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The Enforcement of Foreign Judgments in Italy and in Europe

1. Some General Remarks on Recognition and Enforcement of Foreign Judgments in Italy: the Italian Private International Law Provisions

The recognition and enforcement of foreign judgments in Italy is governed by Article 64 et seq. of the Private International Law Act (Law No. 218 of 31 May 1995), which replaced some provisions of the Italian Code of Civil Procedure and of the Italian Civil Code.

As far as recognition is concerned, pursuant to the Act, any judgment issued by a foreign court is automatically recognized in Italy without the need of a court order (which was required under the old law), unless the recognition or enforcement of the foreign judgment is denied or resisted by the person against whom it is asserted. In order for a foreign judgment to be (automatically) recognized, however, it must satisfy the following requirements:

- The judge who issued the judgment must have had jurisdiction over the matter in accordance with the relevant Italian principles;
- The original summons or claim must have been served upon the defendant in compliance with the prescriptions of the state in which the process took place, and the fundamental right to a defence must not have been violated;
- The parties must have appeared in the action in accordance with the local procedural law, or a default must have been properly declared in accordance with such law;
- The foreign judgment must be final and binding according to the law of the jurisdiction in which it was issued;
- The foreign judgment must not conflict with any final judgment issued by an Italian court;
- No proceedings may be pending before any Italian court in relation to the same subject matter and between the same parties which were instituted prior to the commencement of the foreign proceedings; and
- The rulings contained in the foreign judgment may not conflict with Italian public policy.

As I have just explained, no formal recognition is required.

However, pursuant Article 67 of said Italian act of 1995, in case of not compliance with or of challenging of the automatic recognition of foreign judgement, or when it appears to be necessary to enforce the judgement (see below, on this aspect), anyone who has an interest in it can

lodge a request with court of appeal of the place in which the judgment has to be enforced, asking the court to ascertain the existence of the requirements for the recognition of the judgement. The judge can also incidentally recognize a foreign judgement with an effect which is limited to this second judgement.

Just to give an example of this situation, in a recent judgement before the first instance court of Belluno, the court, which had been asked by an Ukrainian woman to issue a legal separation judgement against her husband (Ukrainian citizen), rejected her plea, because it incidentally recognized the divorce judgement previously rendered by a Ukrainian court, so deciding that, being the couple already divorced, they could no longer get a judgement of legal separation (as, following the recognition of the foreign judgement, that couple could not be considered as married).

Coming to enforcement, we have just seen that a special procedure for recognition is requested by above mentioned Article 67 in order to have a foreign judgement enforced. Therefore we can say that, while recognition is, generally speaking, automatic (save challenge by concerned party), enforcement presupposes as a formal requirement a previous formal recognition (*delibazione*) by an Italian appellate court. After such recognition has occurred, the foreign judgement can be enforced following the same procedure provided for by Italian law for the execution of Italian judgements.

2. Recognition and Enforcement of Foreign Judgments in Italy and in Europe: the European Law Provisions

The issue of recognition and enforcement of foreign judgements forms also object of a number of international conventions to which Italy is part, as well as of an increasing array of regulations issued by the European Union.

Among such European Regulations let me mention the following ones:

- Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings.
- Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments (called also "Brussels I" Regulation). It entered into force on 1st March 2002 and simplifies the procedure for having a foreign judgment declared enforceable, replacing the Brussels Convention of 1968. The Regulation was extended to Denmark following the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- Regulation (EC) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (called also "Brussels I *bis*" Regulation). As of 10 January 2015 this instrument replaced "Brussels I", but only in proceedings instituted after that date; the same is true for decisions issued after that date. In other cases ("older" cases and judgements), "Brussels I" is still applicable.
- 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 (called also "Brussels II *bis*" regulation).
- Regulation (EC) No. 805/2004 of 21 April 2004 creating a European enforcement order for uncontested claims.
- Regulation (EC) No. 1896/2006 of 12 December 2006 creating a European order for payment procedure (which allows creditors to recover their civil and commercial claims according to a uniform procedure that operates on the basis of standard forms).

– 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.

Also some cross-border new procedures have been created, in order to directly obtain an enforcement title, which is automatically recognised and enforceable in any EU State (save Denmark):

– Regulation (EC) No. 1896/2006 of 12 December 2006 creating a European order for payment procedure.
– Regulation (EC) No. 861/2007 of 11 July 2007, establishing a European Small Claims Procedure.

A tendency within the EU legal order is to progressively abandon the distinction between recognition and enforcement. Aim is to have a system in which European judgements can "circulate" among EU countries without any need of formal recognition or *exequatur*.

The "Stockholm Programme" (2010-2014) approved by the EU clearly set that goal, providing for that "As regards civil matters, the European Council considers that the process of abolishing all intermediate measures (the *exequatur*), should be continued during the period covered by the Stockholm Programme. At the same time the abolition of *exequatur* will also be accompanied by a series of safeguards, which may be measures in respect of procedural law as well as of conflict-of-law rules." As far as such safeguards are concerned, the same document said that appropriate measures will especially regard "judgments taken by default, which may be measures in respect of procedural law as well as of conflict of law rules (e.g. the right to be heard, the servicing of documents, time required for providing opinions, etc). The main policy objective in the area of civil procedural law is that borders between countries in the European Union should not constitute an obstacle either to the settlement of civil law matters or to initiating court proceedings, or to the enforcement of decisions in civil matters. With the Tampere conclusions and The Hague programme, major steps have been taken to reach this goal. However, the European Council notes that the effectiveness of Union instruments in this field still needs to be improved."

The main achievement in this field was the already mentioned Regulation (EC) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (called also "Brussels I *bis*" Regulation).

Unfortunately, after the expiry of the "Stockholm Programme" in 2014 the thrust towards a higher degree of European integration seems to have withered, maybe as a side-effect of the general crisis and lack of confidence affecting Europe in these sad and difficult times.

3. Recognition and Enforcement of Foreign Judgments in Italy and in Europe: From "Brussels I" to "Brussels I bis*"*

The already mentioned "Stockholm Programme" was implemented, as I already hinted, with Regulation (EC) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (called also "Brussels I *bis*" Regulation).

This new instrument replaced "Brussels I", as of 10 January 2015, but only in proceedings instituted after that date; the same is true for judgments issued after that date, whereas in other cases ("older" cases and judgements), "Brussels I" is still applicable.

Regulation 1215/2012 substantially simplifies the system put in place by the Brussels I Regulation, as it abolishes the need for an *exequatur*, i.e. the procedure for the declaration of enforceability of a judgment in another Member State. The Brussels I Regulation required a declaration of enforceability for a judgment given in a Member State to be enforced in another Member State (Article 38). According to the European Commission, the *exequatur* used to cost

between € 2,000 and € 3,000 depending on the Member State, although it could cost up to € 12,700 including lawyers' fees, translation and court costs. In almost 95% of cases, this procedure was a pure formality.

Regulation 1215/2012 provides that a judgment delivered in a Member State, which is enforceable in that Member State, shall be enforceable in any other Member State, without any declaration of enforceability being required (Article 39). An enforceable judgment shall entail the power to proceed to any protective measures existing under the law of the Member State addressed (Article 40).

Pursuant to Article 42 of the Brussels I *bis* Regulation, a party who wishes to enforce a judgment delivered in another Member State shall provide the competent enforcement authority with:

a) A copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

b) A certificate issued by the court of origin in the form provided in Annex I of the regulation.

Notwithstanding the above, the new regulation still provides for grounds to refuse enforcement of a judgment (Articles 46 et seq. of the Brussels I *bis* Regulation; Articles 34 and 35 of the Brussels I Regulation).

These grounds are the same as those for the refusal of recognition of a judgment (Article 45 of the Brussels Ibis Regulation):

a) If the enforcement is manifestly contrary to public policy (*ordre public*) in the Member State addressed;

b) Where the judgment was delivered in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence;

c) If the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

d) If the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed;

e) If the judgment conflicts with the rules governing the jurisdiction when the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employees was the defendant (respectively Articles 10 to 16, Articles 17 to 19 and Articles 20 to 23), and the rules governing the exclusive jurisdiction (Article 24).

Regulation 1215/2012 enhances effectiveness of choice of court agreements.

Article 27, Para. 1, of the "old" Brussels I Regulation reads as follows: "where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized was established." This mechanism led to an undermining of contractual jurisdiction clauses with the rushing to the favoured court in order to gain advantage of first seizure. This abuse of the *lis pendens* rule is also known as "Italian torpedo."

The new Brussels I *bis* Regulation now gives the court chosen by the parties precedence over all other courts regardless of when proceedings are started. The new regulation preserves the general rule that any court other than the court first seized must stay its proceedings pending its decision (Article 29, Para. 1). However, an important exception has been inserted. Pursuant to Article 31, Para. 2, of Regulation 1215/2012, where a court of a Member State on which parties have conferred exclusive jurisdiction is seized, any court of another Member State shall stay the

proceedings until the court seized on the basis of the agreement declares that it has no jurisdiction under such agreement.

In other words, should the parties have conferred exclusive jurisdiction on a certain court, the latter may proceed to hear the case, even if it was not first seized and all other courts shall stay their proceedings. Once the court designated in the agreement has established jurisdiction, any court from another Member State shall decline jurisdiction in favour of the former one.

Regulation 1215/2012 provides for an extension of the jurisdiction rules to disputes involving defendants who are not domiciled in an EU Member State.

Under the "old" Brussels I Regulation, consumers were often not able to exercise their rights when, for instance, purchasing goods from an undertaking domiciled in a non-EU country but selling products in the EU. The new jurisdiction rules in relation to employees, consumers and insured shall also apply independently of the domicile of respectively the employer, the undertaking or the insurer, when an exclusive competence rule protecting these three categories of person designates an EU jurisdiction (respectively Articles 20 and 21, Articles 17 and 18, and Articles 10 and next). For instance, an employer which is not domiciled in the EU may be sued in a court of a Member State where (or from where) the employee habitually carries out his work, or in the court of the last place where the employee did so.

4. Recognition and Enforcement of Foreign Judgments in Matrimonial and Parental Responsibility Matters according to "Brussels II bis*" EU Regulation*

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 (Brussels II *bis*) sets forth a single legal instrument to help international couples resolve disputes, involving more than one country, over their divorce and the custody of their children.

Regulation sets out:

- rules determining which court is responsible for dealing with matrimonial matters and parental responsibility in disputes involving more than one country
- rules making it easier to recognise and enforce judgments issued in one EU country in another
- a procedure to settle cases in which a parent abducts a child from one EU country and takes them to another.
- It does not deal with substantive family law matters. These are the responsibility of individual EU countries.

The Regulation applies to civil law cases involving more than one country that relate to:

- divorce
- legal separation
- the annulment of a marriage
- any aspect of parental responsibility (such as custody and access rights).

One of its main objectives is to uphold children's right to maintain contact with both parents, even if they are separated or live in different EU countries.

The Regulation does not apply to cases concerning:

- grounds for divorce or the law applicable in divorce cases
- divorce-related issues such as maintenance
- establishing and challenging paternity
- judgments on adoption and the associated preparatory measures

- annulling or revoking an adoption
- a child's first and last names
- the independence of children from their parents or guardians
- trusts and inheritance
- measures taken in response to criminal acts committed by children

As far as recognition and enforcement are concerned, Under the Regulation, any EU country must automatically recognise judgments given in another EU country on matrimonial and parental responsibility matters. Recognition can be refused if, for example:

- recognition is clearly contrary to public policy
- the defendant did not receive the document initiating proceedings in time to arrange legal defence (in cases where the judgment was given in the defendant's absence)
- recognition is incompatible with another judgment given between the same parties.
- For judgments concerning parental responsibility, recognition can also be refused if:
- the child was not given an opportunity to be heard
- on the request of a person claiming that the judgment infringes his or her parental responsibility, the judgment was issued without this person having been given an opportunity to be heard.

As for enforcement, a judgment on the exercise of parental responsibility enforceable in the EU country where it was issued can be enforced in another EU country when it has been declared enforceable there at the request of any interested party.

However, no declaration is required for judgments

- granting rights of access or
- concerning the return of a child that have been certified by the original judge in accordance with the Regulation.

Cooperation between central authorities in parental responsibility cases

Each EU country designates a central authority (or more than one) whose duties include:

- helping parents seeking the return of a child abducted by another parent and taken to another EU country
- promoting information-sharing on national law and procedures;
- helping courts communicate with each other
- helping parents or guardians seeking to recognise and enforce decisions
- seeking to resolve disagreements between parents or guardians through alternative means such as mediation.

As far as matrimonial matters are concerned (but here only cases concerning divorce and legal separation), we must add that "Rome III" Regulation (Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation) sets forth rules on applicable law in separation and divorce transnational cases.

This instrument provides citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, protects weaker partners during divorce disputes and prevents 'forum shopping'. This also helps avoiding complicated, lengthy and painful proceedings.

More specifically, Regulation (EU) No 1259/2010 allows international couples to agree in advance which law would apply to their divorce or legal separation as long as the agreed law is the law of the Member State with which they have a closer connection. In case the couple cannot agree, the judges can use a common formula for deciding which country's law applies.

This Regulation does not, on the other hand, apply to the following matters: the legal capacity of natural persons; the existence, validity and recognition of a marriage; the annulment of a

marriage; the name of the spouses; the property consequences of the marriage; parental responsibility; maintenance obligation and trusts and successions. It also does not affect the application of Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

It is an instrument implementing enhanced cooperation between the participating Member States. The enhanced cooperation allows a group of at least nine Member States to implement measures in one of the areas covered by the Treaties within the framework of the Union's non-exclusive competences. According to Article 331 TFEU, the non-participating Member States keep the right to join the established enhanced cooperation in progress.

5. Recognition and Enforcement of Foreign Judgments in Italy: the Role of International Conventions

Coming to international conventions to which Italy is part, I would like to mention following ones:

- New Lugano Convention. Signed on 30 October 2007 by the European Union, this new instrument on jurisdiction and enforcement of judgments in civil and commercial matters replaces the 1988 Lugano Convention, which until then had governed the rules on jurisdiction between EFTA Member States (EFTA covers the European Union plus Switzerland, Iceland, Norway and Lichtenstein - however, this latter Member State did not ratify the Brussels Convention). The original Lugano Convention, signed on 16 September 1988, was negotiated on the basis of the Brussels Convention as interpreted by the European Court of Justice over the past 40 years. The construal of the Lugano Convention, however, did not fall within the ambit of the ECJ's jurisdiction, as of course it falls short of the requirements set out under article 293 of the EC Treaty for a convention to be deemed as a piece of legislation produced by the EU. As a result, to avoid divergent views on the application and interpretation of the two Conventions, three additional protocols were adopted. These additional protocols compel the courts of each Contracting State to "pay due account to the principles laid down by any relevant decision delivered by courts of the other Contracting State" in relation to the provisions of either Convention. Protocol No. 2 sets up an information exchange system specifically aimed at achieving uniform interpretation. This information system involves transmitting relevant judgments delivered pursuant to these two Conventions to a central body (a Register of the ECJ). The 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters entered into force between the Member States of the European Union (including Denmark) and Norway on 1 January 2010.
- Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants (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 has been signed in 2003 by Italy, but it has not been ratified yet).
- Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.
- Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.
- Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

- European (Council of Europe) Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Luxembourg, 20 May 1980.

6. Difference between Recognition and Enforcement

The legal term "Recognition" designates the attribution within a certain legal order of effects which are other than the enforceability. This means that a judgement which has been recognised can automatically get all effects which imply a modification in the legal relations among parties and with other subjects. "Enforcement," on the contrary, is the legal proceeding tending to force parties to comply with the judgement. In other words, while recognition automatically affects the level of legal relations, enforcement implies and presupposes the cooperation (spontaneous or forced) by other people.

Just to give an example, saying that a foreign judgement of divorce is recognized means that those persons can marry again, as they are considered to be singles, without any need for the divorce judgement to be revised or submitted to an *exequatur* procedure. Having a former husband pay alimonies according to the divorce judgement is, on the contrary, a matter for execution.

We have already seen that this difference is becoming less relevant in the framework of European Regulations. On the contrary it is still quite relevant if we consider relations between Italian and extra-European legal system, whereas rules of the Italian system of private international law apply.

7. What Conditions are Required in Order to Declare a Foreign Judgment as Enforceable?

As already mentioned, pursuant to Article 67 of the 1995 Act, a foreign judgement has to be formally recognized by a decision of the court of appeal, in order to become enforceable and to be enforced in Italy. This may happen under following conditions:

- The judge who issued the judgment must have had jurisdiction over the matter in accordance with the relevant Italian principles;
- The original summons or claim must have been served upon the defendant in compliance with the prescriptions of the state in which the process took place, and the fundamental right to a defence must not have been violated;
- The parties must have appeared in the action in accordance with the local procedural law, or a default must have been properly declared in accordance with such law;
- The foreign judgment must be final and binding according to the law of the jurisdiction in which it was issued;
- The foreign judgment must not conflict with any final judgment issued by an Italian court;
- No proceedings may be pending before any Italian court in relation to the same subject matter and between the same parties which were instituted prior to the commencement of the foreign proceedings; and
- The rulings contained in the foreign judgment may not conflict with Italian public policy.

We can add that reciprocity is no longer a pre-condition for enforcing foreign judgments in Italy. Before the reform of 1995 came into force, Article 16 of preliminary provisions of the Italian Civil Code stipulated that foreigners could enjoy same civil rights as citizens only under condition of reciprocity. This rule has been quashed by aforementioned law.

8. What Conditions are Required in Order to Refuse the Enforcement of a Foreign Judgment?

I have already explained the requirements for the enforceability of a foreign judgement. Therefore the Italian courts of appeal will not declare enforceable those judgments which do not comply with above mentioned requirements.

Let me point out in particular, in this framework that Italian law provides that foreign judgments shall not conflict with Italian internal international public policy (*ordine pubblico interno internazionale*), often described in a more simple way as "Italian international public policy." Italian case law on the definition and scope of Italian international public policy is very limited and has tended not to involve commercial cases. In those cases in which Italian courts have ruled on the issue, the practice has been to adopt a very narrow construction of public policy. It is therefore possible for an Italian judge to order the recognition of a foreign judgment which, had the judgment originated in Italy itself, would not have been issued on the basis that it violated public policy.

Just to give an example, which also shows the difference between "Italian international" and "Italian internal" public policy, in 1984 the Italian Supreme Court of Cassation declared as not in violation of Italian international public policy the American rule which recognized validity and enforceability of prenuptial agreements in contemplation of divorce, in a case concerning an American couple. The same Court said that that very kind of agreement would cause an infringement of the Italian internal public policy (i.e. Italian mandatory rules, from which the parties may not depart, but which do not represent fundamental and indefeasible values of Italian society).

9. The Enforceability in Italy and in Europe of Foreign Temporary Orders

According to Article 10 of Law 218/95 temporary orders can be issued by an Italian judge when the temporary order has to be enforced in Italy or when there is Italian jurisdiction on the merits of the case.

So, for instance, in case of a prejudice caused by a foreigner against an Italian citizen, the Italian judge will have jurisdiction provided that assets of debtor to be frozen are located in Italy, or if the place where the harmful event occurred or may occur is located in Italy (because in this latter case the Italian judge has jurisdiction over the merit, according to our conflict law rules).

As far as recognition of foreign temporary orders is concerned, it has to be underlined that Article 64 of the Italian international private law reform of 1995 only concerns "judgments." According to the Italian definition of "judgment" a temporary order is not contemplated under that provision; reason is that interim and precautionary measures undergo simplified and accelerated procedures, they tend to be provisional and they have are instrumental to the case (this means that, unlike judgements, such decisions cannot become permanent and final). As a consequence, a foreign temporary order (such as e.g. an American "asset-freezing injunction") cannot be recognized or enforced in Italy. Foreign creditors who want to protect their credits and or assets in Italy will have to lodge a petition with an Italian judge.

Special rules are provided for within the European Regulation system.

Pursuant to Article 35 of "Brussels I *bis*" regulation, "Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter." According to *Considerandum* 33 of same Regulation, "Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This

should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State."

Pursuant to Article 20 of the "Brussels II *bis*" Regulation "1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter. 2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate."

According to Article 14 of Regulation No. 4/2009, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation, "Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter."

Coming to the special case of a temporary order for alimony, I think this kind of decision, even if it is a provisional one, can be considered as a "decision," pursuant to Article 2 of said regulation No 4/2009. According to this provision, "1. For the purposes of this Regulation: 1. the term 'decision' shall mean a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term 'decision' shall also mean a decision in matters relating to maintenance obligations given in a third State."

This means concretely that, in alimony cases, the decision will be automatically enforceable, according to Articles 17 et seq. of Regulation No. 4/2009, which provide for abolition of *exequatur* for decisions over maintenance obligations in Member States bound by the 2007 Hague Protocol, without any special procedure being required and without any possibility of opposing its recognition and also without any need for a declaration of enforceability.

10. The Incidental Recognition of Foreign Judgments

The Italian judge can also incidentally recognize a foreign judgement with an effect which is limited to this second judgement. This is literally provided for by Article 67, Para. 3, of said Law No. 218 of 1995.

I have already referred the case of a recent judgement before the first instance court of Belluno, where the judge, who had been asked by an Ukrainian woman to issue a legal separation judgement against her husband (Ukrainian citizen), rejected her request, because the court incidentally recognized the divorce judgement previously rendered by a Ukrainian court, so deciding that, being the couple already divorced, they could no longer get a judgement of legal separation (as, following the recognition of the foreign judgement, that couple could not be considered as married).

11. The Enforcement of Judgments concerning Properties/Estates

A case of particular interest in the field of recognition of foreign judgments is the one concerning properties/estates and especially property of spouses.

I can refer here of a case adjudicated by the Italian Supreme Court of Cassation some years ago concerning an American couple, living in the States, but having properties also in Italy. A divorce judgment of the Cook County (Illinois) Court had decided about the division of the assets of the former spouses, assigning to the ex wife the property of a house previously in Italy. The woman had asked to the competent Italian Appellate Court the enforcement of the decision, in order to have the exclusive property right in Italy registered in the estate books. The former husband had asked the Court to reject that petition for enforcement. According to the defendant, the American judgment was against the Italian public policy, because it had given to the woman the property of a house the husband had bought alone in 1968, before the common property regime (community of acquests) became the default regime in Italy. Therefore, according to him, the house did not fall within the co-ownership regime and subsequently it could not have been transferred by the American Court in the exclusive property of the former wife.

The Italian Supreme Court of Cassation (see Cass., 18 April 2013, No. 9483) recognized that the American Court was provided with jurisdiction to adjudicate the case. Furthermore it had applied the American Law rule, according to which, at the moment of the divorce, the judge can adjudicate and "re-adjust" properties of spouses, according to what the Court deems fair, regardless of rules on property, deeds and provenance of money. Of course this rule is contrary to Italian law, because it is impossible for an Italian judge to adjudicate in such a way (and, in particular, it is impossible to allocate the personal property of one of the spouses to the other, if both parties do not agree). However, the Italian Cassation Court correctly remarked that the case did not concern the application of Italian law. The question was whether the foreign decision was in compliance with the Italian "*ordre public*" rule and the conclusion was that no violation of public policy was envisageable. The American law (or, more exactly: the Illinois law) rule applied by the foreign judge does not breach the fundamental principles of the Italian legal system, even if it is not in compliance with it.

Just to give you an idea, the same Court has stated, in 1996, that the principles of the Canadian law, according to which no succession right is given to relatives of the deceased against the provisions of their last wills and testaments, are not against the Italian public policy rule (see Cass., 24 June 1996, No. 5832).

On the contrary, in more recent times (see Cass., 22 August 2013, No. 19405), the Court has declared as not in compliance with Italian international public policy rules the Austrian law (Article 1327 of the *ABGB*—Austrian Civil Code), according to which compensation for damages for the death of a close relative (a child, in that case) cannot comprise also moral damages, but must encompass only the material prejudice suffered by the relative as a consequence of the death. The final result was that a foreign law or a foreign decision excluding compensation for moral damages as a consequence of a wrongful act causing the decease of a close relative is against the Italian public policy rule.

12. A Couple of Italian Cases concerning Australia

In the Italian Cassation Court electronic data base we can find a very little number of cases concerning relations between Italy and Australia.

However, I would like to cite here a case decided in 2011 (see Cass., 22 December 2011, n. 28363). The summary of the judgment reads as follows: "In cases regarding administrative sanctions (fines) related to vehicle circulation, whereas a car belongs to a trust (created on the basis of Australian law), subject to the sanction is not the trust in itself, but the person of the trustee, because this person is the formal owner of the vehicle; this is a consequence of Article 2, Para. 2.b. of the law of 16th October 1989, No. 364, ratifying for Italy the Hague Convention on the law applicable to trusts and on their recognition, according to which 'b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee'."

Another interesting case is the one decided by a judgement of the year 2000 (see Cass., 19 September 2000, No. 12398). Italian company A had been sentenced to restore damages for breaching a contract with the Australian company B. The former had sold to the latter some materials for making ice creams, but these substances had turned out to be battered. The Australian company B had sold the battered materials to the Australian company C. The latter had sued B before an Australian Court; B had sued "in guarantee" A before the same Court; so the Italian company A had been sentenced by the Supreme Court of New South Wales to pay more than a half million Australian Dollars to the Australian company B (which had been sentenced to pay damages to C). The Italian company had then objected to the enforcement of the Australian decision in Italy, because, in its opinion, the Australian Judicature had no jurisdiction on the case.

However, the Italian Supreme Court of Cassation recognised that the Australian Court had jurisdiction, according to the provisions of the Brussels Convention of 1968. This is because Article 64 of the Italian law No. 218 of 1995 (Italian Reform of the Private International Law) refers to the provisions of the Brussels Convention, which, in this way, has a sort of "universal" character.

Well, according to Article 6, Para. 1.2. of the 1968 Brussels Convention, "A person domiciled in a Contracting State may also be sued: (…) 2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case." The case was about the interpretation of the words "warranty or guarantee." According to the Italian company, this means only the so called "proper warranty," which is to say when the defendant sues his/her insurance company, but the Supreme Court said this provisions encompasses also the so called "improper warranty," which is to say when the defendant wants to extend the litigation to the subject he/she thinks is, at the end of the day, really liable of the breaching of the contract or of the tort.

It may be interesting to say that the above mentioned rule concerning a third party we found in the 1968 Brussels Convention is the same we may find in Article 8, Para. 1.2. of the Brussels I *bis* Regulation. I add this remark because Italian Scholars are currently disputing on whether the reference in the 1995 Italian private international law statute to the 1968 Brussels Convention must now be interpreted as referred to Brussels I *bis* Regulation, which may cause problems in all cases in which provisions of the new Regulation do not match with the correspondent provisions of the Convention.