 8 of Law No 218/1995, Italian courts have jurisdiction in a dispute on the custody of a child with dual nationality who resided in Italy at the time a separate proceeding was commenced which led to a different judgment on the merits having *res judicata* effects which ascerted the residence in Italy of the whole family; in fact, if two judgments between the same parties refer to the same legal relationship, and one of them has acquired *res judicata* effects, the assessment therein made of the legal situation or of questions of fact and law concerning a fundamental point that is common to both cases, precludes a new examination of the same point of law already established in the (first) judgment, even if the second judgment pursues a different aim than the one sought with the first judgment.

73. *Corte di Cassazione (plenary session), order 19 January 2017 No 1311* ..... 1047

Under Article 5(3) of Regulation (CE) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a pre-contractual liability action for the violation of the duties of information in relation to interest-rate swap con-

tracts promoted by the Lazio Region with several credit institutions based in Italy and in the United States of America, since in Italy is the place where the tort occurred (*locus commissi delicti*). Neither Regulation (EU) No 1215/2012 of 12 December 2012, nor the prorogation clause contained in the ISDA Master Agreement may be construed as relevant, as the former is inapplicable *ratione temporis,* and the latter must be interpreted in a strictly restrictive sense and, accordingly, the formula "relating to this Agreement" cannot be understood in a broad sense, such as to include extra-contractual claims.

74. *Corte di Cassazione, 31 January 2017 No 2487* ..... 125

Under Article 369(2) of the Code of Civil Procedure, the action brought by a Mayor against a judgment of the Court of Appeal upholding the registration in the civil register that Mayor's city of a same-sex marriage concluded abroad between a French citizen and a person with dual – French and Italian – citizenship may not be pursued since the claimant, while having acknowledged the notification of the decree against which she is appealing, failed to deposit a copy thereof.

75. *Trieste Court of Appeal, 6 March 2017* ..... 771

While the principle of impartiality and neutrality of the judge – established under Articles 111 of the Constitution, 6 of the European Convention on Human Rights, and 47 of the Charter of Fundamental Rights of the European Union – may be construed as a public policy principle, it is not warranted unlimited protection in the Italian legal system: under Article 34(1) of the Lugano Convention of 30 October 2007, two Swiss decisions rendered subsequently to two other decisions given in the same dispute do not manifestly conflict with public policy and, as such, they may be declared enforceable in Italy in accordance with Article 41 of the Convention, regardless of the fact that some of the judges sitting on the benches that rendered the two sets of decisions partially overlapped.
Article 46(3) of the 2007 Lugano Convention, which provides that the court with which an appeal is lodged against a declaration of enforceability may make enforcement conditional on the provision of such a security as it shall determine, should be construed so as to use limit said power at the time it renders its decision on the opposition, so as to safeguard the rights of the opponent in view of a possible subsequent appeal before the *Corte di Cassazione*.

76. *Corte di Cassazione, 17 May 2017 No 12380* ..... 791

Under Article 4(2) of Law 5 February 1992 No 91, which regulates the automatic grant of citizenship to foreigners born in Italy, the requirement that the applicant legally reside in Italy until he becomes of age is to be construed as lawful stay in Italy or as a stay which is not in violation of the provisions that govern the entrance, circulation and stay of foreign citizens. Furthermore, the belated registration in the civil registry of a child may not preclude his acquisition of the Italian citizenship provided that the individual in fact resided in Italy: proof of such residence may be provided with any

available means and it also overrides erroneous declarations to the contrary made by the parents, who are often oblivious of the consequences of such declarations.

77. *Corte di Cassazione (plenary session), 5 July 2017 No 16601* ..... 1049

Under Article 64 of Law 31 May 1995 No 218, a U.S. judgment ordering an Italian company manufacturing helmets to pay to a U.S. company, reseller of those helmets, the amount paid, under a settlement, by the latter in favour of a motorcyclist for the physical injuries suffered and caused by an alleged defect of one of said helmets, is eligible for recognition in Italy.
This applies also when the judgment was rendered on the grounds of a "potential liability test" according to which, when the guaranteed settles the dispute with a damaged party, the guarantor can only approve the settlement and accept its effects or enter himself a plea in favour of the guaranteed. Such a decision does not affect the fundamental right to a fair trial, even if it was rendered without verifying the grounds for the calling of the guarantee, since the manufacturer was offered the opportunity to join the proceedings between the motorcyclist and the retailer, and since the manufacturer did not raise any objections after he was notified of the retailer's payment to the injured party. In fact, if the guarantor did not make use of the opportunities to raise a defence provided in the State of origin, he is not allowed to invoke the differences in the procedural systems at the recognition stage, unless they caused an unreasonable and disproportionate restriction of the right of defence.
Under Article 64 of Law No 218/1995, a judgment sentencing to the payment of punitive damages is not ontologically incompatible with the Italian legal system, since, in the Italian legal system, civil liability not only aims at restoring the injured party's assets, but is also meant, under certain conditions, to deter and sanction. For a foreign judgment ordering the payment of such damages to be eligible for recognition in Italy in terms of public policy it is necessary to ascertain whether the judgment was rendered on a legal basis that provides the necessary safeguards in terms of the typicality of the court's order (*i.e.*, the court order for which recognition in sought has to satisfy the pre-requisites for a court order under the law of the requested State), its predictability and its limits as to the amount.

*EU CASE-LAW*

*Consumer protection:* 13, 14, 27.

EC Regulation No 1346/2000: 2, 21, 23, 36.

*EC Regulation No 44/2001*: 4, 7, 8, 9, 10, 12, 18, 26, 34.

*EC Regulation No 2201/2003*: 19, 22, 29, 37.

*EC Regulation No 805/2004*: 3, 32.

*EC Regulation No 864/2007*: 14.

*EC Regulation No 1393/2007*: 7, 31.

*EC Regulation No 593/2008*: 14, 20.

*EC Regulation No 4/2009:* 28, 29.

*EU Citizenship:* 15, 16.

EU Law: 14, 25, 28.

*EU Regulation No 1215/2012:* 24, 33, 38, 39.

*Freedom of movement of goods:* 5.

*Intellectual property:* 1, 11, 17, 35.

*Judicial proceedings before the Court of Justice:* 6, 30.

*Liability of Member States:* 13.

1. *Court of Justice, 17 March 2016 case C-99/15* ..... 152

Article 13(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as permitting a party injured by an intellectual property infringement, who claims compensation for his material damage as calculated, in accordance with heading (b) of the second subparagraph of Article 13(1) of that Directive, on the basis of the amount of royalties or fees which would have been due to him if the infringer had requested his authorisation to use that right, also to claim compensation for the moral prejudice that he has suffered, as provided for under heading (a) of the second subparagraph of Article 13(1) of that Directive.

2. *Court of Justice, order 24 May 2016 case C-353/15* ..... 140

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that, where a company's registered office has been transferred from one Member State to another Member State, the court seised, subsequent to that transfer, of an application to open insolvency proceedings in the Member State of origin may disregard the presumption that the same company's centre of main interests is situated at the place of the new registered office and find that the centre of those interests remained, as at the date on which that application was brought before it, in that Member State of origin, although the company no longer had an establishment there, only if it is apparent from other objective evidence, ascertainable by third parties, that, nonetheless, the company's actual centre of management and supervision and of the management of its interests was still located there at that date.

3. *Court of Justice, 16 June 2016 case C-511/14* ..... 149

The conditions according to which, in the case of a judgment by default, a claim is to be regarded as 'uncontested', within the meaning of the second

subparagraph of Article 3(1)(b) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, must be assessed autonomously, solely in accordance with that Regulation.

4. *Court of Justice, 16 June 2016 case C-12/15* ..... 141

1. Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in an action for damages resulting from the negligence on the part of a lawyer in drafting a contract for the purchase of shares, the 'place where the harmful event occurred' may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage which materializes directly in the applicant's bank account and is the direct result of an unlawful act committed in another Member State.
2. In the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.

5. *Court of Justice, 21 June 2016 case C-15/15* ..... 151

Article 35 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as the Flemish Community of the Kingdom of Belgium, which requires every undertaking that has its place of establishment within the territory of that entity to draw up all the details on invoices relating to cross-border transactions exclusively in the official language of that entity, failing which those invoices are to be declared null and void by the national courts of their own motion.

6. *Court of Justice, 5 July 2016 case C-614/14* ..... 153

1. Article 267 TFEU and Article 94 of the Rules of Procedure of the Court, read in the light of the second paragraph of Article 47 and of Article 48(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a national rule which is interpreted in such a way as to oblige the referring court to disqualify itself from a pending case, on the ground that it sets out, in its request for a preliminary ruling, the factual and legal context of that case.
2. EU law, and in particular Article 267 TFEU, must be interpreted as meaning that it does not require the referring court, after the delivery of the preliminary ruling, to hear the parties again and to undertake further inquiries, which might lead it to alter the findings of fact or law made in the request for a preliminary ruling, nor does it prohibit the referring court from doing so, provided that the referring court gives full effect to the interpretation of EU law adopted by the Court of Justice of the European Union.
3. EU law must be interpreted as precluding a referring court from applying a

national rule which requires that court to disqualify itself from hearing the case before it on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case, because that rule is deemed to be contrary to EU law.

7. *Court of Justice, 7 July 2016 case C-70/15* ..... 143

1. The concept of 'proceedings to challenge a judgment' referred to in Article 34(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as also including applications for relief when the period for bringing an ordinary challenge has expired.
2. The last subparagraph of Article 19(4) 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 as excluding the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired.

8. *Court of Justice, 7 July 2016 case C-222/15* ..... 145

Article 23(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 a jurisdiction clause which, first, is set out in the client's general terms and conditions, referred to in the instruments witnessing the contracts between those parties and forwarded upon their conclusion, and, secondly, designates as courts with jurisdiction those of a city of a Member State, meets the requirements of that provision relating to the consent of the parties and the precision of the content of such a clause.

9. *Court of Justice, 14 July 2016 case C-196/15* ..... 146

1. 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 an action for damages founded on an abrupt termination of a long-standing business relationship, such as the termination at issue in the main proceedings, is not a matter relating to tort, delict or quasi-delict within the meaning of that Regulation if a tacit contractual relationship existed between the parties, a matter which is for the referring court to ascertain. Demonstration of the existence of a tacit contractual relationship of that kind must be based on a body of consistent evidence, which may include in particular the existence of a long-standing business relationship, the good faith between the parties, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged.

2. Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a long-standing business relationship, such as that at issue in the main proceedings, is to be classified as a 'contract for the sale of goods' if the characteristic obligation of the contract at issue is the supply of goods or as a 'contract for the provision of services' if the characteristic obligation is a supply of services, a matter which is for the referring court to determine.

10. *Court of Justice, 14 July 2016 case C-230/15* ..... 148

Article 71 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 350 TFEU, does not preclude the application to those disputes of the rule of jurisdiction for disputes relating to Benelux trademarks and designs, laid down in Article 4.6 of the 2005 Benelux Convention on Intellectual Property (Trade Marks and Designs), signed in The Hague by Belgium, Luxembourg and the Netherlands.

11. *Court of Justice, 21 July 2016 case C-226/15 P* ..... 1082

It follows from Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark, and, in particular, Title IV thereof, relating to the procedure for registration of an EU trade mark, that European Union Intellectual Property Office (EUIPO) has exclusive jurisdiction over registration and opposition to such registration of an EU trade mark.
Moreover, attention should be drawn to the importance of the principle of *res judicata*. In that regard, it should be noted that, although Regulation No 207/2009 does not explicitly define the concept of 'res judicata', it follows, in particular, from Article 56(3) and Article 100(2) of that Regulation that, in order that decisions of a court of a Member State or EUIPO which have become final are *res judicata* and can therefore be binding on such a court or EUIPO, it is required that parallel proceedings before them have the same parties, the same subject matter and the same cause of action.
It should be noted that, the action for infringement before an EU trade mark court concerning an earlier EU trade mark and a national trade mark should be distinguished by the opposition proceedings before EUIPO invoking the same earlier EU trade mark and the same sign as the national trade mark for which registration is sought on the EU level. As regards, first, the registration of a mark as an EU trade mark, its purpose is, as is clear from Article 6 of Regulation No 207/2009, to obtain such an EU trade mark. Accordingly, the opposition to such registration is intended to prevent the applicant for that registration from obtaining the mark in question, hence, in accordance with Article 42(5) of that regulation, either the application for registration of the mark is refused in respect of all or part of the goods or services for which that mark is sought, or the opposition is rejected. As regards, second, the infringement action brought before a national court acting as an EU trade marks court, the proprietor of the earlier EU trade mark asks, in the context of such an action, that court to prohibit the use of a sign creating a likelihood of confusion with that of the earlier EU trade mark. The proprietor of the EU trade mark accordingly seeks to render the infringer liable for infringement of its exclusive rights.
In the light of the exclusive competence of EUIPO's adjudicating bodies to

authorise or refuse the registration of an EU trade mark, the subject matter of any proceedings before EUIPO relating to registration of an EU trade mark or opposition to that registration necessarily is different to any proceedings before a national court, even where that court acts as an EU trade marks court.

12. *Court of Justice, 28 July 2016 case C-102/15* ..... 429

An action for recovery of sums not due on the ground of unjust enrichment, such as that at issue in the main proceedings, which has its origin in the repayment of a fine imposed in competition law proceedings does not fall within 'civil and commercial matters' within the meaning of Article1 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.

13. *Court of Justice, 28 July 2016 case C-168/15* ..... 442

1. Member State liability for damage caused to individuals as a result of a breach of EU law by a decision of a national court may be incurred only where that decision is made by a court of that Member State adjudicating at last instance, which it is for the referring court to determine in respect of the main proceedings. If that is the case, a decision by that national court adjudicating at last instance may constitute a sufficiently serious breach of EU law, capable of giving rise to that liability, only where, by that decision, that court manifestly infringed the applicable law or where that infringement takes place despite the existence of well-established Court case-law on the matter. It cannot be concluded that a national court which, prior to the judgment of 4 June 2009 in *Pannon GSM* (C-243/08, EU:C:2009:350), failed, in the context of proceedings for enforcement of an arbitral award upholding a claim for payment of debts under a contractual term which must be regarded as unfair within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, to assess of its own motion whether that term is unfair, although it could rely on the legal and factual elements necessary for that purpose, manifestly disregarded the Court's case-law on the matter and, therefore, committed a sufficiently serious breach of EU law. 2. The rules regarding reparation for damage caused by a breach of EU law, such as those concerning the assessment of such damage or the relationship between a claim for that reparation and other remedies which could be available, are determined by the national law of each Member State, in conformity with the principles of equivalence and effectiveness.

14. *Court of Justice, 28 July 2016 case C-191/15* ..... 435

1. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that, without prejudice to Article1(3) of each of those Regulations, the law applicable to an action for

an injunction within the meaning of Directive 2009/22/EC of the European Parliament and of the Council of 23April 2009 on injunctions for the protection of consumers' interests directed against the use of allegedly unfair contractual terms by an undertaking established in a Member State which concludes contracts in the course of electronic commerce with consumers resident in other Member States, in particular in the State of the court seised, must be determined in accordance with Article 6(1) of Regulation No 864/2007, whereas the law applicable to the assessment of a particular contractual term must always be determined pursuant to Regulation No 593/2008, whether that assessment is made in an individual action or in a collective action.
2. Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a term in the general terms and conditions of a seller or supplier which has not been individually negotiated, under which the contract concluded with a consumer in the course of electronic commerce is to be governed by the law of the Member State in which the seller or supplier is established, is unfair in so far as it leads the consumer into error by giving him the impression that only the law of that Member State applies to the contract, without informing him that under Article 6(2) of Regulation No 593/2008 he also enjoys the protection of the mandatory provisions of the law that would be applicable in the absence of that term, this being for the national court to ascertain in the light of all the relevant circumstances.
3. Article 4(1)(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that the processing of personal data carried out by an undertaking engaged in electronic commerce is governed by the law of the Member State to which that undertaking directs its activities, if it is shown that the undertaking carries out the data processing in question in the context of the activities of an establishment situated in that Member State. It is for the national court to ascertain whether that is the case.

15. *Court of Justice, 13 September 2016 case C-165/14* ..... 441

Article 21 TFEU and Directive 2004/38/EC of the European Parliament and of the Council 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 must be interpreted as precluding national legislation which requires a third-country national to be automatically refused the grant of a residence permit on the sole ground that he has a criminal record where he is the parent of a minor child who is a Union citizen and a national of a Member State other than the host Member State and who is his dependant and resides with him in the host Member State.
Article 20 TFEU must be interpreted as precluding the same national legislation which requires a third-country national who is a parent of minor children who are Union citizens in his sole care to be automatically refused the grant of a residence permit on the sole ground that he has a criminal record, where that refusal has the consequence of requiring those children to leave the territory of the European Union.

16. *Court of Justice, 13 September 2016 case C-304/14* ..... 441

Article 20 TFEU must be interpreted as precluding legislation of a Member State which requires a third-country national who has been convicted of a criminal offence to be expelled from the territory of that Member State to a third country notwithstanding the fact that that national is the primary carer of a young child who is a national of that Member State, in which he has been residing since birth without having exercised his right of freedom of movement, when the expulsion of the person concerned would require the child to leave the territory of the European Union, thereby depriving him of the genuine enjoyment of the substance of his rights as a Union citizen. However, in exceptional circumstances a Member State may adopt an expulsion measure provided that it is founded on the personal conduct of that third-country national, which must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of that Member State, and that it is based on consideration of the various interests involved, matters which are for the national court to determine.

17. *Court of Justice, 22 September 2016 case C-223/15* ..... 807

Article 1(2), Article 9(1)(b) and Article 102(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that, where an EU trade mark court finds that the use of a sign creates a likelihood of confusion with an EU trade mark in one part of the European Union whilst not creating such a likelihood in another part thereof, that court must conclude that there is an infringement of the exclusive right conferred by that trade mark and issue an order prohibiting the use in question for the entire area of the European Union with the exception of the part in respect of which there has been found to be no likelihood of confusion.

18. *Court of Justice, 12 October 2016 case C-185/15* ..... 430

Article 6(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 the court designated by that provision as regards counterclaims has jurisdiction to hear a counterclaim seeking the reimbursement on the ground of unjust enrichment of a sum corresponding to the amount agreed in an extrajudicial settlement, where that claim is brought in fresh legal proceedings between the same parties, following the setting aside of the judgment delivered in the original proceedings between them, the enforcement of which gave rise to the extrajudicial settlement.

19. *Court of Justice, 13 October 2016 case C-294/15* ..... 431

1. Article 1(1)(a) 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, re-

pealing Regulation (EC) No 1347/2000, must be interpreted as meaning that an action for annulment of marriage brought by a third party following the death of one of the spouses falls within the scope of Regulation No 2201/2003.
2. The fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that a person other than one of the spouses who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in those provisions.

20. *Court of Justice, 18 October 2016 case C-135/15* ..... 439

1. Article 28 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that a contractual employment relationship that came into being before 17 December 2009 falls within the scope of the Regulation only in so far as that relationship has undergone, as a result of mutual agreement of the contracting parties which has manifested itself on or after that date, a variation of such magnitude that a new employment contract must be regarded as having been concluded on or after that date, a matter which is for the referring court to determine.
2. Article 9(3) of Regulation No 593/2008 must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed from being applied, as legal rules, by the court of the forum, but as not precluding it from taking such other overriding mandatory provisions into account as matters of fact in so far as this is provided for by the national law that is applicable to the contract pursuant to the Regulation. This interpretation is not affected by the principle of sincere cooperation laid down in Article 4(3) TEU.

21. *Court of Justice, 26 October 2016 case C-195/15* ..... 428

Article 5 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted to the effect that security created by virtue of a provision of national law (such as Paragraph 12 of the German GrStG), on the basis of which the real property of a person owing real property taxes is, by operation of law, to be subject to a public charge and that property owner must accept enforcement of the decision recording that tax debt against that property, constitutes a 'right *in rem*' for the purposes of that Article.

22. *Court of Justice, 27 October 2016 case C-428/15* ..... 432

1. Article 15 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 meaning that it is applicable where a child protection application brought under public law by the competent authority of a Member State concerns the adoption of

measures relating to parental responsibility (such as a placement in a foster family), whereby it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other Member State thereafter commence a different set of proceedings which are completely separate from those brought in the first Member State, pursuant to its own domestic law and possibly relating to different factual circumstances.
2. Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that in order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction in a Member State must be satisfied that the transfer of the case to that other court is such as to provide genuine and specific added value to the examination of that case, taking into account, *inter alia*, the rules of procedure applicable in that other Member State. Furthermore, in order to determine that such a transfer is in the best interests of the child, the court having jurisdiction in a Member State must be satisfied, in particular, that such a transfer is not liable to be detrimental to the situation of the child.
3. Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court having jurisdiction in a Member State must not take into account, when applying that provision in a given case relating to parental responsibility, either the effect of a possible transfer of that case to a court of another Member State on the right of freedom of movement of persons concerned other than the child in question, or the reason why the mother of that child exercised that right, prior to that court being seised, unless those considerations are such that there may be adverse repercussions on the situation of that child.

23. *Court of Justice, 9 November 2016 case C-212/15* ..... 794

1. Article 4 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that provisions of domestic law of the Member State on the territory of which insolvency proceedings are opened which provide, in relation to a creditor who has not taken part in those proceedings, for the forfeiture of its right to pursue its claim or for the suspension of the enforcement of such a claim in another Member State come within its scope of application.
2. The fiscal nature of the claim pursued by means of enforcement in a Member State other than that on the territory of which the insolvency proceedings are opened, in a situation such as that at issue in the main proceedings, has no bearing on the answer to be given to the first question referred for a preliminary ruling.

24. *Court of Justice, 16 November 2016 case C-417/15* ..... 804

The provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that an action seeking the avoidance of a gift of immovable property on the ground of the donor's incapacity to contract does not fall within the exclusive jurisdiction of the courts of the Member State in which the property is situated, provided for under Article 24(1) of

Regulation No 1215/2012, but within the special jurisdiction provided for under Article 7(1)(a) of that Regulation.
An action seeking the removal from the land register of notices evidencing the donee's right of ownership falls within the exclusive jurisdiction provided for under Article 24(1) of the same Regulation.

25. *Court of Justice, 15 December 2016 case C-558/15* ..... 806

Article 4 of Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as not requiring Member States to provide that the claims representative appointed pursuant to that Article may itself be sued, instead of the insurance undertaking which it represents, in the national court before which an action for damages was brought by an injured party falling within the scope of Article 1 of Directive 2000/26, as amended by Directive 2005/14.

26. *Court of Justice, 21 December 2016 case C-618/15* ..... 796

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, for the purpose of conferring the jurisdiction given by that provision to hear an action to establish liability for infringement of the prohibition on resale outside a selective distribution network resulting from offers, on websites operated in various Member States, of products covered by that network, as meaning that the place where the damage occurred is to be regarded as the territory of the Member State which protects the prohibition on resale by means of the action at issue, a territory on which the appellant alleges to have suffered a reduction in its sales.

27. *Court of Justice, 26 January 2017 case C-421/14* ..... 1085

1. Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding a provision of national law, such as the Fourth Transitional Provision of Ley 1/2013, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social (Law 1/2013 on the protection of mortgagors, restructuring of debt and social rent) of 14 May 2013, which, as regards mortgage enforcement proceedings which were instituted before the date of entry into force of the law of which that provision forms part and which were not concluded at that date, imposes a time limit of one month on consumers, calculated from the day following the publication of that law, within which to object to enforcement on the basis of the alleged unfairness of contractual terms.
2. Directive 93/13 must be interpreted as not precluding a rule of national law, such as that resulting from Article 207 of Ley 1/2000, de Enjuiciamiento

Civil (Law 1/2000 on the Civil Procedure Code), of 7 January 2000, as amended by Ley 1/2013, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social (Law 1/2013 on the protection of mortgagors, restructuring of debt and social rent), of 14 May 2013, then by Real Decreto-Ley 7/2013, de medidas urgentes de naturaleza tributaria, presupuestaria y de fomento de la investigación, el desarrollo y la innovación (Decree-Law 7/2013 on urgent fiscal and budgetary measures and promoting research, development and innovation), of 28 June 2013, then by Real Decreto-Ley 11/2014, de medidas urgentes en materia concursal (Decree-Law 11/2014 on urgent measures in the area of bankruptcy), of 5 September 2014, which prohibits national courts from examining of their own motion the unfairness of contractual terms where a ruling has already been given on the lawfulness of the terms of the contract, taken as a whole, with regard to that Directive in a decision which has become res judicata. By contrast, where there are one or more contractual terms the potential unfair nature of which has not been examined during an earlier judicial review of the contract in dispute which has been closed by a decision which has become res judicata, Directive 93/13 must be interpreted as meaning that a national court, before which a consumer has properly lodged an objection, is required to assess the potential unfairness of those terms, whether at the request of the parties or of its own motion where it is in possession of the legal and factual elements necessary for that purpose.

3. Article 3(1) and Article 4 of Directive 93/13 must be interpreted as meaning that:

the examination of the potential unfairness of a term of a contract concluded between a seller or supplier and a consumer requires it to be determined whether that term causes a significant imbalance in the parties' rights and obligations under a contract to the detriment of the consumer. That examination must be carried out in the light of national rules which, in the absence of an agreement between the parties, are applicable, the means which the consumer has at his disposal under national law to bring an end to the use of that type of term, the nature of the goods or services covered by the contract at issue and all the circumstances surrounding the conclusion of the contract; where the national court considers that a contractual term relating to the calculation of ordinary interest, such as that at issue in the main proceedings, is not in plain intelligible language, within the meaning of Article 4(2) of that Directive, it is required to examine whether that term is unfair within the meaning of Article 3(1) of the Directive. In the context of that examination, it is the duty of the referring court, *inter alia*, to compare the method of calculation of the rate of ordinary interest laid down in that term and the actual sum resulting from that rate with the methods of calculation generally used, the statutory interest rate and the interest rates applied on the market at the date of conclusion of the agreement at issue in the main proceedings for a loan of a comparable sum and term to those of the loan agreement under consideration; and

as regards the assessment by a national court of the potential unfairness of the term relating to accelerated repayment resulting from a failure on the part of the debtor to comply with his obligations during a limited specific period, it is for the referring court to examine whether the right of the seller or supplier to call in the totality of the loan is conditional upon the non-compliance by the consumer with an obligation which is of essential importance in the context of the contractual relationship in question, whether that right is provided for in cases in which such non-compliance is sufficiently serious in the light of the term and amount of the loan, whether that right derogates from the applicable common

law rules, where specific contractual provisions are lacking, and whether national law provides for adequate and effective means enabling the consumer subject to such a term to remedy the effects of the loan being called in. 4. Directive 93/13 must be interpreted as precluding an interpretation in the case-law of a provision of national law governing accelerated repayment clauses in loan agreements, such as Article 693(2) of Law 1/2000, as amended by Decree-Law 7/2013, which prohibits the national court which has found such a contractual term to be unfair from declaring that term null and void and removing it where the seller or supplier did not in fact apply it, but complied with the requirements laid down in that provision of national law.

28. *Court of Justice, 9 February 2017 case C-283/16* ..... 803

1. Chapter IV 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, in particular Article 41(1) thereof, must be interpreted as meaning that a maintenance creditor who has obtained an order in one Member State and wishes to enforce it in another Member State may make an application directly to the competent authority of the latter Member State, such as a specialised court, and cannot be required to submit the application to that court through the Central Authority of the Member State of enforcement.
2. Member States are required to give full effect to the right laid down in Article 41(1) of Regulation No 4/2009 by amending, where appropriate, their rules of procedure. In any event, it is for the national court to apply Article 41(1), if necessary refusing to apply any conflicting provision of national law and, as a consequence, to allow a maintenance creditor to submit her application directly to the competent authority of the Member State of enforcement, even if national law does not make provision for such an application.

29. *Court of Justice, 15 February 2017 case C-499/15* ..... 797

Article 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, repealing Regulation (EC) No 1347/2000, and Article 3 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 meaning that, in a case such as that in the main proceedings, the courts of the Member State which made a decision that has become final concerning parental responsibility and maintenance obligations with regard to a minor child no longer have jurisdiction to decide on an application for variation of the provisions ordered in that decision, inasmuch as the habitual residence of the child is in another Member State. It is the courts of the Member State of habitual residence that have jurisdiction to decide on that application.

30. *Court of Justice, 16 February 2017 case C-503/15* ..... 1086

The Court of Justice of the European Union has no jurisdiction to rule on the

request for a preliminary ruling submitted by the Secretario Judicial del Juzgado de Violencia sobre la Mujer Único de Terrassa (Registrar of the Single-Member Court dealing with matters involving violence against women, Terrassa, Spain), since the same does not constitute 'a court or tribunal', for the purposes of Article 267 TFEU. In fact, on the one side, an action for the recovery of fees, such as that in the main proceedings, concerns proceedings that are administrative in nature, in the context of which the Secretario Judicial cannot be regarded as exercising a judicial function. Moreover, on the other side, the requirement for a body making a reference to be independent is comprised of two aspects, internal and external. The Secretario Judicial does not meet the criterion of external independence under Spanish law as it currently stands, because it is entrusted with determining the action for the repayment of fees at issue in the main proceedings in observance of the principles of unity of action and subordination to hierarchy.

31. *Court of Justice, 2 March 2017 case C-354/15* ..... 799

1. 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 as precluding national legislation, such as that at issue in the main proceedings, according to which, in the event that a judicial document, served on a defendant residing in the territory of another Member State, has not been drafted or accompanied by a translation either in a language which that defendant understands, or in the official language of the requested Member State or, where there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, the omission of the standard form set out in Annex II to that Regulation renders such service invalid, even if such invalidity must be invoked by that defendant within a specified period or at the beginning of the proceedings and before any defence on the merits.
The Regulation requires, on the other hand, that such an omission be corrected in accordance with the provisions laid down in that Regulation, by communicating the standard form set out in Annex II of that Regulation to the person concerned.
2. Regulation No 1393/2007 must be interpreted as meaning that postal service of a document instituting proceedings is valid, even if:
the acknowledgment of receipt of the registered letter containing the document to be served on the addressee has been replaced by another document, provided that such document provides equivalent guarantees as regards information provided and evidence. It is for the court hearing the matter in the Member State of transmission to satisfy itself that the addressee has received the document in question in such a way as to ensure that his rights of defence have been respected;
the document to be served has not been delivered to its addressee in person, provided that it has been served on an adult person who is inside the habitual residence of that person and is either a member of his family or an employee in his service. Where appropriate, it is for the addressee to establish, by all admissible forms of evidence before the court hearing the matter in the Member State of transmission, that he could not effectively take account of the fact that judicial proceedings were being brought against him in another

Member State, that he could not identify the subject-matter and grounds of the claim, or that he did not have sufficient time to prepare his defence.

32. *Court of Justice, 9 March 2017 case C-484/15* ..... 1077

1. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that, in Croatia, notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document', do not fall within the concept of 'court' within the meaning of that Regulation.
2. Regulation No 805/2004 must be interpreted as meaning that a writ of execution adopted by a notary, in Croatia, based on an 'authentic document', and which has not been contested may not be certified as a European Enforcement Order since it does not relate to an uncontested claim within the meaning of Article 3(1) of that Regulation.

33. *Court of Justice, 9 March 2017 case C-551/15* ..... 1078

1. Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that enforcement proceedings brought by a company owned by a local authority against a natural person domiciled in another Member State, for the purposes of recovering an unpaid debt for parking in a public car park, the operation of which has been delegated to that company by that authority, which are not in any way punitive but merely constitute consideration for a service provided, fall within the scope of that Regulation.
2. Regulation No 1215/2012 must be interpreted as meaning that, in Croatia, notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document', do not fall within the concept of 'court' within the meaning of that Regulation.

34. *Court of Justice, 4 May 2017 case C-29/16* ..... 1074

Article 27(1) and point 1 of Article 30 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, in cases of *lis pendens*, that the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced cannot constitute the date on which, within the meaning of point 1 of Article 30 of that Regulation, a court called upon to rule on a substantive application which was brought in the same Member State following the result of that measure was 'deemed to be seised'.

35. *Court of Justice, 18 May 2017 case C-617/15* ..... 1083

Article 97(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that a legally distinct second-tier subsidiary, with its seat in a Member State, of a parent body that has no seat in the European Union is an 'establishment', within the meaning of that provision, of that parent body if the subsidiary is a centre of operations which, in the Member State where it is located, has a certain real and stable presence from which commercial activity is pursued, and has the appearance of permanency to the outside world, such as an extension of the parent body.

36. *Court of Justice, 8 June 2017 case C-54/16* ..... 1072

1. Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted to the effect that the form and the time-limit in which a person benefiting from an act that is detrimental to all the creditors must raise an objection under that Article, in order to challenge an action to have that act set aside in accordance with the *lex fori concursus*, and the question whether that Article may also be applied by the competent court of its own motion, if necessary, after the time-limit allowed to the party concerned has expired, fall within the procedural law of the Member State on whose territory the dispute is pending. That law must not, however, be less favourable than the law governing similar domestic situations (principle of equivalence) and must not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness), that being a matter for the referring court to determine.
2. Article 13 of Regulation No 1346/2000 must be interpreted to the effect that the party bearing the burden of proof must show that, where the *lex causae* makes it possible to challenge an act regarded as being detrimental, the conditions to be met in order for that challenge to be upheld, which differ from those of the *lex fori concursus*, have not actually been fulfilled.
3. Article 13 of Regulation No 1346/2000 may be validly relied upon where the parties to a contract, who have their head offices in a single Member State on whose territory all the other elements relevant to the situation in question are located, have designated the law of another Member State as the law applicable to that contract, provided that those parties did not choose that law for abusive or fraudulent ends, that being a matter for the referring court to determine.

37. *Court of Justice, 8 June 2017 case C-111/17 PPU* ..... 1075

Article 11(1) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in a situation, such as that in the main proceedings, where a child has been born and has lived continuously with her mother for several months, in accordance

with the joint wishes of her parents, in a Member State other than that where those parents were habitually resident before her birth, the initial intention of the parents with respect to the return of the mother, together with the child, to the latter Member State cannot allow the conclusion that that child was 'habitually resident' there, within the meaning of that Regulation.
Consequently, in such a situation, the refusal of the mother to return to the latter Member State together with the child cannot be considered to be a 'wrongful removal or retention' of the child, within the meaning of Article 11(1).

38. *Court of Justice, 14 June 2017 case C-67/17* ..... 1080

Article 1(2)(a) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a dispute such as that in the main proceedings, relating to the liquidation of property — acquired during marriage by spouses who are nationals of a Member State but domiciled in another Member State — after a divorce has taken place, does not come within the scope of that Regulation but comes rather within the scope of matrimonial property regimes and, consequently, within the scope of the exclusions listed in Article 1(2)(a) of that Regulation.

39. *Court of Justice, 15 June 2017 case C-249/16* ..... 1081

1. Article 7(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a recourse claim between jointly and severally liable debtors under a credit agreement constitutes a 'matter relating to a contract', as referred to in that provision.
2. The second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that a credit agreement, such as that at issue in the main proceedings, between a credit institution and two jointly and severally liable debtors, must be classified as a 'contract for the provision of services' for the purposes of that provision.
3. The second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, where a credit institution has granted a loan to two jointly and severally liable debtors, the 'place in a Member State where, under the contract, the services were provided or should have been provided', within the meaning of that provision, is, unless otherwise agreed, the place where that institution has its registered office, and this also applies with a view to determining the territorial jurisdiction of the court called upon to hear and determine an action for recourse between those joint debtors.

*DOCUMENTS*

Amendments to and restatement of Italian private international law rules on registered partnerships pursuant to Article 1 para. 28 letter *b* of Law 20 May 2016 No. 76 (Legislative Decree 19 January 2017 No. 7) ..... 154

Regulation (EU) No. 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters .... 156

Communications to the European Commission pursuant to Article 50 of Regulation (EU) No. 655/2014 ..... 192

Agreement between Italy and Brasil on the employment of family members of diplomatic, consular and administrative personnel. ..... 196

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings ..... 443

Urgent measures to safeguard investors in the banking sector ..... 493

Italian implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. ..... 496

Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes ..... 497

Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ..... 809

Extradition treaty between Italy and Chile, with protocol. ..... 815

Private International Law Act of the Principality of Monaco (Law 28 June 2017 No. 1448) ..... 1087

Opinion of the Ministry of Internal Affairs on the application of Article 1 para. 36 of Law 20 May 2016 No. 76 on unmarried couples to Italian citizens or to foreigners resident in Italy. ..... 1105

*CURRENT EVENTS AND RECENT DEVELOPMENTS*

F. FAVUZZA, Security Council Resolution No 2347 (2017) and the protection of cultural heritage in situations of armed conflict and from terrorist groups 529

C.M. MARIOTTINI, Two recent judgments by the US Supreme Court on jurisdiction against defendants not domiciled in the State of the Court seized ..... 824

R. RAFFELSIEPER, Report on Recent German Case-Law relating to Private International Law in Civil and Commercial Matters ..... 201

S. SPANCKEN, Report on Recent German Case-Law relating to Private International Law in Family Law Matters ..... 209

*Legislative, judicial and international practice.* International treaties coming into force in Italy (according to the Official Journal from 28 November 2016 to 14 March 2017) – Contracting Parties of the Hague conventions in force – «*Brexit*» Act approved – New EU rules concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment – New provisions concerning restrictive measures in relation to Syria, Democratic Republic of Korea and Iran – European Parliament study on cross-border recognition of adoptions – European Parliament Resolution on cross-border aspects of adoptions – Recommendations by the Court of Justice of the EU to national courts and tribunals in relation to the initiation of preliminary ruling proceedings – Judgment by the Italian Constitutional Court on the granting to children of the maternal surname – New ECHR judgment in the case of *Paradiso and Campanelli* v. *Italy* – ECHR judgment in the case of *Naku* v. *Lithuania and Sweden* ..... 217

*Legislative, judicial and international practice.* International treaties coming into force in Italy (according to the Official Journal from 15 March to 30 May 2017) – European Council guidelines for «*Brexit*» negotiations – New provisions concerning restrictive measures in relation to Zimbabwe, Democratic Republic of Korea, Belarus, Sudan and South Sudan, Republic of Guinea-Bissau, Central-African Republic, Ukraine, Syria, Libya and Yemen – The 2017 EU Justice Scoreboard – European Commission's 2017 EU Citizenship Report – European Commission Report on the application of the EU Charter of Fundamental Rights in 2016 – Communication from the European Commission on the protection of children in migration – New French rules on immunity of States from *interim* measures and enforcement – ICJ order on the request for the indication of provisional measures in the case on «Immunities and Criminal Proceedings» (*Equatorial Guinea* v. *France*) – ECHR judgment on defamation and freedom of press in the case of *Kunitsyna* v. *Russia* ..... 540

*Legislative, judicial and international practice.* International treaties coming into force in Italy (according to the Official Journal from 31 May to 12 July 2017) – New provisions concerning restrictive measures in relation to Iran, Centro-African Republic, Syria, in view of Russia's actions destabilizing the situation in Ukraine and in response to the illegal annexation of Crimea and Sevastopol – Amendments to the consolidated law on immigration and treatment of foreigners concerning the contrast to illegal immigration and new provisions on unaccompanied minors – Institution of specialized courts for matters concerning immigration, international protection and freedom of circulation of EU citizens – New provisions on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer – New provisions on the entry and residence of foreign investors – Amendments to Legislative Decree 28 January 2008 No 25 on minimum standards on procedures in Member States for granting and withdrawing refugee status – European Commission position paper on Judicial Cooperation in Civil and Commercial Matters in the «*Brexit*» negotiations – Report from the European Commission on the application of the EU Directive on consumer rights ..... 835

*Legislative, judicial and international practice.* International treaties coming into force in Italy (according to the Official Journal from 13 July to 31 October 2017) – Commission Decision confirming the participation of Ireland in Regulation (EU) 2017/353 on insolvency proceedings – Commission Delegated Regulation replacing Annexes to Regulation (EC) No 861/2007 establishing a European Small Claims Procedure – Commission Delegated Regulation replacing Annex I to Regulation (EC) No 1896/2006 creating a European order for payment procedure – Commission Delegated and Implementing Regulations concerning Regulation (EC) No 207/2009 on the European Union trade mark – New provisions concerning restrictive measures in relation to Democratic Republic of Korea, Mali, Libya, Democratic Republic of Congo, Ukraine and Syria – Directive on tax dispute resolution mechanisms in the European Union – Complaint by French legal experts to the European Commission for breach of EU law – European Parliament study on the implementation of the European Protection Order Directive ..... 1106

*Notices.* 2017 Courses of the Hague Academy of International Law ..... 244

*Notices.* 2019 Winter courses of the Hague Academy of International Law ..... 1123

*BOOK REVIEWS*
*(See Italian Index)*