Spanish Judicial Decisions in Private International Law, 2003

This section was prepared by Dr. E. Zabalo Escudero, Professor of Private International Law at the *Universidad de Zaragoza*, with the collaboration of Dr. J. Pérez Milla, Dr. P. Diago Diago and Dr. K. Fach Gómez.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

II. INTERNATIONAL JURISDICTION

1. Family

– *SAP* Valencia. 3 July 2003. Web Aranzadi JUR 2003\212530.

Jurisdiction of Spanish Courts to hear a marriage nullity case in a foreign country between a Spanish complainant and his foreign spouse.

"Legal Grounds:

(. . .) And in accordance with articles 21 and 22 of the *LOPJ*, Spanish Courts and Tribunals have jurisdiction in the marriage nullity case held in Havana between the complainant of Spanish nationality and the defendant of Cuban nationality and therefore the first of the grounds for opposition to the judgement of the Court of First Instance cannot be upheld and must be completely dismissed".

– *SAP* Orense. 9 June 2003. Web Aranzadi JUR 2003\178058.

Jurisdiction of Spanish Courts in an inheritance division matter. Tacit submission.

"Legal Grounds:

(. . .) In accordance with article 63.1 *LECiv.*, the defendant and those that may legitimately be party to the case being heard may file a complaint regarding the lack of jurisdiction of the court before which the case was filed on the grounds that it should be heard in a foreign court. In accordance with article 64.1 the declinatory plea must be filed within the first two days of the period allowed to respond to the complaint or within the first five days of the hearing citation and will have the effect of suspending the principal proceedings under way until it is resolved. In the case at hand, a request for the judicial division of the inheritance of Luis Manuel filed by his siblings Camila, Mari Luz and Víctor, the decision was taken to hold a meeting with all of the heirs to establish an inventory. One of the heirs, the appellant José Pablo who failed to file the declinatory plea within the five-day deadline, filed a complaint for the first time at the meeting to establish the inventory (held subsequent to the five-day deadline) claiming lack of jurisdiction and the competence of the Panamanian courts given that the inheritance documents

were processed by Luis Manuel in Panama. At that same act the appellant opposed the merits of the case prior to formulating the jurisdiction exception and therefore the latter could not be upheld both for the extemporaneous nature of the allegation as well as the tacit admission of jurisdiction which was expressly accepted at the 20 December 2001 hearing ('the competence of this court which has already been decided is not being called into question') and therefore it is confusing as to why the issue would be brought up again in this appeal. Assuming the jurisdiction of Spanish Courts to hear the initial request, the existence of judicial proceedings on the same issue in the Panamanian courts is irrelevant and the conclusion is therefore reached that such a procedure cannot support the exceptions of litispendency or *res judicata* that were also invoked".

– *SAP* Barcelona. 1 April 2003. *AC* 2003\1120.

Lack of jurisdiction of Spanish Courts in proceedings with regard to a child born out of wedlock. Submission on the part of the complainant of the principal case to the courts of Ecuador and the child's legal domicile in that country.

"Legal Grounds:

(. . .) The Judge of the court of first instance allowed the declinatory plea regarding jurisdiction based on the lack of jurisdiction of the Spanish Courts to hear the complaint filed and pointed out that the submission of the complainant of the principal case to the courts of Ecuador and to the child's legal domicile in that country led to this decision. (. . .) It is our view that, in fair application of the above-mentioned doctrine, the conduct of the appellant was what determined the jurisdiction of the Ecuadorian Courts in light of the fact that he acted freely before such courts. In contrast to the view expressed by the appellant, the case filed before the Spanish Courts is the one seeking to weaken or alter a privilege that he himself recognised by establishing the legal residence of his partner and daughter. His claims of defencelessness caused by the case being filed before the courts of Ecuador cannot be heard in accordance with the different procedural principles in force in the two countries given that there is no prior objective ground giving rise to doubts concerning the procedural assurances provided to the appellant in that nation and to which he submitted in the past as was indicated above".

2. Contracts

– *STS.* 11 June 2003. *RJ* 2003\5348.

Jurisdiction of Spanish Courts to hear a case regarding property statement, division of shared property and other issues regarding assets in Spain. The suit was filed by one co-owner against the other, both foreign nationals who shared a non-matrimonial registered partnership.

"Legal Grounds:

(. . .) The *petitum* clearly shows that the litigation has undeniable patrimonial content derived from the existence of a civil community formed between the parties whose separation is proposed as well as the corresponding rendering of accounts

in addition to compliance with the agreement entered into by the parties on 28 July 1986 which also reflects patrimonial content in its reference to the recognition of propriety ownership regarding the objects in question, all of which separates the entanglement or rectification of the litigation from the institution of marriage. This is independent of the fact that when the assets in question were acquired, the parties were joined in a relationship not legally recognised in Spain and therefore in this particular case it is not possible to apply the extension to the institution of marriage referred to in Article 22.3 legally denominated in Spain as a *de facto* couple. The application of article 22, paragraphs 1 and 2 (and not the erroneously applied number 3 which, once again, envisages matrimonial relationships) is the basis for the jurisdiction that thus becomes undeniable therefore calling for the overturn of the declared lack of jurisdiction and, in accordance with lapsed article 1715 *LECiv.*, the examination of the merits of the case. Therefore, this court recognises the jurisdiction that was rejected in first instance while also recognising the validity of the argumentation made on this issue by the Court of Instance in light of the fact that the source of the proceeding, as regards its respective postulate, dates back to the content of that 28 July 1986 agreement (. . .)".

– *STS.* 1 April 2003. *RJ* 2003\2979.
Tacit submission to Spanish Courts.
"Legal Grounds:
(. . .) The first ground of the appeal (article 1692–4° of the old *LECiv.*) denounces over zealousness in the exercise of jurisdiction leading to infraction of article 51 of the above-mentioned *LECiv.* The Appellants (*Panini España, SA* and *Panini, SpA*) hold that, although the first of the two companies cited above was the one that commercialised in Spain the albums and picture cards that are the focus of the litigation, the printing of this material was done by the second company in Italy and this activity is therefore subject to Italian law and not Spanish law given that it cannot be considered a 'civil business initiated in Spain'. If the alleged 'meddling in image rights' had indeed been committed by *Panini, SpA*, it could only have been committed in Italy. The approach confuses the procedural question of the acting jurisdiction, in accordance with the criteria set out in 'international jurisdiction', with the legal rules of material law applicable to the case and fails to clarify, although implicitly this is deduced, whether its new petition, set out in this ground, refers to both defendants or, as can be inferred, exclusively to one. Moreover, this analysis of the ground, lacking in arguments, should find support in the lack of conviction regarding its viability because it is all for nought; according to the proceedings the Italian company submitted to (tacitly at least) Spanish Courts and Tribunals meaning that the latter have jurisdiction to hear this case, in accordance with paragraph two of article 22 *LOPJ* given that the lack of passive legitimacy that was asserted does not give rise to any exception of lack of jurisdiction but rather is an argument in favour of the acceptance of the jurisdiction under dispute".

– *STS* 1079/2003. 10 November 2003. Web Aranzadi.

Tacit submission to Spanish Courts.

"Legal Grounds:

(. . .) The only request laid down in the complaint filed was to sentence the defendant to be present and to submit to the liquidation of the joint property arrangement that existed between the two parties for the duration of the marriage . . . (. . .) In response to the complaint the defendant, Mr. Rickmann, tacitly submitted, by virtue of having failed to submit a declinatory plea, as he had in the former case heard before this same Court of Haro. In consequence, no infringement has been detected of article 9.2 of the Civil Code given that it is a private international law regulation the purpose of which is to determine the rule applicable to personal effects and especially to patrimonial assets under the economic-matrimonial regime but not to effects resulting from the dissolution of the marriage bond. There was no infringement of article 22.3 of the *LOPJ* either given that the defendant had established legal domicile in Spain; a fact accredited in the judgement handed down in first instance. In addition to the above, the criteria set out in number one and two of the same article cited above prevail and are indeed applicable".

– *AAP* Madrid. 23 April 2003. Web Aranzadi JUR 2003\274111.

Lack of jurisdiction of Spanish Courts in a VAT claim filed by the Spanish Tax Administration.

"Legal Grounds:

(. . .) Therefore, this party is of the opinion that the origin of the tax obligation claimed is not contractual but rather extra-contractual and arises by virtue of an act of the Spanish Government meaning that, in accordance with article 22.3 of the *LOPJ*, the Spanish Courts have jurisdiction in this claim especially considering that the taxable transaction took place in Spain. It is also clear that for the defendant, as well as for the complainant and in the interest of justice, Spanish jurisdiction is the most advisable especially in light of the fact that the defendant has the means and is present in our country and the alternative jurisdiction is not clear. For these reasons a request is filed to overturn the resolution of the First Instance Court and to replace it with a new resolution recognising the jurisdiction of the First Instance Court to resolve this case with its inherent declarations. In response to the above statement, it should be pointed out that, despite the affirmations made by the appellant, the obligation that forms the basis of the claim cannot, under any circumstances, be considered to be of an extra-contractual nature because, in contrast with the complainant's pretension, the collection of VAT corresponding to the purchase of refrigerated lorries cannot be conceived independent of the sales contract because, by legal imperative, the payment of the tax arises from the existence of a transaction subject to such tax. The tax obligation cannot, therefore, be conceived independently of the sales contract at the time when the tax authorities called for its payment. Moreover, this is independent of the fact that VAT accrued by virtue of the sales operation and is an autonomous

obligation arising *ex lege* and therefore independent of the price agreed to by the contracting parties. Furthermore, in light of the contract subscribed to (which was perfected in France, the country that accepted the offer and where payments were made) it was drawn up as such by the appellant party itself in the invoices; an issue not susceptible to change in the terms called for by the appellant for the subsequent claim of VAT by the purchasing party. For all of the above, the appeal should be rejected".

– *AAP* Valladolid. 30 June 2003. Web Aranzadi JUR 2003\191378.

Lack of jurisdiction of Spanish Courts with respect to a sales contract the payment of which was to be made in Germany.

"Legal Grounds:

(. . .) With regard to the specific issue of jurisdiction, the appellant herself pointed to article 5.1 of the 1968 *BC* as the applicable regulation – a precept assigning jurisdiction to the court at the location where the obligation must be fulfilled. As concerns sales contracts, consolidated case law has established the criteria applied in our 10 November 1999 ruling that the place where the obligation is to be fulfilled is where payment should be made. The facts of the complaint clearly seem to indicate that the place of payment was Germany because it was there, according to the banking information provided by the seller, that a bank transfer was made in the amount of the down payment and a personal cheque was issued for payment of the balance. Moreover, the ruling correctly appealed considers the place of delivery to be Germany because the merchandise was delivered there to the porter in compliance with article 31.a) of the cited Vienna Convention".

– *AAP* Cadiz. 31 March 2003. Web Aranzadi JUR 2003\158981.

Lack of jurisdiction of Spanish Courts in monitory procedures.

"Legal Grounds:

(. . .) A brief overview of the complaint filed is enough to show that the complainant herself has named Schiedam (Holland) as legal domicile, requesting notification of the claim at said domicile and the summons for payment issued to the debtor at that domicile. Therefore, and without having to analyse jurisdictional issues, when requesting the monitory procedure in the circumscription where the debtor has legal domicile to be heard by the Judge of First Instance and having infringed upon the above regulation and the requirements highlighted, the view is that the First Instance Judge does not have jurisdiction to hear the monitory procedure requested. As a result, it is also the view of the court that the complaint should not be granted leave to proceed and much less notification be issued at the expressed domicile".

– *AAP* Huelva. 12 September 2003. Web Aranzadi JUR 62\2003.

Tacit submission in marine transport issues. Article 17.c) *BC*.

"Legal Grounds:

(. . .) In this case one of the uses of marine transport is the inclusion of submission clauses to the courts of another State and in this sense the so-called Spanish 'minor case law' has become prevalent. Although the use of this type of clause is common practice in the sector, it cannot be interpreted (as the appellant has done) that submission to the Portuguese Courts is not a use of the international transport of goods because the use is constituted by the submission to one of the contracting states and not to a single specific state, Portugal being one of the contracting states. In addition to this requirement, the requirement that one of the contracting parties have legal domicile in Portugal is also fulfilled. The requirement of compliance with the attributive clause of jurisdiction is also applicable. The judgment handed down by the *TJCE* on 16 March 1999 points out that 'in so far as an attributive competition clause attached to a bill of lading is valid according to article 17 of the Agreement in the docker – porter relationship, said clause may be invoked vis-à-vis a third holder of such bill of lading from the moment at which, in compliance with applicable national law, the holder of the bill of lading assumes the rights and duties of the porter'. In this case it is not enough to only consider the supposition underscored by the *TJCE* (when the use of the clauses corresponds to a use prevailing in the field of international commerce in which they operate and are familiar with or should be familiar with); one must also consider that the complainant based his claim on the bill of lading and therefore cannot claim the validity of some clauses and the invalidity of others in accordance with his interests".

– *AAP* Cadiz. 27 May 2003. AC 2003\1134.

Jurisdiction of Spanish Courts in marine credit issues. Enforcement of the Brnssels Convention of 10 May 1952.

"Legal Grounds:

(. . .) the part of the alien issue taken into consideration by the Brussels Convention and applicable to this case is that of domicile of the parties or of one of them in a contracting State other than that of their nationality permitting them to be sued over contractual matters before the court of the place in which the obligation on which the complaint is based was or should be fulfilled in accordance with article 7.1 of the above-mentioned convention. Based on the above, the remedy of appeal should be admitted thus recognising the jurisdiction of the courts of this judicial district and specifically that of the Court of First Instance no. two in Algeciras to hear the complaint filed".

3. Provisional measures

– *AAP* Madrid. 27 June 2003. Web Aranzadi JUR 2003\248576.

Lack of jurisdiction of Spanish Courts with respect to the request for the adoption of precautionary preventive seizure measures. Multiple defendants.

"Legal Grounds:

(. . .), it should first of all be pointed out that article 5.1 of Community Regulation

44/2001 is not applicable to this case because no specific mention was made in clause 4.8 of the sales contract of the shares that the place of fulfilment of the obligation should be Spain and the place of fulfilment should therefore be the Republic of Argentina (. . .). Article 22.3 of the *LOPJ* is not applicable to this case either because the obligation to make payment for shares arose from a contract that was not endorsed in Spain and therefore should not be fulfilled there either. (. . .) The appellant claims that, in accordance with article 6.1 of the above mentioned regulation, the case can be heard by a Spanish Court because charges were filed, jointly with the Argentinean purchasing entity, against two Spanish companies. (. . .) the fact is that the above mentioned article 6.1 cannot be applied to this case either because the fact that two of the companies charged have legal domicile in Spain ('*Telefónica, S.A.*' and '*Grupo Admira Media, S.A.*') does not mean that Spanish Courts automatically have jurisdiction in the case. Moreover, from document number one furnished by the requesting party it can be deduced that these companies of Spanish nationality were not party to the above mentioned contract which is the focus of future litigation. In other words, charges were filed by the complainant against the Argentinean company *'Atlántida de Comunicaciones, S.A.'* – formerly known as *'Editorial Atlántida S.A.'*- which was indeed party to the contract, and also against two other Spanish companies, *'Telefónica, S.A.'* and *'Grupo Admira Media, S.A.'* that were not party to said contract. It should also be mentioned that the abundant documentation furnished regarding action taken by said Spanish companies fails to prove that they were even shareholders of the purchasing company at the time the contract was signed or that they had any close connection between themselves or with the Argentinean company (. . .). For all of the above, it is incumbent upon this Court to uphold the ruling delivered in first instance and to thus dismiss the appeal declaring lack of international jurisdiction of the Spanish Courts to hear this case regarding the company of Argentinean nationality and residency *'Atlántida de Comunicaciones, S.A.'*, also declaring that there is no motive for adopting the precautionary measure called for with respect to the other two companies of Spanish nationality and domicile *'Grupo Admira Media, S.A.'* and *'Telefónica, S.A.'*(. . .)".

4. Lis pendens – related actions

– *SAP* Lérida. 10 February 2003. *AC* 2003\575.

Lack of jurisdiction of Spanish Courts. Lack of *lis pendens*.

"Legal Grounds:

(. . .)

Moreover, and to further highlight the reasoning presented above, if recognition of the jurisdiction of the Spanish Courts was based solely on the criteria of the nationality or residence of the complainant in Spain, there would be no territorial connection criteria for the determination of the domestic jurisdiction of the Spanish Courts determined by the domicile of the minor; territorial common law that would be applicable for the adoption of the measures requested with respect

to a child born out of wedlock in terms of the exercise of patria potestas. This is, therefore, a personal action and, as indicated by the *STS* of 17 November 1998, 'in accordance with rule number one laid down in article 62 of the Code of Civil Procedure, jurisdiction to hear litigation corresponds territorially to the court where the minor has legal domicile'.

As for the facts and the legal grounds: referred to, the fact is that when Mr. . . . filed charges before the Spanish Courts for the custody and care taking of his daughter . . . and subsidiarily requested a visitation scheme, the minor had already been residing in Germany for over seven months and at that time a judicial resolution had been delivered by the courts of that country awarding the *patria potestas* of the minor to the mother, Ms. . . . Of course at that point in time the complainant could have filed the appeals envisioned in the 1980 Hague Convention with a view to procuring the return of the minor to Spain and, once the child was here, express his pretensions directly related with the minor. The filing of the lawsuit, when a German Court had already awarded the mother the *patria potestas* of the minor, a pronouncement followed by other judicial resolutions which, through direct intervention of the complainant, established a visitation scheme in harmony with the personal, family and social circumstances of the minor, would lead to the sanctioning of two completely different visitation schemes; i.e. the one granted by the German judicial authorities and the one devised by the Spanish Courts. These resolutions grant visitation rights with very different scopes in the absence of, as pointed out by the *STSJ* of Catalonia of 10 October 2002, any expedient way to harmonise and reconcile the two resolutions.

Furthermore, the possibility of delivering judicial resolution laying down a visitation scheme without having met beforehand with the minor and without being able to assess, by any of the means available under law, the child's current personal, family and social circumstances, especially in light of the significant amount of time passed since the mother and daughter moved to Germany, hampers an assessment of the minor's best interests – interests directly related to the *favor filii* principle that underlies our domestic legislation as well as the provisions contained in the international treaties subscribed to by our country. And finally, the clear contradiction between judicial resolutions will stand in the way of their enforcement or at the very least such enforcement will be limited geographically.

Therefore, provided that there is no controversy with regard to the care taking and custody of the minor, the patria potestas of whom was awarded to the mother by virtue of the judicial resolution of the German Courts, and given that the minor and her mother had already established habitual residence in that country at the time when the complainant filed the suit giving rise to this proceeding, in accordance with article 22 of the *LOPJ* the Spanish Judges and Courts do not have jurisdiction to hear the case leading inevitably to the upholding of the remedy of appeal filed and the reversal of the first instance resolution".

III. PROCEDURE AND JUDICIAL ASSISTANCE

– *STS.* 14 April 2003. Web Aranzadi *RJ* 2003\3708.

Lack of international notification, non-declaration of contempt of court, need for an order for enforcement of the bankruptcy resolution ordered in Switzerland in order to be taken into consideration in litigation in Spain against the bankrupt party.

"Legal Grounds:

On 14 October 1992, Mr. Dario filed a small claims hearing against Mr. Marcelino calling for payment of 406,885 Swiss Francs or an equivalent amount in pesetas plus interest accrued to be made to the complainant. According to the suit, this amount was owed to the complainant for professional services rendered to the defendant or to his companies. (. . .) The court highlights the fact that all proceedings have been contrary to the constitutional principle prohibiting defencelessness (article 24.1 Constitution). The judgement of the First Instance Court, subsequently confirmed by the Provincial Court, did without the elementary response as to whether the letters rogatory sent to the Swiss authorities summoning the accused to appear at the hearing and respond to the lawsuit as requested by Mr. Dario was actually carried out or not. The lack of concern was such that the judge did not even declare the defendant in contempt of court. The fact is that if there is no record of a summons having been issued allowing the defendant to respond to the suit, no judgement can be issued against him.

(. . .) Notwithstanding the above, and in light of the assertion made by Mr. Luis Carlos, legitimately intervening in the process as the manager of the defendant's bankruptcy proceeding and acting on his behalf, that before issuing a declaration of nullity a careful look must be taken at his Supreme Court appeal because if it is upheld and his representation is admitted, such a declaration would be inappropriate.

The first ground, in accordance with article 1.692.4 *LECiv.* alleges infraction of articles 600 and 601 in relation with articles 955 *et. seq.*, all of the same law, for not taking into consideration the documents filed to accredit the existence of a bankruptcy proceeding taking place in Switzerland that prevented the complainant, who is party to that proceeding, from filing his particular judicial claim against the bankrupt party once a unanimous agreement was reached with all of the creditors.

The ground is rejected not only due to its faulty procedural formulation but also case law from this court has reiterated that the appeal must specifically indicate the rule that has allegedly been violated; not covered in the ground.

In addition to that, and we repeat, the ground is rejected based on substantive issues. The appellant does indeed first of all allege a declaration as to the state of the bankruptcy of the defendant in Lugano and it goes without saying that the above-mentioned convention with Switzerland would have to be applied for such a declaration to take effect in Spain. Under no circumstances may this be substituted by simply presenting the document accrediting that bankruptcy declaration. Moreover, the Swiss regulations governing bankruptcies, the effects of the bankruptcy declaration and of agreements with creditors require proof of Swiss Law (article

12.6 Civil Code). It is not admissible either that the appellant overlooks this precept citing only Spanish bankruptcy rules as if Spanish law were applicable for his convenience".

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS AND DECISIONS

1. Family

– *ATS.* 15 July 2003. *RJ* 2003\6221.

Divorce judgement delivered by the Gibraltar Supreme Court; new legal system arising from the 19 April 2000 Agreement between Spain and the United Kingdom; consideration of Gibraltar as a territory of the European Union and to which Community regulations apply, while the United Kingdom assumes responsibility for its external relations; subject to the principle of free movement of judgements.

"Legal Grounds:

(. . .) The request under scrutiny here is clearly affected by what is now the new regulatory framework which is, in turn, the result of a new state of affairs underlying that legal situation and the consequences of which, going beyond their own scope, cannot be ignored and are key to the decision that should be adopted. On 19 April 2000 the system agreed to between Spain and the United Kingdom with respect to the authorities of Gibraltar in the context of European Union instruments and related Treaties was made public (. . .) Here it is important to highlight and bear in mind that the above-mentioned agreement – laying down the legal system affecting the Gibraltar authorities and their resolutions and that for reasons of time restrictions was not taken into consideration in the resolution of the order for enforcement of the above-mentioned judgement issued by the Gibraltar authorities and subject to the consideration of this Court – is a reflection of the unequivocal will to consider Gibraltar, within the framework of international judicial cooperation, as a territory over which the United Kingdom assumes international responsibility vis-à-vis the rest of the European Union Member States (and by extension vis-à-vis the Member States of the European Free Trade Association); an assumption of responsibility that, although contemplated in a general manner in article 299.4 of the EC Treaty, is explicitly laid down within the scope of international cooperation and recognition of decisions.

This new system agreed to between Spain and the United Kingdom is the fruit of the negotiating process carried out within the European Union regarding the Gibraltar dispute and is the result of the current state of events on this issue. This reality is, beyond all doubt, that which has led to the creation of the new Community regulatory framework on recognition of judgements and which underlies its provisions that were already in force at the time that the request for official recognition now under scrutiny was tabled.

(. . .) The legal consequences arising from this new Community regulatory

framework, which as far as this case is concerned is a reflection of the new state of events created within the European Union with respect to the territory of Gibraltar and the judgements issued by its authorities subsequent to the 19 April 2000 Agreement, must transcend beyond the strict time scope of their provisions and project the reality that they envision and the principles that guide them towards the case now under study with a view to preserving the most basic coherency and standardisation of decisions and to establishing homogeneous criteria based on the current state of events – both material as well as legal – with the ensuing effects on legal security. This calls for the study of judgements issued by the Gibraltar authorities, independent of the recognition system to which they are subject, as judgements from a territory situated within the confines of the European Union, to which Community regulations apply and with respect to which the United Kingdom assumes responsibility for external relations which, as such, must benefit from the free movement of judgements – a Community objective – as well as from the general principle leading to its achievement, regardless of the authority issuing such judgements and therefore not tied to the recognition of sovereign authority and the subsequent jurisdictional authority.

In any case, recognition of a judgement issued by the Gibraltarian authorities should be subject to compliance with the requirements laid down by autonomous law comprised of a system created as a result of the 19 April 2000 Agreement already referred to. Paragraph 3 of said agreement states that the authority of the United Kingdom which, in accordance with paragraph 2, must certify the authenticity of decisions issued by the Gibraltarian authorities shall be the United Kingdom Government/Gibraltar Liaison Unit for EU Affairs of the Foreign and Commonwealth Office of the United Kingdom with headquarters in London or any other body of the United Kingdom with headquarters in London that the Government of this State decides to name. Said measure must form part of the conditions laid down by *LECiv.* 1881 and must especially be included in the requirement laid down in article 954.4 of the *LECiv.*

In this case the authenticity of the resolution the recognition of which is sought has been certified by the United Kingdom Government/Gibraltar Liaison Unit for EU Affairs in accordance with arrangements set out in Council document 7988/2000 of 19 April and has the corresponding apostille. All of the other requirements that must be met for the official recognition of the judgement laid down in paragraphs 1, 2 and 4 of the above mentioned article 954 *LECiv.* 1881 have been complied with and the international jurisdiction of the authorities issuing the judgement is justified bearing in mind the nationality of the wife, the place where the marriage took place and without losing sight of the role of the United Kingdom in taking responsibility for the external affairs of the territory of Gibraltar in accordance to the system agreed to forming part of the above mentioned EU Council document 7998/2000. There is, therefore, no incompatibility whatsoever with the judgement issued in the court of law or its enforcement in Spain nor is there any proceeding under way in Spain regarding the same issue and involving the same parties. Order for the enforcement of the judgement is thus granted. (. . .)".

– *ATS.* 31 July 2003. *RJ* 2003\6266.

Inapplicability of the order of enforcement procedure regarding the full legal adoption of a minor born in Chile by adoptive parents of Spanish nationality residents in Chile. Official equivalency by means of recognition expressed by the body before which the request was filed.

"Legal Grounds:

(. . .) Given that the resolution the recognition of which is sought deals with the full legal adoption of a minor, it falls into the category of acts of voluntary jurisdiction in which the intervention of the jurisdictional authority is not related to litigation or controversy between conflicting parties but rather its action is necessary in accordance with the corresponding regulation whether its purpose is to receive statements of private will thus constituting a formal requirement for the validity of the act or to interpret and apply the law to the case at hand providing such case with the legal constitutive or attributive effects for those involved. In the Spanish procedural system, one of the characteristics of acts of voluntary jurisdiction is that they do not have executive consequences – at least in the strict sense – nor material *res judicata* and the case can therefore be heard by judges and courts by means of the applicable contentious proceeding.

In accordance with these characteristics, this Court has traditionally denied recognition of acts of this nature by means of the order for enforcement (*exequatur*) proceeding regulated in articles 951 and subsequent of the *LECiv*. For quite some time now the unique differences between resolutions handed down regarding voluntary jurisdiction cases and judgements issued in contentious hearings have been highlighted. These differences are evident both in the cause and the form in which jurisdictional action is taken as well as in the function that the law reserves for the intervention of the jurisdictional body and in the effects that one or the other type of decisions have. These differences preclude any attempt that is even comparable to the proceeding envisaged in articles 951 and subsequent of the *LECiv.* and shift responsibility for the official recognition of acts of voluntary jurisdiction to the body or authority before which the request was filed for the recognition of the particular effects derived from such acts. In the case of recognition in Spain of an adoption carried out overseas, in addition to verification of the requirements set out in articles 600 and 601 of *LECiv.*\1881, attention must also be placed on those set out in Spanish conflict regulations (article 9.5 *Cc*, amended by Law 1/1996, of 15 January, including any possible international agreements to which Spain is party and which are applicable based on the subject matter and the date of the adoption or the request for recognition; all of this subsequent to verification of the identity of the foreign institution through which our legal system enforces regulations; through public order control authorised by article 600–1 of the *LECiv.*, if no other formula is possible (see article 9.5, paragraph 3 *Cc*)".

– *ATS.* 24 July 2003. Web Aranzadi JUR 2003\206251.

Order for enforcement granted in the case of a divorce judgement issued in Andorra.

"Legal Grounds:

(. . .) Given that no treaty has been signed with the Principality of Andorra and that there is no applicable international regulation on the recognition and execution of judgements, the general regime of article 954 *LECiv.* should be applied (. . .). It was determined that the judgement was final (. . .). Requirement 1 of article 954 of the above-mentioned *LECiv.* 1881 should be considered met in light of the personal nature of divorce proceedings (. . .). As for requirement number two of the same article 954, accrediting evidence has been provided that the divorce proceedings were initiated by mutual agreement of the spouses involved in the process (. . .). As for requirement number three of the same article 954 regarding correspondence with Spanish public order – in the international sense – compliance is unquestionable: article 85 *Cc* envisages the possibility of divorce regardless of the form and time of the celebration of the marriage. The authenticity of the resolution called for under article 954.4 is guaranteed by the apostille with which it was issued and as is indicated in the case record. There is no reason to believe that the international judicial jurisdiction of the Courts of the Principality of Andorra was the product of the parties' fraudulently seeking a court of convenience (articles 6.4 *Cc* and 11.2 *LOPJ*) (. . .). No contradiction or material incompatibility was found with any judicial judgement delivered or case pending in Spain. Order for enforcement is thus issued with regard to the judgment handed down by the Sole Judge Court (Civil Section) of Andorra la Vella, Principality of Andorra on 20 May 2003 by virtue of which a divorce was granted to Mr. Carlos José and Ms. Gema who had contracted marriage in Madrid, Spain on 2 April 1993, registered in the Spanish Civil Registry".

– *ATS.* 31 July 2003. JUR 2003\206271.

Concession of an order for enforcement of a divorce judgement issued in Mexico.

"Legal Grounds:

(. . .) The agreement signed between the United Mexican States and the Kingdom of Spain on the recognition and enforcement of judicial judgements and arbitration awards in civil and commercial matters done at Madrid on 17 April 1989, ratified on 10 July 1990 and published in the *BOE* of 9 April 1991 is not applicable in light of the fact that article 3.1 specifically excludes from its scope of application: a) the marital status and the capacity of natural persons and b) divorce, marriage nullification and corresponding system for the division of assets. The general regime of article 954 *LECiv.* 1881 should be applied (. . .). Order of enforcement granted (. . .)".

– *SAP* Barcelona. 31 March 2003. *AC* 2003\1109.

Claim filed to eliminate financial provision granted in a divorce judgement handed down by a French court. Application of the *BC*. Order of enforcement not necessary.

"Legal Grounds:

(. . .) We cannot state that that financial provision is specifically excluded from the scope of the *BC* but neither can it be asserted implicitly, from the letter or the

spirit of the agreement, that this exclusion can be deduced given that said international treaty includes an issue which is intimately linked with marital processes (as is the case with financial provision) and that is alimony or maintenance payments that are specifically referred to in article 5.2. This fact is recognised in the *BC* explanatory report of 28 May 1968 which was replaced by Regulation 1.347/2000 and does not merit further reference here. The *BC* of 1968 includes the maintenance payments that may be established in judgements which, at the same time, rule on marital status as recognised in article 5.2 itself in indicating that persons domiciled in a State that is party to the agreement can be sued 'in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings'. In other words, the agreement contains provisions referring to maintenance payments even when such payments are demanded by means of an incidental claim regarding marital status. We do not see why the same logic should not apply to financial provision which is normally established in proceedings regarding the marital status of persons. The important matter here is that neither maintenance nor financial provision are specifically excluded in the 1968 *BC* and that maintenance is expressly and specifically included despite its relationship with certain marital status proceedings. Therefore, the issue of financial provision cannot be excluded either because it is not specifically excluded nor is it a marital status issue or a part of the economic regime of the marriage although it is related (like maintenance) to proceedings concerning status.

(. . .) Having reached the conclusion that the *BC* of 1968 is applicable to the case at hand, it should be affirmed that a Supreme Court order of enforcement is not necessary for the purposes of this particular case. In accordance with article 26 of the *BC*, acknowledgement of the judgment, as concerns financial provision, is automatic and can be carried out by the court before which said issue was presented and enforcement of the ruling may be requested in accordance with the above mentioned agreement (. . .). Moreover, it would be considered overly demanding to require the two parties to appear before the Supreme Court in a case in which the issues are very clear. No one has questioned the existence nor the validity of the 1980 divorce judgement delivered in a hearing in which the two interested parties obviously participated and the pension payment was made during many years as was openly admitted in this suit. No one addressed the issue of the need for an order of enforcement either. As just stated, under such conditions it would be overly zealous to demand compliance with said requirement and would also be legally unnecessary as we believe we have adequately demonstrated".

2. Contracts

– *ATS.* 4 March 2003. Web Aranzadi JUR 2003\87951.

Lack of relevance of the order for enforcement. Judgement delivered which violated the right to defence of the accused: lack of a summons served at his domicile

in Spain: notifications served at branch offices that were no longer part of his patrimonial holdings.

"Legal Grounds:

(. . .) In light of the existence of an Agreement between the Czechoslovak Socialist Republic and Spain concerning legal assistance, acknowledgement and enforcement of judgements in civil affairs of 4 May 1987, ratified on 22 September 1988 and published in the *BOE* of 3 December 1988 and considering that the Socialist Republic of Czechoslovakia no longer exists – having given rise to two new States, the Slovakian Republic and the Czech Republic, it is incumbent upon this Court to rule on the applicability of the above-mentioned agreement to the Czech Republic. Having examined the Vienna Convention on the Law of Treaties of 23 May 1969 and especially the Vienna Convention on Succession of States in Respect of Treaties of 23 August 1978, the conclusion reached is that in the case of separation of parts of a State to form one or more States, regardless of whether the original State continues to exist, the dominating principle is that of the ongoing nature of treaties.

(. . .) The accused party alleges, as a cause for opposition 'the flagrant violation of the principles of public order that should be respected in all proceedings' and which were assumed violated for 'not having been properly notified, for not having the opportunity to defend herself, for not having been given the option of arguing for the existence of the discretional clause before the judge of the proceeding and for not being able to answer the claims made by her adversary or present evidence. She did not even have the opportunity to appeal the judgement that today is to be enforced because she did not even have knowledge of said judgement until it was final.' The appellant asserts that although in the pre-contract that was formalised the legal domicile of the entity being sued was at the street known as 'Ollers s/n 0714, Balearic Islands, CIF A-07 255912, Spain,' all of the notifications related to the original proceeding were delivered to a domicile in the Czech Republic, specifically at the street known as Vysocanská, 20, Prague 9. The entity being sued, while recognising that it did carry out commercial activity in Prague – several supermarkets one of which was located at that address – pointed out that on 9 June 1994, due to a divestment process, all assets were sold to the company 'BILLA SPOL S.R.O.' accredited by documents 4, 5, 6, 7 and 8 furnished along with the opposition brief. The appellant went on to explain that from the documents presented with the suit it can be deduced that the notifications delivered during the course of the original proceeding were carried out in an irregular manner. In the first summons dated 10 October 1996 we find the annotation 'company does not reside at that domicile,'; some illegible scribbling is found on the summons of 28 February 1997; and finally, the space for the signature of the party receiving the summons remained blank in the case of the three summons dated 12 April 1997, 5 June 1997 and 14/30 July 1997 respectively. Thus formulated, the cause of opposition must be admitted in light of the violation of the company's right to defence that forms part of the concept of the court's public order; the High Court having defined that concept, as a limit to the recognition and enforcement

of foreign judgements which has acquired a new dimension based on the 1978 Constitution in which, without discussion, permeates the set of principles on which our constitutional system is based, especially fundamental rights and public freedoms, thus acquiring a unique content permeated by the demands of the Constitution and especially by the demands imposed by article 24 of the Constitution.

Therefore, the only way by which this judgement handed down by the foreign court could be upheld (not possible in the case at hand) is by issuing the judgement in default, qualifying it as voluntary or of convenience, the only sort of default, in accordance with the doctrine set out in *STC* 43/85 and *AATS* 10–9–96, 8–10–96 and 22–4–97, that would not be considered an obstacle standing in the way of acknowledgement and enforcement of the judgement handed down by the Czech Courts attenuating the violation of public order alleged by the defendant".

– *ATS*. 16 September 2003. JUR 2003\214989.

Refusal to issue an order for enforcement *ex* article 954 *LECiv*. Default on the part of the defendant and summons by means of public notice without having attempted all forms of personal communication.

"Legal Grounds:

(. . .) Given that there is no treaty with the Republic of Venezuela nor is there any applicable international regulation concerning the acknowledgement and enforcement of judgements, the general regime of article 954 *LECiv.* is applicable (. . .). From among the requirements to which an official statement of acknowledgement is subject, article 954.2 of the *LECiv.* of 1881 requires that the enforceable judgement 'must not have been delivered in default'. (. . .) In this case (. . .) it has been accredited that the transfer of the complaint to the parties against whom this present order for enforcement proceeding is directed, subsequent to several unsuccessful attempts at the domicile designated by the complainant – specifically on 16 and 21 December 1987 and 11 January 1988 –, was carried out by means of notices left at that domicile and in two local newspapers but despite these efforts the defendants did not appear during the course of the proceedings. This course of action, while it may comply with the law of the State of origin, cannot be expected to safeguard the right to defence of the defendant from the standpoint of procedural public order which, in its current configuration within the process of official recognition of foreign judgements, has indisputable constitutional ramifications that are linked, in this aspect, with the procedural rights and guarantees laid down in article 24 of the *CE* because it has not been established that the defence had timely knowledge, allowing it to exercise its right to defence, of the proceeding under way against it in the State of origin, either personally and directly or via notification by third parties – a family member, relative, neighbour or custodian who, subject to legal obligation, could inform the defendant of the lawsuit under way in the Republic of Venezuela thus assuring, to the degree possible, the effective reception of the communication or judicial summons by the addressee. In the case at hand it has not been shown that the Court of origin did everything in its power to deliver personal notification before it resorted to the mere public notice,

nor was it determined that the underlying cause of the non-appearance on the part of the accused was his own convenience, conviction or will – the only cases that would not stand in the way of issuing recognition and the declaration of enforcement called for. In light of the above circumstances, the request for the order for enforcement should be denied".

– *STS.* 23 July 2003. *RJ* 2003\6948.

Concession of an order for enforcement of a judgement issued in default. Absence of defencelessness in the summons and in the notification of the judgement.

"Legal Grounds:

(. . .) The disputed summons was properly served as was highlighted in the certification attached to the judgement handed down by the Supreme Court of England stating that on 4 June 1993 an order to appear in court was issued and the appellant was duly informed via registered mail delivered in a post-paid envelope to his domicile in Nerja (Malaga) and acknowledgement of receipt dated 23 June 1993 was received (. . .). This shows that no infraction of constitutional doctrine was committed regarding acts of procedural communication because a situation of defencelessness was never produced. Moreover, the appellant knew of the existence of the lawsuit because he wrote letters dated 14, 22 and 26 June 1993 that bear witness to the fact that he was fully aware of the lawsuit under way and had been summoned to defend himself.

(. . .) With respect to the alleged violation of article 27.1 of the *BC*, the applicability of which in enforcement issues is determined by remittance to article 34.2, in accordance with which foreign judgements will not be enforced if their acknowledgement is contrary to the public order of the requested State, it should be borne in mind that this issue should be tied to the supposition of defencelessness for having forged ahead with the proceedings against the defendant declared in default without having been heard in the suit. As is shown here, however, this was not actually the case and therefore no violation of any Spanish public order regulation or any constitutional guarantee has been committed. This appeal must therefore be dismissed".

– *ATS.* 23 September 2003. Web Aranzadi JUR 2003\226993.

Concession of an order for enforcement with respect to a notarised debt acknowledgement document issued in Germany. Application of the 14 November 1983 Agreement between Spain and Germany.

"Legal Grounds:

(. . .) The Agreement signed between Spain and Germany on the acknowledgement and enforcement of judicial resolutions and transactions and public documents with executive power in civil and commercial matters of 14 November 1983, ratified on 18 January 1988 and published in the *BOE* on 6 February 1988 should be applied in accordance with articles 1 and 20 (in light of the nature and subject matter of the act for which the order for enforcement is requested) and article 24 (in light of the date) (. . .). Order for enforcement is granted with regard

to the document issued in Bruchsal, Germany, before notary public Mr. Ulrich Feterowsky on 30 March 1993, number 668 of 1993, by Mr. José Francisco and Mr. Luis Francisco and another issued by "Volksbank Bruchsal eG" limiting debt recognition only to Mr. José Francisco for the payment of 400,000 German marks (partial payment) plus 18% interest accrued from the date of the document".

– *ATS.* 1 July 2003. *RJ* 2003\6883.

Order for enforcement ruled by the *BC*. Lack of objective jurisdiction of the *TS*. Jurisdiction attributed to Court of First Instance.

"Legal Grounds:

(. . .) *ius cogens* characterising jurisdiction regulations – with the exception of regulations regarding territorial jurisdiction – is the factor determining that in this case the provisions of the *BC* of 27 September 1968 must be adhered to. Article 32.2 states that requests for enforcement shall be presented "in Spain before the Court of First Instance" signifying that the order for enforcement is not incumbent upon this Court which does not have jurisdiction to rule in this case without prejudice to reserving the right of the petitioner to turn to the corresponding jurisdictional body".

– *ATS.* 31 July 2003. *RJ* 2003\6965.

Application of Regulation 44/01 to the judgement issued on 12 March 2002 by the Court of Instance of Biarritz. Objective lack of jurisdiction of the *TS* and attribution of jurisdiction to the Court of First Instance.

"Legal Grounds:

(. . .) And considering that the judgement the acknowledgement of which is sought was delivered on 12 March 2002 when the above mentioned Regulation was already in force given that the judicial action was taken in the Member State of origin subsequent to the entry into force in France and Spain of the Brussels and Lugano Conventions, the conclusion must be reached that the above-mentioned Regulation is not applicable and, as a result, this Court does not have jurisdiction to hear the order for enforcement requested. (. . .) As for territorial jurisdiction, article 39.2 of EC Council Regulation 44/2001 of 22 December 2000 points out that such jurisdiction shall be determined by the domicile of the party against whom the enforcement is requested or by the place of enforcement".

– *ATS.* 21 January 2003. *RJ* 2003\796.

Exceptional grounds for appeal in orders for enforcement ruled by the *BC*.

"Legal Grounds:

(. . .) Exceptional appealability in rulings delivered by the Provincial Court as part of order for enforcement proceedings should be limited exclusively to the ruling on the contradictory appeal and may not extend to any other than the one related to the resolution of the contradiction at hand because in the absence of that contradiction between parties, the basis for the exception advocated is missing. For that reason, the exceptional grounds for Supreme Court appeal – and for a

procedural infraction in the transitory regime – only in the case of judgements delivered by Provincial Courts, may not be extended to just any type of ruling delivered by the Provincial Courts in enforcement proceedings but rather must be limited to the resolution of the contradictory appeal envisaged in international instruments. The second clarification is in reference to this Court's declaring it impossible to file an extraordinary appeal for a procedural infraction against resolutions delivered in proceedings related to the acknowledgement and enforcement of foreign judgements in accordance with the Brussels Convention of 27 December 1968 and the *LC* of 16 September 1998; declaration based on the application of such Conventions and the doctrine handed down from the Court of Justice of the European Community. This unappealable nature was justified in the ruling of this Court dated 12–3–2002, appeal 75/2002, endorsed on 19–11–2002, appeal 539/2002".

3. Bankruptcy

– *ATS.* 31 July 2003. Web Aranzadi JUR 2003\206339.

Bankruptcy law. Order for enforcement. Authenticity of foreign judicial decision.

"Legal Grounds:

(. . .) Request for an order for enforcement was filed regarding the resolution (certification) of 4 April 2002 delivered by the Local Court of the city of Gifhorn, Germany but only a copy of the resolution for which the order for enforcement was requested was sent while the apostille corresponded to the authenticity of the signature of the sworn translator.

(. . .) Even in the event that, in general, in the different acknowledgement systems no explicit provision is made for the presentation of an authenticated copy of the complete text of the enforceable judgement presented for recognition along with the request of the order for enforcement, said requirement, with a view to guaranteeing the objective integrity of the process, must necessarily be understood as being implicit because this is the document determining the object of the request and is therefore the document under scrutiny with regard to control of compliance with the recognition requirements. Filing of this document at this initial stage of the process is therefore an essential procedural requirement that must be complied with in order for it to be admitted in light of the special nature of the order for enforcement".

V. INTERNATIONAL COMMERCIAL ARBITRATION

– *STS.* 6 February 2003. *RJ* 2003\850.

Validity of a clause calling for submission to arbitration in London.

"Legal Grounds:

(. . .) In the contract documents of the suit giving rise to this appeal it is stipulated, in line with international practice, that the bill of lading would be governed by English law and, in the case of litigation, English law would be applied

with arbitration in London. There is, therefore, no expression of ambiguity capable of raising founded doubts as to the extension of arbitration to all controversies derived from the enforcement of the contract".

– *STS.* 9 May 2003. *RJ* 2003\3893.

Validity of a clause calling for submission to arbitration in London.

"Legal Grounds:

(. . .) The fact is that in all of the contract-related documentation between the carrier and the Spanish companies there is a clause on arbitration in London and the application of English law. It is significant that this is the case not only in the bill of lading of the cargos of both vessels (page 19 overleaf and 388 and 391 overleaf) but also in the prior 'closing notes' drawn up between the carrier and the two Spanish companies (pages 385, 386, 332 and 333) and therefore there should be no doubt as to the unequivocal will of the contracting parties to subject their controversies to arbitration in London under English law. (. . .) Exactly to the contrary, in the contract documents of the litigation giving rise to this appeal it is stipulated, in accordance with international practice, that the bill of lading will be regulated by English law and, in the case of litigation, English law will prevail with arbitration taking place in London. There is not, therefore, any expression of ambiguity that could lead to founded doubts regarding the extension of arbitration to all controversies arising from the enforcement of the contract".

– *STS.* 3 July 2003. *RJ* 2003\4324.

Submission to arbitration in London. Lack of jurisdiction of Spanish Courts.

"Legal Grounds:

(. . .)The mutual insurance company by the name of OCEAN, the co-defendant in first instance and the appellant in the appeal procedure, continued to propose exception to submission to arbitration in second instance (article 11.2 of the Arbitration Law) and, as stated in the judgement of 6 February 2003 cited above, case law of this Court regarding the proper procedural moment at which to propose exception to submission to arbitration in a small claims hearing, based on a strict interpretation of the expression 'any procedural activity' of article 11 of the 1988 Arbitration Law which meant that the proposal would not be admitted if the defendant also opposed the merits of the case, began to evolve towards greater flexibility as of the 18 April 1998 judgement and by 1999 a doctrine was consolidated that, in light of the amplitude of Article 687 *LECiv.* of 1881, nothing prevented the defendant from proposing said exception and, in the same legal brief, respond to the essence of the complaint in the event that the exception was not admitted. The arbitration clause is not only included in freight contracts, it also forms part of the marine insurance contract and the book of rules that constitute its private regulation and completely control the insurance. Said clause should be applied to this case thus excluding Spanish jurisdiction and, if this is not the understanding, the first instance judgement has infringed upon articles 11 and 61 of the Arbitration Law and 21.1 of the *LOPJ* and, upon invoking the grounds mentioned,

there is no call to study the following ones although Spanish legislation would surely not be applicable (grounds 3, 4, 5 and 9) and under no circumstances would direct action be admissible as envisaged in article 76 on insurance contracts because this law does not apply to marine insurance (as reiterated many times over in case law): 'marine insurance is not principally governed by the Insurance Contract Law of 1980 but rather by the special provisions of the Code of Mercantile Law [Section 3, Title III of Book three] of which the former would be merely supplementary and is not even considered in the PI insurance and does not exist in applicable foreign legislation (grounds 2, 5, 7 and 8). And finally, the responsibility of the insured party, that has a bearing on that of the insurer, is very questionable (ground 10)".

– *STS.* 9 October 2003. *RJ* 2003\7231.

Inadmissibility of the *LC* to enforce an arbitral award delivered by the court designated by the Court of Arbitration in the International Chamber of Commerce and the judgement of Federal Civil Court number one in Switzerland. The course laid down in the New York Convention or the treaty between Spain and Switzerland must be followed.

"Legal Grounds:

(. . .) The above supports the interpretation made by the petitioner in the sense that the enforcement of the arbitral award analysed here could have followed the course of the New York Convention or the treaty between Spain and Switzerland but, under no circumstances, the *LC* In other words, the enforcement procedure applicable to the Swiss Federal Court judgement would be regulated by the *LC* but article 1 of this Convention states as follows: 'this Convention shall apply to civil and commercial matters regardless of the nature of the jurisdictional body . . . Arbitration shall be excluded from the scope of this Convention'.

Although it is clear that the real interest contained in the deduced pretension was the enforcement of the arbitral award, the request was for the enforcement of the judgement delivered by the Swiss Federal Court in accordance with the *LC*. This means that by means of an improper proceeding the enforcement of an award was confirmed and approved by the provincial court of Madrid.

The above implies infraction of the *LC* precept cited and an infraction of the following articles of the New York Convention: article I. – This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought. Article III. – Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon . . .

Article 1 of the New York Convention has been infringed upon because enforcement has taken place without following the procedure laid down in this

regulatory text in the event that it is determined that this text is indeed applicable to the case. Article III has also been violated. Based on the text that states 'the rules of procedure of the territory where the award is relied upon', the enforcement proceeding should have adhered to articles 951 and subsequent of the *LECiv.*; specifically, the order for enforcement or *exequatur* should have been formulated before the Supreme Court (Article 955 of *LECiv.* and the declaration by the court as to whether to enforce the enforceable judgement or not should have been made nine days subsequent to hearing the party against whom it was directed; i.e. the appellant and the public prosecutor (article 956 *LECiv.*).

Article I and III of the treaty between Spain and Switzerland have also been violated in the hypothetical situation that this text were given precedence over the New York Convention. Article I states that: final judgements or verdicts on civil or commercial matters handed down in one of the two contracting States either by ordinary, arbitration or commercial Courts . . . legally constituted, shall be enforceable in the other State under the following conditions. These conditions are set out in article III which states that the competent authority shall rule on the request for compliance in the form envisaged under law after hearing the public prosecutor is so envisioned under the law. The law shall also grant the legally stipulated or customary period of time to the party against whom compliance is requested in order to defend his rights and shall indicate to the two parties the date by which the request must be answered.

None of the above was taken into consideration when the Court of First Instance ordered notification of the ruling in question at the same time as the summons for payment or, in the case of seizure, that which was advised by the Provincial Court's resolution now under appeal. Mention must also be made of the contradiction committed in revoking the first instance resolution on grounds referring to the application of the *LC* and in ordering its substitution by the proceeding envisaged in the treaty between Spain and Switzerland. For all of the above, the grounds of the First Instance Court should be upheld and the appeal must be rejected".

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

1. Proof of foreign law

– *SAP* Gerona. 31 March 2003. *AC* 2003\758.

Accreditation of the content and applicability of German law. Case law.

"Legal Grounds:

(. . .) The third ground for the appeal points to an infraction of article 12.6 of the Civil Code (*LEG* 1889, 27) because the resolution under appeal lends credence to the applicability and content of German law cited in the complaint while the only rule reserved in the judgement is article 1822 and subsequent of the Spanish Civil Code.

As upheld by case law, the judicial rule reflected in article 12.6 paragraph two

of the Civil Code, today repealed by the new *LECiv.* 1/2000 (*RCL* 2000, 34, 962 and *RCL* 2001, 1892), requires the party invoking foreign law to accredit such law due to lack of *iura novit curia* and therefore the following must be proven at the hearing:

a) the actual existence of the legislation referred to;
b) that such legislation is in force; and
c) that it applies to the case in question.

Further case law on this subject has established that the use of foreign law must be a question of fact and must be claimed as such by the invoking party thus making it necessary to accredit the exact entity of the law in force, its scope and authorised interpretation in such a way that its application does not cause the least reasonable doubt on the part of the Spanish Courts; in this sense see Supreme Court, First Chamber, judgements of 7 September 1990 (*RJ* 1990, 6855), 31 December 1994 (*RJ* 1994, 10245), 25 January (*RJ* 1999, 321) and 9 February 1999 (*RJ* 1999, 1054).

In the case at hand, the complainant has complied with case law provisions both in terms of the first criteria expressed as well as the second more demanding one. The complaint itself lists applicable German law citing the precepts of the *Bürgerlíches Gesetzbuch* (*BGB* or German Civil Code) translated into Spanish and articles 195, 246, 286, 288, 305, 401, 412, 414 to 418, 421 to 426, 662 to 674 and 765 to 774 which lay down the civil rules applicable to the case at hand. The similarities between said precepts and those regulating these institutions in Spanish law are also cited. Thus, the granting of rights by the moneylender Mr. Q. in favour of Conrad Hinrich Donner Bank, regulated in articles 398 *et seq. BGB* (similar to articles 1526 *et seq. Cc*); the guarantee set out in the loan contract assumed by the company preceding the complainant, today 'SIF hf' in accordance with *BGB* articles 765 *et seq.*, is not an ordinary sort of bond in that it expressly excludes the accessory nature of the obligation of the guarantor which, in the terms of this case, is called a joint and several guarantee and is regulated in articles 1830 and 1831.2 *Cc*; the subrogation of the guarantor for payment to the German creditor bank related to the loan, article 426 *BGB* and its equivalent of *Cc* article 1839.

As concerns the interest claimed, legal interest is accrued as of the filing of the complaint (articles 246, 286 and 288 *BGB*), similar to Spanish substantive regulation, article 1108 *CC*, taking the legal interest envisaged in German legislation as is correctly indicated in the judgement citing the precept.

Thus, the first instance judgement cites articles 1822 and subsequent of the Civil Code as a legal synthesis of its arguments in the sense that they are regulators of the bond contract; essentially equivalent, as far as this case is concerned, to the *BGB* regulation in this material, not indicating, however, a lack of legal basis nor infraction for improper application of the precepts on which the judgement is based which, in any case, should be indicated by the appellant party.

Accreditation of the applicability of pertinent *BGB* articles is covered by virtue of the documentation found on pages 445 and 446 where it is stated that, through the Ministry of Justice and in accordance with the European Agreement of 7 June

1968 (*RCL* 1974, 2050) on information regarding law in force, information shall be furnished on German law and specifically on articles having to do with the resolution of this lawsuit and does so in the sense that the articles amended from the year 1992 up to 6 July 2000 are 288, 401, 418 and 773 of the German Civil Code while the remainder of the articles highlighted remain as they were in 1992 attaching both the old and new versions. Of the amended articles, the only one that is relevant to the resolution of this case is article 288 regulating interest on arrears which has already been taken into account by the *a quo* body.

Based on the above, allegation of a lack of applicability of the regulations cited and provided cannot be accepted given that all of the amendments introduced from 1992 up to July of 2000 are listed (the suit is from October 2000) and this Court considers regulations to be sufficiently updated.

(. . .) And finally, as concerns the affidavit or ruling on German law referring to the content and interpretation of the articles on the granting of loans, on the constitution of a bond as collateral for an obligation, 'Schuldbeitritt' (literally debt support), equivalent to the joint and several guarantee in Spanish civil law articles 1830 and 1861.2 *Cc* (*LEG* 1889, 27), and on rights and obligations of the guarantor, compliance is covered by virtue of the opinion filed along with the suit by the German lawyer Mr. Philipp K. and, although the terminology used may appear unusual in some instances when compared with the Spanish system, it should not be forgotten that it is a translation and equivalents are not easy to find for legal terms although the content of the ruling is perfectly understandable in order that 'SIF-Union of Iceland Fish Producers LTD', the complainant entity, be the legal successor of 'Sölusamband Islentra Friskramleíoenda' which translates into English as 'Union of Iceland Fish Producers'; circumstance that has been perfectly demonstrated according to the reasoning set out in this judgement".

– *SAP* Murcia. 12 May 2003. Web Aranzadi JUR 2003\239925.

Law applicable to matrimonial separation. Moroccan legislation. Lack of invocation and proof of foreign law. Public order law applicable to maintenance and custody.

"Legal Grounds:

(. . .) This is a matrimonial separation case filed by a woman of Moroccan nationality against her husband of the same nationality subsequent to the implementation of measures adopted through a ruling . . . of this same Court.

(. . .) As concerns matrimonial relationships, article 107 of our Civil Code (LEG 1889, 27) states that separation shall be governed by national law common to the spouses at the time the suit was filed. In the event that there is no common nationality, by the law of the place of habitual residence of the couple and, in the event that the spouses have habitual residence in different states, by Spanish law as long as the Spanish Courts have jurisdiction. In this case there is no doubt that the substantive law applicable to the separation of the spouses is Moroccan law given that both are of that nationality but this law must be invoked and proven by the party alleging the action (article 281.2 of the Code of Civil Procedure (*RCL* 2000,

34, 962 and *RCL* 2001, 1892]) and it must not be contrary to public order (article 12.3 of the Civil Code).

In this case, neither of the parties invoked Moroccan substantive law constituted by the Personal Statute Code (Moudawana Code) of 1993 in which repudiation and divorce are regulated but not separation but that legal system was not proven either thus making it impossible to apply to this case. These cases give rise to the dilemma of what legal solution should be adopted by the Spanish Courts – reject the suit due to lack of invocation and accreditation of applicable law (in line with social chamber Supreme Court judgements of 22 [*RJ* 2001, 6477] and 25 May 2001 [*RJ* 2001, 8698]) or resolve it by recurring to the rest of the connection systems leading us to substantive Spanish law (Civil Code). In the case of the latter doctrinal option, special note should be taken of Constitutional Court judgement 155/2001 of 2 July (*RTC* 2001, 155) in accordance with which, in the absence of accreditation of foreign law applicable to the case (that should have been done by the party invoking such law), Spanish law should be applied before rejecting the suit. This solution does, however, seem to contradict the public order nature of conflict regulations (article 12.1 of the Civil Code) and leave applicable substantive law up to the will of the parties. At any rate, during the course of this case the wife has highlighted the fact that her basic rights would be truncated if her national law were applied, thus invoking Spanish international public order exception (article 12.3 of the Civil Code) given that her applicable national law violates some of the basic principles of our legal system (such as non-discrimination for reasons of gender) thus disallowing their application by Spanish Courts which must comply with rnles of subsidiary connection of article 107.1 of the Civil Code (law of habitual common residence of the spouses) and, in other cases, the *lex fori* which is also Spanish. Moreover, this stance seems justifiable for reasons of procedural economy. If the appeal were rejected for not having been based on Moroccan law, the appellant could then resubmit her appeal based on said law but, given that it is contrary to Spanish international public order, it would in the end lead to the application of Spanish material law arriving at the same solution with unjustifiable delays in light of the nature of the rights under discussion and the fact that minors are involved.

In terms of maintenance for the minors and a compensatory pension, the regulation determining applicable substantive law is the Hague Convention of 2 October 1973 (*RCL* 1987, 1891, 2492) and, in accordance with its article 4, the first criteria or point of connection is determined by the law of habitual residence of the creditor of the alimony; i.e. the country in which that person's social centre is found. The creditor in this case is the mother and wife and, in accordance with reiterated doctrine of this Court, she is the party legitimated to claim those maintenance rights for her children who are minors and therefore Spanish substantive law must be applied in this case. The same conclusion is reached if it is determined that the daughters are the creditors of maintenance payments because they also have their permanent residence in Spain.

And finally, regarding the custody of the daughters who are minors and the visitation scheme for the father who does not have custody, the substantive law to be applied is determined by the Hague Convention of 5 October 1961 (*RCL* 1978, 2059) article 2 of which expressly envisages *lex fori* as the applicable law based on the fact explained above that both minors are residents in the country and no importance should be given to the circumstantial presence of one of them in Morocco visiting her maternal grandmother in light of the special circumstances and difficulties that the separation has caused the mother".

2. Public policy

– *STSJ* Catalonia. 30 July 2003. *AS* 2003/3049.

Polygamy. Invocation of public order as opposed to recognition of the practice.

"Legal Grounds:

The issue placed before the Court is that of determining the validity of the Islamic institution of polygamy and whether it can be applied and upheld in the Spanish system or whether it constitutes an affront to public order and therefore should not be applied.

The family model set out in the Constitution (*RCL* 1978, 2836), sharing the same conceptualisation as our European cultural environment and Christian background, has established marriage as a monogamous institution and it can be affirmed that no European Union country allows polygamous marriages in accordance with their respective civil codes whether they be between nationals, nationals and aliens or between aliens.

Our legal system prohibits marriage in the case of those who are already married. This is set out in article 46.2 of the Civil Code and the sanction for violation of this precept is nullity of the institution in accordance with article 73.2 of that Code.

Ius connubis is recognised as a personal right and therefore has the status of a fundamental right under article 32 of the Constitution although clearly it is not an absolute right; the precept itself refers back to the regulating law; in this case the Civil Code that lays down a series of minimum requirements.

The requirements laid down in articles 42, 46 and 73 of the Civil Code comprise a set of principles and values rooted in the Spanish Constitution and human rights conventions ratified by Spain that should be respected and have civil effects on religious marriages. Of these requirements, special mention should be made of the one stating that the spouses should not be subject to any other bonds in the terms set out in article 44 of the Civil Code.

Ad exemplum and with respect to Islamic marriages, although celebrated in Spain, must take into consideration the Cooperation agreement of 20 February 1992 between the Spanish Government and Spanish Islamic Commission that envisages, in practice, the application of Muslim law in order to regulate the celebration of marriage in accordance with the Koran and all that is left unregulated by that legal system is subject to Spanish civil legislation. However, if said reg-

ulations happened to be contrary to the *CE* or its laws they would not be applicable in light of the fact that the 1992 agreement foresees respect for the above-mentioned minimum requirements.

Said agreement makes a clear-cut distinction between the conscience of believers in the Muslim faith that obliges them to comply with the provisions of their religion and their status as citizens of the State which obliges them to comply with a set of civil requirements and the latter must not be set aside in favour of the former. The conclusion must therefore be reached that a valid marriage cannot be celebrated between spouses who are already bound by another marriage thus rejecting polygamy given that it is an affront to a substantial element that must be considered of public order given that it is based directly on the Constitution and human rights agreements as was established above.

It should also be pointed out that the prohibition of polygamy in our legal system is such that it is considered a crime in accordance with article 217 of the Criminal Code (*RCL* 1995, 3170 and *RCL* 1996, 777).

(. . .) Moving on to the study of the case at hand in which the marriages were not contracted in Spain but rather in Gambia, it must be pointed out that marriage is regulated by *lex persona* and, in a strict sense, if polygamy is valid in that country, the validity of that situation should be extended by virtue of private international law regulations. In this case, however, the figure of polygamy collides head-on with the dictates of article 12–3 of the Civil Code (*LEG* 1889, 27) which establishes *ad litteram* that "under no circumstances shall the foreign law be enforceable when it is contrary to public order". The above-mentioned dictate is in line with the commonly accepted idea in private law which holds that foreign law that would be applicable by virtue of the general rules applicable to legal clashes may not, by exception, be applied when it is an affront to the public order of a country.

With respect to the conceptualisation of public order when it comes to international law it can be affirmed that it is that which affects both citizens and foreigners, including those laws which, shared by the peoples of particular moral beliefs, does not allow for the establishment (without serious disturbance to domestic order) of a different regulation, not even in the case of foreigners.

That expression of the public order principle is laid down in the Civil Code – not only in the precept mentioned above but also in article 8.1.

The prohibition of polygamy and its effects are treated in our legislation in a number of different ways the first of which is their above mentioned classification as a crime. The second is found in Organic Law 4/2000 of 11 January (*RCL* 2000, 72, 209) on the rights and freedoms of foreign aliens in Spain and their social integration, amended by Law 8/2000 of 22 December (*RCL* 2000, 2963 and *RCL* 2001, 488) and subsequent regulatory development. As concerns family regrouping, article 16.2 states that alien residents in Spain have the right to regroup with certain family members, pointing out in article 17, one, that the spouse also has the right to regroup provided that the couple is not separated legally or de facto.

With respect to one's spouse (more specifically the number of spouses) the

precept states *ad pedem litterae* that in no case may there be regrouping of more than one spouse even if the alien's personal law admits this type of marriage. This legislation is related to the general principle laid down in article 3.2 of Organic Law 4/00 and therefore to the application of the public order exception of article 12.3 of the Civil Code.

That principle of public order used as an exception to defend the validity of polygamy in Spain is also cited in the steady flow of resolutions delivered by the Directorate General for Registries and Notaries Public that have systematically refused to sanction a second marriage without first having dissolved the first. An example is found in the resolution of 11–5–1994 (*RJ* 1994, 5022) which states that although the Moroccan groom, in accordance with his peculiar personal statute, is free to contract another marriage while the first remains intact, this foreign regulation which is, in principle, applicable according to our conflict regulations, must be excluded by virtue of the international public order exception (article 12.3 *Cc*).

This same argument is supported by the resolutions of 27–10–92 (*RJ* 1992, 9461), 3–12–96 (*RJ* 1996, 7371) and 20–2–97. The latter ruling was when the interested party held his former Moroccan nationality and when, already married, he got married again to a Moroccan divorcée. Although this second marriage was valid in the Moroccan legal system and, in principle, the personal statute of the spouses should be applied, there is no doubt that the foreign applicable law, as a rule according to our conflict regulations, must be excluded in this case by virtue of the international public order exception . . . which cannot permit the registration of a polygamous marriage; an affront to the Spanish concept of marriage and against the constitutional dignity of women.

All of the above leads to the conclusion that, as far as Spanish law is concerned, the second marriage is null and void and therefore *quod nullum est ab initio, nullum efectum producet*. This means that this Court sees no possible way to validate the criteria contained in the *INSS* resolution calling for a 50% share going to each one of the two women.

The concept of marriage under Spanish law can only be derived from the first marriage and therefore the appeal for reversal should be upheld.

It should also be pointed out that even in the event that (although this was not established in the summary of facts) the co-defendant had lived with the deceased, in light of the fact that the marriage lacked validity given the international public order exception, the relationship should be qualified as *de facto*. This issue has been studied by this Court in rulings 2075/97, 253/98, 7325/98, 2748/99, 4858/99, 6375/99 (*AS* 2000, 5422), 1082/00 (*AS* 2001, 691), 3762/00 (*JUR* 2001, 136242), 5909/00 (*JUR* 2001, 138628), 8574/00 (*JUR* 2001, 197106) and 9276/00 (*JUR* 2001, 198829) which reject pretensions of being awarded a widow's pension in cases of relationships between couples.

With respect to this issue the Court has reiterated that in order to be awarded the right to a widow's pension, the beneficiary must have been legally married to the deceased as indicated by the Constitutional Court in its rulings of 18–12–85 (*RTC* 1985, 177), 19–2–86 (*RTC* 1986, 27), 22–12–88 (*RTC* 1988, 260) and

15–11–90 (*RTC* 1990, 184), on issues of constitutionality. Cohabitation *more uxorio* is not considered sufficient. In the view of the Constitutional Court, marriage and extra-marital cohabitation are not the same thing and the Constitution does not recognise the right to form a *de facto* union that is entitled to the same treatment as that given to formally married couples when it comes to Social Security pensions – *SSTC* of 15–11–90, 14–2–91 (*RTC* 1991, 38), 11–4–91 (*RTC* 1991, 77), 28–2–94 (*RTC* 1994, 66) and 17–2–98 (*RTC* 1998, 39), and in the same sense we have Supreme Court case law of 29–6–92 (*RJ* 1992, 4688) and 10–11–93 (*RJ* 1993, 8673), which highlights the unavoidable prerequisite of marriage ties in order to gain access to a widow's pension as regulated in article 174.1 of the *LGSS* (*RCL* 1994, 1825).

In basing its decision on this criteria, this Court does not ignore the resolutions delivered by the Supreme Court of Galicia on 13–7–1998 (*AS* 1998, 1493) and 2–4–02 (*AS* 2002, 899) which, based on the prohibition of that figure in our legal system and accepting the existence of the public order exception, take the view that such unions should indeed be recognised with respect to their legal ramifications to both marriage ties".

3. Renvoi

– *SAP* Alicante. 10 March 2003. Web Aranzadi JUR 2003/197311.

Inheritance of a Scottish subject with property in Spain. Will and testament. Share of the estate. Remission doctrine: inapplicability of double remission.

"Legal Grounds:

(. . .) This proceeding focuses on determining whether the will and testament issued on 19 January 1994 by Ms. María Milagros, of Scottish nationality, is valid or if, on the contrary, the will and testament of 1 August 1989 should be considered valid. In the first will and testament the testatrix named her son Romeo as the universal heir to all of her assets in Spain and in the case of predecease she named her children Camila, Eloy and Marcos along with certain bequests to other persons. Subsequent to her son's death on 19 January 1994, she issued a second will and testament in which she named as heirs her sister Olga and her nephew Arturo with certain monetary bequests left to the three nephews named above and to Santiago. The aim of the proceeding was to challenge said will and testament on the grounds that its provisions are null and void because they are in conflict with the legitimate ones and with the proper hereditary division among the heirs as recognised in the instance judgement.

(. . .) Article 9 of the Civil Code (*LEG* 1889, 27), number 1, paragraph one states that the personal law corresponding to natural persons is that of their nationality. Said law shall govern capacity and marital status, family rights and obligations and succession in the case of death. Number 8 of that Law states that succession due to death shall be governed by the national law of the deceased at the time of his/her death irrespective of the nature of the assets or the country in which they are found. In light of the precept, in this wording we find all of the forms of

denunciation of a person's inheritance, reinforcing the universal criteria of the family succession system that conceives an inheritance as a unit, independent of the form of will and testament and the background of the succession and, in considering the national law of the deceased, it is not necessary to resort to the provision contained in article 12.1, which states that the description used to determine the conflict regulation applicable shall always be done in accordance with Spanish law. The peculiarity of Private International Law comes from the pluralism and diversity of legal systems as regards external traffic and therefore calls for the adoption of a set of criteria with a view to either reaching a sort of international harmony or defending internal harmony. As a result of this diversity between regulations applicable to a given legal situation, problems of maladjustment could arise that are precisely the consequence of a discrepancy in description and thus the importance of this article as a solution to these regulatory conflicts. Number two of the precept states that remission to foreign law shall be understood as referring to substantive law without consideration of the remission that its conflict regulations may make to a law other than Spanish law.

(. . .) The deceased filed the will in Spain but the succession regulations are governed by the deceased's own national law, that of Scotland; substantive law governing succession. As concerns foreign law it should be pointed out that this issue has been accepted as a given and its existence and applicability has not been the subject of discussion in the proceedings. Under Scottish law applicable to both the spouse and the children, they have limited rights in inheritance matters. The spouse is entitled to one third of the moveable assets of the testator limited to cash and stocks (not the case with property assets) and the surviving children have a right to the share of the estate in the proportion of one third of the moveable assets. There is, therefore, almost complete freedom with respect to the provisions of wills and testaments.

But what the complainant insists upon and which is reflected in the judge's upholding of the judgement, is the remission referred to in article 12.2 of the Civil Code (*LEG* 1889, 27) given that if it is recognised that national law should prevail, by remission to foreign law, the assumption is that remission is made to substantive law without regard for the remission that such law's conflict regulation may have to another law other than Spanish law. Given that the Scottish system remits to the place where property is located or the legal domicile of the deceased with respect to moveable assets, in both cases Spanish law prevails thus protecting the share of the estate.

(. . .) The Supreme Court has already ruled in this respect in its judgements of 15 November 1996 (*RJ* 1996, 8212) and 21 May 1999 (*RJ* 1999, 4580). The former points out that the text of Article 12.2 of the Civil Code (*LEG* 1889, 27) literally states: it shall be assumed that remission to foreign law is to substantive law without regard for the remission that its conflict regulations may make to another law other than Spanish law. This precept makes it perfectly clear that when article 9.8 of the Civil Code states: 'succession by reason of death shall be governed by the National Law of the deceased at the time of his/her death irrespec-

tive of the nature of the assets or the country in which they are found,' the law applicable to succession in this case is that of the State of Maryland (in the case of Scotland). Now, when the conflict regulations of this State remit to another State other than Spain, said remission does not have to be borne in mind (and the law of Maryland is applied). However, if remission, as in this case, is to Spanish law, given that the Maryland succession law states that property succession is governed by the law of the place where such property is located, this remission should indeed be 'borne in mind' in accordance with article 12.2 of the text. The phrase 'borne in mind' does not mean that our succession regulations should be inexorably applied in light of the fact that the expression in Spanish 'tener en cuenta' (bear in mind) (according to the Dictionary of the Spanish Royal Academy) means 'to bear in mind or to consider' and that is precisely what is incumbent upon this Court: to consider whether the remission (which has in fact been admitted at one point by our instance courts) should be accepted in this case by virtue of the State of Maryland's conflict regulation which uses, as the point of connection, the place where property is located in determining the substantive legal regulation that should govern succession in the case of its citizens. Denying remission can be based upon the clash between the succession statute set out in article 9.8 of the Civil Code and article 12.2 which speaks of and makes allowances for double remission but which does not exist and is more apparent than real. Article 12.2 contains a general sort of regulation, one of those referred to in the doctrine as 'application or operational regulations' which can not be interpreted in an isolated fashion but rather in relation with the specific and concrete regulation governing succession matters. In Spanish law this is regulation 9.8 which tends towards a point of connection based on nationality when it comes to selecting a governing regulation for succession, irrespective of the nature of the assets or the place in which they are found. Spanish law recognises the preponderance of the National Law *de cuius* while at the same time the Spanish inheritance system is universal in nature; i.e. it supports the criteria of the unity of the succession regime. To this we should add that defence of legitimate rights by the complainants based on Spanish law does not necessarily have to have real content and therefore does not subscribe to the thesis of remission in the succession of property located in Spain. And finally, remission should be considered as an instrument of harmonisation of States' legal systems, as an instrument respectful of the principles on which such systems are based and if American law is based on a wide range of freedom in drafting wills, and does not recognise children sharing the estate, this Court's application of Spanish law to the succession of the diseased in this lawsuit in which neither residence or legal domicile was established in Spain, would do nothing to harmonise the coexistence of the respective law systems.

This is also the sense of the second of the two judgements cited; that of 21 May 1999 (*RJ* 1999, 4580). Although a purely literal application of article 12.2 of the Civil Code (*LEG* 1889, 27) would lead to the solution defended in the lawsuit, current evolution of Private International Law, as evident in comparative law and especially in conventional international law, implies a more qualified treatment

of remission making it impossible to adopt an indiscriminate attitude of acceptance or rejection but rather leads one to apply a flexible criteria applied in a restrictive and very conditioned manner. The application of remission in the terms set out in the lawsuit goes against the universality principle of inheritance which governs our succession law and stands in the way of giving differentiated legal treatment to the succession of mobile assets and property. It also contradicts and leaves unenforced the guiding principle of succession matters in English law which is the freedom to draw up wills as a manifestation of autonomous will.

For all of the above, and in line with the criteria of cited case law, it should be concluded that the succession of the deceased, Ms. Maria Milagros, is governed by her national law; i.e. by Scottish law, that recognises the right of its nationals to draw up wide-ranging wills and the suit should therefore be dismissed and the instance judgement revoked".

VII. NATIONALITY

– *RDGRN.* 9 April 2003. RJ 2003/4217.

Granting of Spanish nationality. Child of Columbian parents in Spain. Correction of the original status of statelessness. Rights of the child.

"Legal Grounds:

(. . .) This appeal focuses on whether, as a simple presumption, a child born in Spain in 2002 of Colombian parents born in Colombia, has Spanish nationality. The appeal is based on the *iure soli* form of attribution of Spanish nationality established in benefit of those born in Spain of foreign parents when the legislation of both parents fails to attribute a nationality to the child (*cfr.* article 17.1.c of the Civil Code [*LEG* 1889, 27]).

(. . .) According to the information gathered concerning Colombian legislation, confirmed via the consular certification attached to the case file, one must come to the conclusion that the children of Colombians born abroad do not automatically acquire Colombian nationality at birth and such nationality is only acquired by taking subsequent action. This gives rise to a situation of original statelessness in which the attribution of Spanish nationality *iure soli* is imposed. It should make no difference that the newborn may subsequently acquire *iure sanguinis* the nationality of his/her parents because this simple fact cannot imply the loss of the nationality attributed *ex lege* at birth.

(. . .) This conclusion is reinforced by the application of article 7 of the Convention on the Rights of the Child (*RCL* 1990, 2712) which establishes that the child, at birth, shall have the right to acquire a nationality and that the States party to the Convention shall see to the enforcement of this right 'especially when the child would otherwise be stateless' (. . .)".

– *DGRN.* 4 July 2003. *RJ* 2003/6333.

Declaration of Spanish nationality through state possession. Native of the Sahara. Enforcement of the doctrine established by the Supreme Court.

"Legal Grounds:

(. . .) The intent of this suit is to have the Court declare Spanish nationality upon simple presumption in the case of a Saharan woman born in Saharan territory in 1961 and whose birth was registered in the Civil Registry of this former Spanish possession.

(. . .) This request is based on the doctrine established in the case of another Saharan by the Supreme Court judgement of 28 October 1998 (*RJ* 1998, 8257). While recognising the difficulty – not expressed in the judgement – of the retroactive application of article 18 of the Civil Code (*LEG* 1889, 27), giving importance to a possession and use of Spanish nationality derived from acts dating back to well before the law of 17 December 1990 (*RCL* 1990, 2598) introducing this article, the fact is that this case presents specific circumstances that do allow for the application of that judgement to this case because these circumstances are surprisingly similar to those of the isolated case contemplated in that Supreme Court decision.

(. . .) The first of these circumstances is that it is sufficiently proven that the interested party and her parents were not included in either of the two categories that, based on residence and possession of certain documentation, would give natives of the Sahara the right to choose Spanish nationality in the terms and time frames set out in the Royal Decree of 10 August 1976 (*RCL* 1976, 1843). The fact is that during the entire period of time that said Royal Decree was in force, neither the interested party nor her parents resided in Spain but rather in the Sahara and therefore were not able to apply for Spanish nationality within the one year time limit provided for in the framework of this provision.

(. . .) The second circumstance referred to here is that the interested party has sufficiently accredited possession and continued use of Spanish nationality. Indeed, in line with the doctrine of the Supreme Court judgement of 28 October 1998 (*RJ* 1998, 8257), administrative documents issued by Spanish authorities should be considered as signs of possession of state and borne in mind as evidence. The admission of this Spanish documentation, however, was declared null and void in accordance with the final second provision of the above-mentioned Royal Decree (*RCL* 1976, 1843) (the validity of which has not been questioned). This must be understood as a corollary of the retroactive application of article 18 of the Civil Code (*LEG* 1889, 27) by the High Court in its aforementioned judgement. In any case, having admitted such evidence it is clear that, based on the latter, the interested party does indeed fulfil the requirements for the consolidation of Spanish nationality as set out in article 18 of the Civil Code".

VIII. ALIENS, REFUGEES AND EUROPEAN COMMUNITY CITIZENS

– *STS.* 20 March 2003. *RJ* 2003\2422.

Appeal by Pro-Immigrant associations against *RD* 864/2001 of 20/07/2001 approving the Regulations for implementation of Organic Law 4/2000 of 11/01/2000 on Rights and Freedoms of aliens in Spain, as reformed by Organic Law of 22/12/2000. Annulment of some articles.

"Legal Grounds:

(. . .)

Four: The appellants hereafter challenge article 38, which reads: 'Without prejudice to the provisions of the foregoing articles, the Ministry of the Interior may authorize stays in Spain of up to three out of any six consecutive months in respect of aliens having entered Spain with defective documentation or even without documentation, or having entered by way of places not authorized therefor, provided that there are humanitarian reasons, reasons of national interest or international obligations in favour thereof, and in such cases it may as a precaution order any of the measures listed in art. 5 of Organic Law 4/2000 (*RCL* 2000, 72 and 209), as reformed by Organic Law 8/2000 (*RCL* 2000, 2963 and *RCL* 2001, 488)', on the grounds that the final proviso, namely 'and in such cases it may as a precaution order any of the measures listed in art. 5 of Organic Law 4/2000 as reformed by Organic Law 8/2000', contravenes the cited Law, which restricts the applicability of such precautionary measures limiting the right of free movement, as stated in the heading of article 5 of the Law, to aliens who are in Spain in the terms set forth in Title II of the Law – that is, who are visitors, temporary residents or permanent residents at the time a state of emergency or siege is declared, and exceptionally for reasons of public safety – but in this case such an order must be issued on an individual basis, the reasons must be stated and the measure must be proportionate to the circumstances of the case.

The cited Law absolutely does not contemplate the possibility of generally extending such measures limiting the right of free movement to cover circumstances other than a state of emergency or siege, and therefore the regulatory extension of the scope of article 5 of the Law is contrary to that same Law and to article 19 of the Constitution (*RCL* 1978, 2836). Only exceptionally, in individual cases and in the manner laid down in the cited Law, may such a limitation be imposed on aliens in Spain with visitor status as referred to in the challenged article 38, which status must be deemed legal in light of the grant of authorization referred to in the cited article of the Regulations.

The challenge is therefore upheld and the provision must be annulled as requested in the appeal, in that it contravenes Law 4/2000 as drafted in Law 8/2000.

Five: The next regulatory provision whose annulment is moved is article 41.5, which reads: 'Aliens having acquired resident status under family reunification procedures may in turn exercise the right of reunification for their own family members provided that they already possess a resident's permit not obtained through

a prior reunification procedure and accredit compliance with the requirements laid down in Organic Law 4/2000 (*RCL* 2000, 72 and 209) as reformed by Organic Law 8/2000 (*RCL* 2000, 2963 and RCL 2001, 488) and in these Regulations for purposes of such reunification'.

The appellants maintain that the provision is contrary to article 17.2 of Law 4/2000 as drafted in Law 8/2000 in that it allows exercise of the right of reunification of family members by persons who obtained that right through prior reunification procedures only if they have obtained a resident's permit on a basis other than the reunification procedures whereby they originally became legally resident in Spain, while article 17.2 of the Law expressly recognises the right of reunification to persons having acquired resident status through prior reunification procedures.

The legality of the cited provision was specifically questioned in the report of the Council of State, which recommended at least the removal of a final point in the bill, which read 'persons granted resident's status under family reunification procedures may not apply for further reunifications'.

In the words of the Council of State, '. . . To introduce regulations laying down certain conditions for a given action, as the Law expressly provides, is one thing; to introduce regulations prohibiting that action, as this bill proposes, is quite another. In its opinion of 28 July 2000 on the draft bill which was later enacted as Law 8/2000 (opinion 2606/2000), the Council drew attention to the danger of serial reunifications, a point also raised in the report of the General Council of the Judiciary. However, this was not the majority view and the Law allows applications for family reunification by persons who possess resident status by virtue of prior reunification procedures, subject to regulated conditions. What the Regulation (*RCL* 2001, 1808 and 2468) cannot do is reverse the Law and prohibit such reunifications, particularly given that the Law, as provided in art. 13 *CE* (*RCL* 1978, 2836), must afford aliens a fundamental right recognised in the Constitution and must interpret that right according to the international rules to which Spain is a party (art. 16 of the Law as it relates to 17.5 *CE*, in light of art. 10.2 *CE* and international regulations: i.e., arts. 12 and 16 Universal Declaration [*LEG* 1948, 1], art. 8 European Declaration [*RCL* 1999, 1190] and arts. 9 and 10 United Nations Convention on the Rights of the Child [*RCL* 1990, 2712]).

The issue here is whether or not the present wording, in which the proviso transcribed above is absent, respects the legally-recognised right referred to by the Council of State as 'serial reunifications', which the Council states is a right recognised in the Law.

In our opinion, to require that a second resident's permit be obtained independently of the one obtained through reunification as a condition for exercise of the right of family reunification recognised in the Law is to deprive persons who have obtained a resident's permit through reunification procedures of the right, recognised in article 17 point 2 of the Law, to exercise that right in respect of their own family members. The position adopted in the Regulations restricts exercise of the right of family reunification to persons possessing a second resident's permit obtained independently of the family circumstances that allowed their own

reunification – in other words, the regulations preclude what the Council of State refers to as serial reunification, which is a possibility contemplated in the Law. The provision must therefore be annulled.

Six: In the correlating section the appellants challenge article 49.2 d) and e) of the Regulations (*RCL* 2001, 1808 and 2468) regarding exemption from the need of a residence visa, which reads as follows: 'd) Aliens who are married to a Spanish citizen or to a legally resident alien who is a national of a State that is party to the Agreement on the European Economic Area, provided that they are not legally separated, that they meet the conditions laid down in art. 17 of Organic Law 4/2000 (*RCL* 2000, 72 and 209) as reformed by Organic Law 8/2000 (*RCL* 2000, 2963 and *RCL* 2001, 488) and that they provide evidence of having cohabited in Spain for at least one year. e) Aliens who are married to a Spanish citizen or to a legally resident alien who is not a national of a State that is party to the Agreement on the European Economic Area, provided that they are not separated legally or *de facto*, that they meet the conditions laid down in art. 17 of Organic Law 4/2000 as reformed by Organic Law 8/2000, that they provide evidence of having cohabitated in Spain for at least one year, and that the spouse's resident's permit is valid for at least one more year'.

The appellants maintain that the phrase 'in Spain' oversteps the requirement laid down in article 31.7 of Organic Law 4/2000.

The Law does not place any condition upon the requirement of at least one year's cohabitation to qualify the spouse of a resident in Spain for exemption from the residence visa. In requiring that such cohabitation must necessarily take place in Spain, the regulation introduces a restriction that goes beyond the legal requirement and is thus in breach of the principle of legality, besides entailing an obligation to remain for one year in Spanish territory in irregular circumstances. Had the legislator intended to require cohabitation in Spain, it would have remitted to article 16 of the Law, in the same Chapter referring to Family Reunification, which does make reference to residence in Spain. The provision must therefore be annulled.

Eight: The appellants further call for annulment of article 56.8 of the Regulation (*RCL* 2001, 1808 and 2468) as it relates to undocumented aliens, where it provides: 'Once the report is completed, unless the alien comes under one of the rules barring entry or entailing expulsion, if the alien wishes to remain in Spain, the Deputy Government Delegate, or the Government Delegate in single-province Autonomous Communities, shall, subject to payment of the fiscal dues required by law, order that person's registration in a special section of the Aliens Registry and shall issue him/her with a printed certificate of registration, which must be renewed annually and whose characteristics shall be determined by the Ministry of the Interior. The Directorate General of Police shall issue certificates or reports, to be included in the said special section for presentation to any other Spanish authority'.

The motive of the call for annulment is the phrase 'unless the alien comes under one of the rules barring entry or entailing expulsion'.

Inasmuch as the phrase referred to is contrary to article 34.2 of Law 4/2000 (*RCL* 2000, 72 and 209) as set forth in Law 8/2000 (*RCL* 2000, 2963 and *RCL*

2001, 488), the challenge must be upheld in that the law simply provides that 'The requested papers shall be denied where the applicant's situation is one of those listed in article 26'; the heading of article 26 refers to the barring of entry, but not to expulsion as assumed in the Regulation. It therefore contravenes the Law it is intended to implement, in that such denial is only applicable to persons who have been expelled and only for the duration of the prohibition of entry, and to persons barred from entry for another legally established reason or by virtue of an international convention to which Spain is a party; but it certainly does not extend to persons currently the subject of expulsion procedures as long as no expulsion order has been issued.

Moreover, the existing wording of the provision here challenged, if retained, would render impracticable, and hence nullify, the intent of article 34, since any alien obliged to proceed as provided in article 34.2 of the Law to obtain an identity document by reason of being undocumented and unable to obtain documentation from the authorities of any country for reasons other than statelessness will in any case be liable to expulsion for lack of legal status; after all, according to article 25 of Law 4/2000 applicants must possess a passport or travel document accrediting their identity, which is completely different from undocumented status as referred to in article 34 of the Law.

We therefore repeat that the challenged provision must be annulled in respect of the phrase 'or entails expulsion'.

Nine: Article 57 of the Regulation (*RCL* 2001, 1808 and 2468) reads: '1. In the case of aliens in Spain who can furnish documentary evidence of an exceptional need to quit Spanish territory but are unable to obtain a passport for any of the reasons listed in art. 34.2 of Organic Law 4/2000 (*RCL* 2000, 72 and 209) as reformed by Organic Law 8/2000 (*RCL* 2000, 2963 and *RCL* 2001, 488), upon completion of the formalities regulated in the foregoing article, the Directorate General of Police may issue them with a travel warrant valid for the countries that they specify, with authorisation to return to Spain unless the sole purpose of the journey is to enable the applicant to return to his or her country of nationality or residence, in which case such warrant shall not authorise the person to return to Spain.

2. The maximum period of validity and the limitations on use of the travel warrant shall be as stated on the warrant itself, which shall be issued in accordance with a model determined by Order of the Ministry of the Interior'.

The appellants seek the annulment of the provision here at issue in that part relating to the phrase 'who can furnish documentary evidence of an exceptional need to quit Spanish territory' and the expression 'may issue', on the ground that they contravene article 34.2 of Organic Law 4/2000 by introducing requirements not contemplated in the Law and further rendering discretionary an action that is mandatory according to the Law.

The last part of article 34.2 of Law 4/2000, which is allegedly infringed by the regulatory provision whose annulment is sought, provides that 'those wishing to travel abroad shall further be issued with a travel warrant'.

The Law places no conditions on the issue of a travel warrant other than possession of the documentation referred to in the same article, and therefore to predicate the issue of a travel warrant upon documentary evidence of 'an exceptional need to quit Spanish territory' rather than the simple desire to travel abroad as contemplated in the Law is clearly in contravention of that Law and therefore must be annulled as requested. The same applies to the expression 'may issue' as used in the Regulation, in that it expresses a mere possibility at odds with the mandatory force of article 34.2 of the Law, where it provides that they 'shall further be issued'.

In view of the foregoing, section 1 of article 57 must be annulled in its entirety, since deletion of the phrase whose annulment is requested would render the provision unintelligible.

Ten: Regarding article 84 as it relates to grounds for non-admission of applications for work permits, viz., sections 2 and 6, where they read: '2. Lack of competence of the body to which the application is addressed' and '6. An application submitted by way of improper procedures, as provided in these Regulations', The appellants hold that these should be annulled inasmuch as they contravene articles 71.1, 70 and 20.1 of the Public Administrations and Common Administrative Procedures (Legal Regime) Act (*RCL* 1992, 2512, 2775 and *RCL* 1993, 246).

According to the relevant provisions of the Public Administrations and Common Administrative Procedures (Legal Regime) Act, 'any administrative body deeming itself incompetent to resolve any matter shall transfer the procedures to the body that it considers competent, if the latter belongs to the same Public Administration' (art. 20 *LRJPAC*). In light of this provision, there is no doubt that section 2 of article 84 of the Regulations (*RCL* 2001, 1808 and 2468) as transcribed above contravenes a rule having the rank of Law and must therefore be annulled, considering that non-admission is only allowable where the body to which the application is addressed belongs to an Administration other than that competent to deal with the matter.

As regards section 6 of the challenged article, the reference to procedures must be taken as meaning the provisions set forth in Chapter III Section Five, which includes those relating to 'documentation required for first-time grant or renewal of a work permit' (art. 81) and to the place and manner of presentation (art. 82). It follows from the wording of the challenged art. 84.6 that omission of any of the documents listed in the cited art. 81, for instance the presentation of two photographs rather than three (art. 81.1.1b), would cause non-admission of the application. This is contrary to the meaning of article 71 of *LRJPAC*, which provides that if an application for the initiation of an administrative procedure does not meet the requirements stated in the preceding article and any other requirements of the law specifically applicable to the case, 'the applicant shall be notified that he/he must remedy the omission or furnish the requisite documents within ten days and must be warned that otherwise the application will be deemed to be withdrawn and will be set aside without further action . . .'.

Given that Law 30/1992 applies to all Public Administrations and that all administrative procedures must be adapted to it, the provisions of article 84.6 of the

Regulations are clearly in breach of article 71 of Law 30/1992 as transcribed. They must therefore be annulled inasmuch as they do not permit the remedy of defects as provided by the Law.

Thirteen: Next, the appellants consider that article 117.2 of the Regulations (*RCL* 2001, 1808 and 2468) at issue here, concerning precautionary measures in expulsion procedure, where it reads 'In the first steps of the instruction stage, where there are circumstances that make such action advisable, for example an alien lacking a fixed abode or known address or failing to name any place for the purpose of notifications, the body competent to initiate the procedure or the Court of Instruction may order the provisional withdrawal of the alien's passport or other document accrediting nationality, in which case he/she must be given a receipt in evidence thereof', should be annulled in the part reading 'to initiate the procedure or the Court of Instruction' inasmuch as it contravenes article 61.1 of the Aliens Act (*RCL* 2000, 72 and 209).

In effect, the cited article 61.1 provides that the authority competent to decide on sanction procedures where expulsion is proposed may, at the instance of the Court of Instruction . . ., order withdrawal of the alien's passport or other document accrediting nationality (art. 61.1.c). Hence, in shifting this competence to the Court of Instruction, which the law only empowers to make a proposal, and to the body competent to initiate the procedure, the regulations undoubtedly contravene a statute of superior rank, and therefore the provision must be annulled.

Fourteen: In this point of their suit the appellants call for annulment of article 127.2.c of the challenged Regulations (*RCL* 2001, 1808 and 2468) where it reads: 'Internment of an alien may only be ordered where any of the following circumstances arise: c) a return order has been issued in accordance with the provisions of these Regulations', on the ground that it infringes article 58.5 of the Aliens Act (*RCL* 2000, 72 and 209), in that the Act only allows internment in cases where return is ordered by reason of violation of a bar on entry – that is, in the events listed in section 2.a) of article 58 of the Act – while the challenged provision contemplates the possibility of internment in all cases where a return order has been issued.

Consequently, the regulatory provision is in clear contravention of article 58.5 of the Act, which distinguishes between return by reason of violation of a bar on entry to Spain (art. 58.2.a), contemplating internment where such return is not practicable within seventy-two hours, and the return of persons attempting to enter the country illegally, in which case it does not contemplate internment; moreover, there can be no confusion between return and expulsion, in which latter case internment is allowed under article 62. e) of Organic Law 4/2000 as reformed by Organic Law 8/2000 (*RCL* 2000, 2963 and *RCL* 2001, 488).

To regulate in such a way as to extend a precautionary measure affecting the right of freedom to cases not contemplated in the Law is contrary to our legal system, and therefore the challenged provision must be annulled.

Fifteen: In this ground the appellants call for the annulment of article 130 of the Regulations (*RCL* 2001, 1808 and 2468) implementing Organic Law 4/2000

(*RCL* 2000, 72 and 209) as reformed by Organic Law 8/2000 (*RCL* 2000, 2963 and *RCL* 2001, 488), which reads:

'1. Internees are obligated to comply with the rules of communal conduct, internal order, health and hygiene and to preserve the facilities and furnishings of the centre.
2. In each centre there shall be a Board, comprising the Director of the centre, the medical officer and a social worker. The social worker shall advise the Director on the adoption of measures in respect of internees who fail to observe the rules of communal conduct and internal order, which measures must be communicated to the judicial authority that authorised internment.
3. The management of the centre shall establish a timetable regulating the various activities to be carried on by the internees.
4. Internees may receive and send correspondence and may make and receive telephone calls to and from the outside. Such communications may only be restricted by court order.
5. All necessary steps shall be taken to prevent restrictions on the exercise of religious freedom by internees.
6. Internees are authorised to communicate with their solicitors and to communicate periodically with relatives, friends and diplomatic representatives of their country. Such communications must take place within the times set for proper communal conduct of internees, in accordance with the rules and regulations of the centre'.

The question here is whether the issues referred to in the challenged provision are reserved to the Law, regardless of whether such Law need be an Organic Law.

As the Constitutional Court has determined, article 53.1 of the Constitution (*RCL* 1978, 2836) is to be construed as referring to the legal nature or the mode of conceiving or configuring each of the rights enshrined in Title One Chapter Two of the Constitution, or else as it relates to what a strong legal tradition terms legally protected interests, as the central core of subjective rights. In this respect the cited article adds an extra guarantee by declaring such rights directly applicable and hence reserving to the legislator – that is, the Parliament – the power, within the essential meaning of the article, to regulate the exercise of these rights, which naturally include the right to freedom enshrined in article 17, which applies to all persons and not only Spanish nationals.

The challenged article addresses issues relating directly to the legal status of aliens who have been placed in internment centres under the provisions of articles 60 and 62 of Organic Law 4/2000 as reformed by Organic Law 8/2000, and hence that legal status, insofar as it affects and limits the exercise of various essential aspects of the right to freedom of aliens – over and above the right of free movement referred to in article 60.2 of Law 8/2000, for instance imposition of a quantitative limitation (viz., the term 'periodically') on the possibility of communicating with relatives or diplomatic representatives of internees' countries of origin, or the contemplation of corrective measures for 'internees' who do not observe

the rules of communal conduct without specifying what these are and without them being established by Law – are required by the Constitution to be regulated by Law. This was the view of the legislator in connection with a situation of deprival of freedom which the Constitutional Court has deemed comparable to the situation in question as regards necessary guarantees: namely, preventive detention, in which the legal status of those affected by the measure is regulated by Organic Law 1/1979 (*RCL* 1979, 2382). In effect, this Organic Law regulates such issues as the obligation to comply with rules of internal order, health care, disciplinary rules, inmates' communications, religious services, etc., all of them issues referred to in the regulatory provision here challenged. The provision must therefore be annulled as possessing insufficient rank in respect of all those parts entailing limitations on rights other than as contemplated in article 60 of Law 8/2000, the last phrase in section 2 whereof provides that 'interned aliens shall be deprived solely of the right of free movement'. Consequently, there is absolutely no doubt that annulment is indicated in the case of paragraphs 2 and 6 of the article here at issue, and we further insist on annulment of paragraph 6 must be annulled inasmuch as it introduces the element of periodicity in communications, hence implying a limitation on a right that this Court holds to be beyond question and not susceptible of limitation by way of regulation in light of the terms of article 60.2 of Law 8/2000 as cited above. On the other hand, there is no call to annul paragraphs 4 and 5 inasmuch as they are confined to recognising, albeit needlessly, the right to send and receive correspondence, to hold telephone conversations and to exercise religious freedom.

Paragraphs 1 and 3 are essential adjuncts to the practical possibility of internment as established by law, essential adjuncts forming part of a principle accepted by the Constitutional Court and by this Bench in a number of decisions, among them those of 30 November 1982 and 1 June 1973. In our view they are absolutely essential inasmuch as compliance with the rules of communal conduct, internal order, health, hygiene, timetables and the preservation of facilities and furnishings is absolutely essential to the proper running of an internment centre.

Therefore, paragraphs 2 and 6 of the challenged article must be annulled, be it stressed nonetheless that the list of rights set forth in paragraphs 4 and 5 of the said article , which must stand, by no means constitute a *numerus clausus*, which would contravene article 60 of Law 8/2000.

Sixteen: The appellants base their challenge of article 136.3 of the Regulations (*RCL* 2001, 1808 and 2468) concerned here, which provides that 'The Courts shall inform the governmental authority of the conclusion of judicial proceedings in which there have been administrative infringements of the regulations on aliens, so that the administrative authorities may resume, initiate or shelve the administrative sanctioning procedure, as appropriate in each case. They shall likewise give notice of convictions of aliens for criminal offences carrying prison sentences of more than one year, for the purposes of instituting the appropriate sanctioning procedures', on the fact that in their opinion it violates article 2.2 of the Judiciary Act (*RCL* 1985, 1578 and 2635).

The article at issue here obliges the Courts – and hence Judges – to inform the governmental authorities as provided in the article, since it is up to Judges and Magistrates to order enforcement of any judgment by a Court. Thus, this article imposes duties upon Judges and Magistrates, hence conflicting with their Statute and with article 2.2 of the Judiciary Act, which restricts the functions of the Courts to delivering and enforcing judgments, and to 'whatever other functions the Law vouchsafes them in guarantee of any right'. The notifications referred to in the article of the Regulations at issue cannot be considered part of the procedure of enforcement of court orders, especially given that article 990 of the Criminal Procedure Act (*LEG* 1882, 16) refers only to regulations having regard to the manner and time of enforcement of penalties, inasmuch as the governmental procedures referred to in article 136.3 of the Regulations here at issue cannot by any means be construed as constituting either the main part or a secondary part of the penalty. This point of the article must therefore be annulled.

Furthermore, the notice mentioned in the last sentence of the article at issue, referring to convictions of aliens for criminal offences carrying prison sentences of more than one year, exceeds the bounds of procedure in requiring notification of the court's decision to one not a party in the proceedings; this contravenes article 160 of the Criminal Procedure Act, whereunder notice of decisions is to be served on the parties and their Counsels. Such notification therefore affects proceedings; as such it has to be regulated by Law and hence comes under article 122 of the Constitution (*RCL* 1978, 2836) and article 2.2 of the Judiciary Act. This means that, affecting judicial procedure as it does, such notice can only be sanctioned by regulations having the rank of Law and must therefore be annulled.

Eighteen: In the last part of their writ the appellants call for annulment of article 138.1.b) of the Regulations (*RCL* 2001, 1808 and 2468) concerned here as regards the possibility of returning aliens in the following cases: '1.b) Aliens seeking to enter the country illegally; for these purposes this includes aliens intercepted at or in the vicinity of the border or in transit or *en route* within the national territory who do not comply with the requirements for entry'.

The appellant calls for the excision of the words 'or in transit or travelling within the national territory' on the ground that under article 58.2 of the Aliens Act (*RCL* 2000, 72 and 209), aliens can only be returned without an expulsion order if they 'seek to enter the country illegally' (section b) or are in breach of a bar on entry to Spain in consequence of a prior expulsion (section a).

The article challenged here seeks to give an interpretation of article 58 section 2.b of the Law, as transcribed above, as it relates to section 1.b): 'for these purposes (aliens seeking to enter the country illegally) this includes aliens intercepted at or in the vicinity of the border or in transit or *en route* within the national territory who do not comply with the requirements for entry'.

The question is whether this regulatory provision exceeds its legal mandate by introducing an unlawful interpretation, in which case it must be annulled.

There can be no doubt that the article at issue refers to attempted entry: the expression 'seeks to enter' is not open to doubt. It is likewise evident that persons

inside the national territory, whether *en route* or in transit, are not seeking to enter the country; this conflicts with the fact of their being 'within the national territory', regardless of whether they are *en route* to a specific destination within the national territory or in transit to a third country.

The Act refers strictly to persons seeking to enter the country illegally, not to persons already in the country and travelling from one to another place in the country or to a third country. The challenged article oversteps the limit of the law by attempting to extend it to a case not provided for therein. This is therefore un unlawful interpretation which seeks to apply exceptional rules lacking the guarantees associated with expulsion to cases other than those contemplated by law. This provision must therefore be annulled".

IX. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

X. FAMILY

1. Adoption

– *RDGRN.* 9 April 2003. *RJ* 2003/4344.

Adoption in Peru: Spanish adopter and Peruvian adoptee in his majority. Applicability of the national law of the adopter. Allowability of registration.

"Legal Grounds:

(. . .) In light of articles 9, 19 and 175 of the Civil Code (*LEG* 1889, 27); 15, 16 and 23 of the Civil Registry Act (*RCL* 1957, 777); 66, 68 and 85 of the Civil Registry Regulations (*RCL* 1958, 1957, 2122 y *RCL* 1959, 104), and Decision 6 of 12 September 2002 (*RJ* 2003, 137),

(. . .) This appeal raises the issue of whether it is allowable to register with the Consular Registry the adoption of a Peruvian citizen of legal age by a Spanish citizen, done in Peru in accordance with Peruvian law.

(. . .) Given that in an adoption constituted by the competent foreign judicial authority, the law of the adoptee prevails as regards capacity and the necessary consents (*cf.* art. 9.5 *Cc* [*LEG* 1889, 27]), there is no obstacle to admission of an adoption of a Peruvian citizen of legal age constituted in accordance with Peruvian law, and the Spanish rules restricting the admission of adoptions of persons of legal age to exceptional cases (*cf.* art. 175 *Cc*) is not applicable. Furthermore, since the Spanish adopter is domiciled in Peru, no declaration of suitability is required from the Spanish public authority; also, there is no doubt that this Peruvian adoption is equivalent in its effects to a Spanish adoption, given that it entails the adoptee becoming an integral member of the adopter's family and the severing of all ties with the biological family, and it is irrevocable (*cf.* art. 9.5 *Cc*).

(. . .) For the rest, the adoptee may opt for Spanish nationality within the two years following constitution of the adoption".

2. Legal kidnapping

– *AP* Cáceres. 3 June 2003. JUR 2003/211413.

International kidnapping of a minor by his father. Custody awarded to the mother by a French Court. Restitution. Hague Convention.

"Legal Grounds:

(. . .). Silvio X's legal counsel is appealing against a judgment of Court of First Instance no. 1 of Plasencia, dated 12 March 2003, alleging violation of rules of national law and private international law. Counsel further alleges defencelessness and the violation of constitutional guarantees in that the client's right to effective judicial protection is necessarily violated by the court's refusal to admit evidence, and particularly by the fact that no hearing was granted to the minor or to the Mayor of the minor's and the parents' habitual place of residence (Jaraíz de la Vera).

The issue here considered arises out of a writ submitted by the State Attorney, dated 20 February 2003, proposing measures for the return of the minor Alfredo, by reason of the alleged kidnapping of the minor by the father Silvio X. Custody of the minor had been awarded to the mother, Eugenia X, by order of the Tribunal de Grande Instance of Fontaineblau (France), which in an order *pendente lite* no. 75/2000 of 25 February, established among other things that the habitual residence of the minor was the home of the mother; a subsequent decision (no. 216–DP of 16 July 2002) prohibited either of the parents from removing the minor from French territory without the written consent of the other parent.

In defiance of the above court order, the defendant Silvio X succeeded in removing the minor from French territory and taking him to Spain by means known to himself and not recorded in the proceedings, and settled in Jaraíz de la Vera (Cáceres), CALLE000 no. 002. In response, the mother Eugenia X requested the return of the minor to France as provided in Hague Convention no. 28 on civil aspects of international kidnapping of minors, of 25 October 1980. In light of this request, the Spanish Ministry of Justice remitted the relevant documents to the State Attorney's Office for the latter to institute proceedings for the return of the minor to his habitual residence.

That being the situation, by decision of 12 March 2003, the Court of First Instance no. 1 of Plasencia ordered the return of the minor to the mother's habitual residence, NO000 ADDRESS000. Porte NO001. 77550 Moyssy-Cremayel (France) on the ground that the defendant Silvio X had violated the order of the Tribunal de Grande Instance of Fontaineblau by removing the minor from French territory and taking him to Spain.

(. . .). The decision reached by the Court of First Instance no. 1 of Plasencia is challenged by counsel for the appellant Silvio X. The grounds for this appeal, as detailed further below, are that the said decision not only violates rules of national law and private international law but has further left the defendant defenceless by violation of the principle of judicial protection in not admitting evidence, meaning refusal to give a hearing to the minor or to the Mayor of the minor's habitual place of residence (Jaraíz de la Vera).

This Bench cannot accept the arguments proffered in objection. As regards the alleged violation of rules of private international law, we would point out that the appellant himself in principle accepted the competence of the French Courts by initiating divorce proceedings there, for all that when the court's decision was adverse to him, he objected and claimed always to have been resident in Jaraíz de la Vera. The decisive fact here is that in the proceedings before the French Court, the appellant's domicile was given as NO003 ADDRESS001 – 77850 HERICY. Moreover, according to the decision of 16 July 2002 of the Tribunal de Grande Instance of Fontainebleau, the minor's habitual place of residence was the mother's, namely NO000 ADDRESS000. Porte NO001. 77550 Moyssy-Cremayel (France). This decision expressly prohibited the removal of the minor from France without the consent of the other spouse. Now, according to article 3 of the Hague Convention referred to above, removal of a minor is considered unlawful where – as in the present case – it is in breach of the right of custody awarded to the other spouse. Furthermore, under article 12 of the said Convention, where less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith. The sole exception to this is provided in article 13 of the Convention, which permits non-return of the minor if the person, institution or other body having the care of the person of the child was not actually exercising the custodial rights at the time of removal or retention, or there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. That said, in the present case there is no such risk of harm; a psychological test conducted on 22 November 2001 shows clearly that the mother is better able than the father to care for the child, and that the mother has made no objections to the child communicating with the father".

3. Marriage

a) Celebration and registration

– *DGRN.* 14 January 2003. *RJ* 2003/3051.

Application for registration of marriage constituted abroad between non-Spanish citizens. Subsequent acquisition of Spanish nationality by the wife. Validity under foreign law

"Legal Grounds:

(. . .) Marriages celebrated in a foreign country by persons who subsequently acquire Spanish nationality can be registered with the competent Spanish Civil Registry (*cf.* art. 66 *RRC* [*RCL* 1958, 1957, 2122 and *RCL* 1959, 104]) provided that they meet the necessary requirements and a registrable document is submitted; such document is normally a marriage certificate issued by an authority or functionary of the country where the marriage took place (*cf.* art. 256.3 *RRC*).

(. . .) In the present case the marriage partners are both Cuban, and therefore legal capacity and the requirements for legal marriage are governed by Cuban law

(*cf.* art. 91 *Cc* [*LEG* 1889, 27]); there can be no doubt as to the validity of the marriage under Cuban law, given that it has been registered with the Cuban Civil Registry. This means that the Spanish rules regarding consent to matrimony and the consequent nullity of this marriage absent such consent (*cf.* arts. 45 and 73.1 *Cc*) do not apply, since these rules, intended to prevent fraud, are only to be applied where one of the partners possessed Spanish nationality at the time of the marriage".

b) Divorce

– *AP* Barcelona. 19 March 2003. *AC* 2003/1119.

Law applicable to divorce between Mexican and Argentinian spouses. Marriage celebrated in Uruguay. Effects of matrimony.

"Legal Grounds:

(. . .) As regards the material law applicable to this case, it would indeed appear in principle that this is the law of Uruguay, given that as stated in recital four of the writ of action, the spouses do not share a common nationality (he is Mexican; she is Argentinian); they drew up a marriage contract as required by the Civil Code of the Oriental Republic of Uruguay, the country where both were resident prior to their marriage, the marriage was celebrated in that country, and there they established their common habitual abode immediately after the said marriage. The applicable precepts are therefore the relevant provisions of the Uruguayan Civil Code (arts. 81 *et seq.*), a reproduction of which is appended to the writ of action as document no. 4 (folios 21 *et seq.*).

On the one hand there are the effects of matrimony (art. 9.2 *Cc* [*LEG* 1889, 27]). These are governed by the common personal law of the spouses; failing that, by the personal law or the law of the habitual place of residence of either partner where both have so chosen by virtue of a notarised document formalised prior to the marriage; failing that, by the law of the common habitual place of residence immediately after the marriage; and failing that, by the law of the place where the marriage was celebrated. Having regard to the effects of matrimony, the law of Uruguay undoubtedly applies; it is in the final analysis the only forum of undisputed connection, given that there the present opponents celebrated their marriage, there they draw up a marriage contract and there they established their first place of residence, albeit they subsequently moved to El Cairo in pursuit of the professional career of the husband, who is in the catering business and moves from one country to another. The separation and divorce are governed by the law determined in art. 107 of the Civil Code. In the case here at issue, it is clear that as the husband is Mexican and the wife Argentinian, there was no common national law at the time suit was brought. Therefore, the applicable law must be that of the partners' habitual place of residence; there is no doubt that the partners Francisco and Nieves were resident in Spain, where Francisco worked in . . . Barcelona, and at the time legal proceedings were initiated this was the common place of residence, albeit the husband has since moved to Mexico, and indeed failed to appear at the hearing in the matrimonial proceedings. Given that the Spanish courts are

competent, it is clear that absent a common national law, the only alternative is to apply the law of Spain, and that the judgment of the Spanish courts cannot be influenced by a generalised and abstract invocation of Uruguayan law as made in the writ of action.

(. . .) The decision here at issue cannot cause dissolution of the marriage by divorce, as Spanish law is fully applicable in this respect (art. 86 of the *Cc* [*LEG* 1889, 27]). Under the principle of equivalence of institutions existing in private international law and for the sake of congruence with the intent of the party, such that he who files for divorce implicitly confirms the existence of a separation, be this *de facto* or alternatively the consequence of moderation of the party's intent and assent to the separation as judicially decreed, in order to avoid the state of tension arising in cohabitation once there ceases to be *affectio maritalis*, such separation may lawfully be decreed. For the rest, the effects provided by the decision as a consequence of this separation closely resemble those ensuing under Uruguayan law as invoked, so much so indeed that there is no observable incompatibility. Therefore, the action for separation in this case coincides with that provided in the Uruguayan Civil Code, which likewise establishes that the liability for maintenance of the common child be apportioned in accordance with the parents' financial capacity and that the wife is entitled to maintenance as the less favoured spouse. (. . .)".

XI. SUCCESSION

– *AP* Baleares. 13 May 2003. Web Aranzadi JUR 2003/229140.

German declaration of heirs. Law applicable to succession of a German national.

"Legal Grounds:

An appeal was brought against the above decision by the legal representative of the defendant, whose counsel, without questioning the substance of the matter, here reiterates the allegation that the plaintiffs lack legitimate standing on the ground that the certificate of inheritance issued by the Court of Detmold, whose validity is not denied, is not enforceable in Spain under the provisions of article 22.3 of the Organic Law of the Judiciary (*RCL* 1985, 1578, 2635), on which basis the defence sustains that albeit the deceased's last domicile was in LluchMayr, where he died, and he possessed goods in that place, the document appended to the writ of action and relating to the foreign judgment, consisting in a declaration of heirs, is not enforceable in Spain.

The plaintiff and respondent, adopting the grounds of the original judgment and defending the validity in Spain of the certificate of inheritance issued by the Court of Detmold, Germany, moved for denial of the appeal and confirmation of the decision appealed against.

(. . .) The defendant and appellant denies not the validity in Spain of the document appended to the writ of action consisting in a declaration of heirs issued on 30/07/01 by the Municipal Court of Detmold, Germany in favour of the deceased's daughters, the plaintiffs in this case, but the enforceability of that document as it

relates to the case at issue, on the ground that such a certificate conflicts with article 22.3 of the Judiciary Act (*RCL* 1985, 1578, 2635), in accordance with which – so the appellant appears to sustain – although the deceased's last domicile was in LluchMayr, where he possessed goods, the declaration of heirs ought to have been made under Spanish regulations and hence, the appellant concludes, the document appended to the writ of action and relating to the foreign judgment, consisting in a declaration of heirs, is not enforceable in Spain.

This Bench cannot agree with these arguments given that, as the challenged decision rightly pointed out, point 1 of article 9 of the Civil Code (*LEG* 1889, 27) provides that: 'The personal law of natural persons is that determined by their nationality. Such law shall govern legal capacity and marital status, the rights and duties of family and succession *mortis causa.*', while point 8 of the same article stipulates that: 'Succession *mortis causa* shall be governed by the national law of the deceased at the time of death, regardless of the nature of the goods and the country in which they are situated.'

This being so, and there being no question in the proceedings that the deceased was of German nationality, it is German law that must govern the succession, and therefore the declaration of heirs issued by the Clerk of the Court of Detmold, Germany must be deemed valid and enforceable in Spain by virtue of the provision of the Hague Convention of 5/10/1961 (*RCL* 1978, 2059) – as referred to by the plaintiff – abolishing the requirement of legalisation for foreign public documents, as ratified by Spain by instrument of ratification of 10/4/78 (*BOE* 229/1978 of 25/09/1978), article 1 of which provides that: 'The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State' and identifies among those deemed to be public documents for the purposes of the Convention: 'a) documents emanating from an authority or an official connected with the Courts or Tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server.'

Therefore, by virtue of the said convention, also ratified by Germany, each Contracting State must waive the requirement of legalisation for documents to which the Convention applies and which have to be produced in its territory, so that the sole legalisation requirement will be a formality consisting in the Apostille described in the Convention, issued by the competent authority of the State from which the document emanates. Moreover, this stricture has recently been removed, reducing the formalities still further, by EC Regulation no. 44/2001 of 22/12/2000 (*LCEur* 2001, 84), article 33 of which provides for the recognition of judgments decreed in a Member State without the need of any procedure whatsoever.

Therefore, inasmuch as the defendant and appellant questions not the authenticity or the Apostille of the document as such but its general enforceability in Spain on the ground that the succession is governed by Spanish law, the appeal cannot be entertained, since the law governing the succession is the national law of the testator and hence the declaration of heirs, issued by the German authority and duly apostilled, is valid and enforceable in Spanish courts.

Be it said furthermore that in matters of succession, the article cited by the appellant, article 22.3 of the Judiciary Act (*RCL* 1985, 1578, 2635), which determines the competence of Spanish Courts in civil matters, does not conflict with the rules of Private International Law as regulated in article 8 *et seq.* of the Civil Code (*LEG* 1889, 27), article 9.8 of which, as noted, provides that without prejudice to the competence of the Spanish Courts as cited, succession *mortis causa* is to be governed by the national law of the testator at the time of his death, regardless of the nature of the goods or the country in which they are situated.

The jurisprudential criterion of the Supreme Court, as is well enough known to make a specific citation superfluous, is that there is tacit acceptance of an inheritance in the event of acts by an heir that reflect such tacit acceptance, as for example acts in connection with the collection of inherited debts, or the very act of taking legal action for recovery of such debts, and consequently we cannot accept the ground of appeal which, confined as it is to the issue of legal capacity to act, without submitting the substance of the matter to the Bench, relieves the Court, for obvious reasons of consistency, from the need to make any pronouncement in that respect".

XII. CONTRACTS

– *SAP* Barcelona. 8 January 2003. Web Aranzadi JUR 2003\108382.

Carrier not liable due to lack of a legal tie. Lack of documentary credit. *Lex mercatoria.*

"Legal Grounds:

The complaint consists of two actions: one in demand of monies for contractual liability arising out of the defendant's non-performance of his obligations under an international carriage contract as carrier of certain goods sold by PLASTIKEN SL. to SIN FIN USA CORPORATION, a mercantile company domiciled in the United States of America; and another action, subsidiary to the first, in demand of monies for extra-contractual liability. (. . .) international contract of sale of goods concluded between the plaintiff as seller and SIN FIN USA CORPORATION as purchaser, on the terms 'EX WORKS' as defined in INCOTERMS (International Commercial Terms) of 1990.

(. . .) Having regard to the practical outcome whose interpretation is here challenged, we must first stress the absence of any arrangement for a documentary credit between seller and buyer through a financial institution as channel of payment which might indirectly link the carrier to the plaintiff. As the invoices submitted show, delivery was to be ex-works and payment was to be made by the purchaser at 90 days as of reception of the merchandise – that is, as of its effective removal from the seller's premises. For its part, the defending carrier had no contractual tie with the plaintiff, given that it acted in the transaction on the orders of the American company LYON CUSTOMS BROKERS, who in turn had been engaged by the American firm that was purchasing the merchandise, and the carrier was not engaged by the plaintiff.

The bill of lading, as title in the merchandise and expression of the transfer of possession thereof, shows that the only person entitled to require delivery of the merchandise from the carrier was the purchaser SIN FIN USA CORPORATION, with no express or usual condition that the carrier had to fulfil vis-à-vis the seller; such condition ought to have been stated explicitly, on the responsibility of the plaintiff, who consequently has no ground for action against the carrier.

(. . .) The conclusion from the foregoing is that the consigner of the merchandise in this case is the actual purchaser, acting through transport firms engaged by itself, so that any actions open to the plaintiff for non-payment of the price of the merchandise must be against the purchaser, since there is no legal tie, whether direct or deriving from the customs and rules regulating the international carriage of goods, between the seller and the carrier, whose role in this case was confined to picking up the goods at the place designated by the purchaser, on the latter's behalf and at the latter's risk (through the broker LYON CARGO).

(. . .) As to extra-contractual or Aquilian liability as sought in the subsidiary action, the appellant bases his case on the action of the defendant, who it is alleged delivered the goods to the American consignee without requiring the relevant bills of lading issued by the plaintiff and handed over to the defendant at the time the goods were uplifted from the plaintiff's premises.

The claim as formulated does not come within the meaning of Aquilian liability, but at best within that of contractual liability, given that the obligations allegedly not performed would arise out of international customs in contracts for international carriage of goods. Such liability is dealt with in the previous ground.

It is of course odd that the plaintiff should have handed over the merchandise and the documents of sale to the carrier sent by the purchaser without receiving prior payment or taking at least minimal precautions. Nonetheless, however unusual, such conduct is not in breach of any commercial custom, as indicated by the bills of lading of the goods handed over by the plaintiff to the defendant, where the mode of delivery is clearly stated as EX-WORKS, the form normally used when the exporter has received payment for the sale in advance of delivery, when final settlement of the transaction is guaranteed or when commercial relations between the parties are close enough to warrant confidence in due settlement".

XIII. TORTS

XIV. PROPERTY

– *RDGRN.* 19 July 2003. Web Aranzadi *RJ* 2003\6176.

Entry in a Register. Revocation of power of attorney.

"Legal Grounds:

On 9 August 2001, a deed of capital increase by a single member limited liability company was presented at the Land Registry, dated 31 July 2001, whereby certain real estate properties were assigned by a Panamanian joint-stock company

through its branch in Spain. On 12 September 2001, another, earlier deed was presented at the same registry, dated 26 July 2001 and authenticated by a different notary, by virtue of which the same Panamanian company, through a different attorney, sold to a different party one of the same properties assigned in the document presented first.

In the deed of capital increase, the assignor was represented (whether or not such representation was proper constitutes the central issue of the appeal) by an attorney to whom sufficient powers of attorney as proxy had been granted by virtue of a foreign notarial deed (duly legalised and translated) which the attorney presented to the Notary at the time the deed of capital increase was notarised. At the same time, he also presented a certificate from the Mercantile Registry (issued on 8 January 2001) accrediting registration of the powers of attorney of the grantor of proxy covering the substitution, declaring that his powers of attorney as proxy and those of the grantor of proxy were still in force.

However, on 27 September 2001 the Land Registry (. . .) certification remitted *ex officio* by the Mercantile Registry, indicating that the certification issued by the latter on 8 January 2001 was erroneous in stating that the powers of attorney were in force when in fact they had been revoked according to an earlier entry dated 27 September 1996 in the grantor's registry sheet. The Land Registrar then rejected the entry because, apart from another objection not appealed against, the power by virtue of which the attorney acted had been revoked. (. . .) As the issue has not been explicitly raised, it hardly seems necessary for the strict purposes of this appeal to devote particular attention here to the foreign element in this case, since the foreign company whose representation is at issue acted through a legally constituted Spanish branch, subject to the qualification that this entails as regards his personal status as representative (aside from the concordance, according to the appellant, between the regulations in article 1738 of our Civil Code and article 1429 of the Panamanian Civil Code) and the effect that acting through the branch also has in respect of the law applicable to the contract in light of the common habitual residence of the contracting parties, which in any case coincides here with the place of signing of the contract and also the location of the properties concerned, apart from the applicability of Spanish law to the regime and scope of public access to mercantile and land registries.

(. . .) However, even if there was a prior revocation of the substituted power that ought to have rendered the substitution void, such revocation need not necessarily be effective, given that the action of the agent in ignorance of the causes of cessation of his mandate is valid and is fully effective in respect of third parties dealing with him in good faith (according to article 1738 of the Spanish Civil Code, whose terms the appellant alleges coincide literally with those of article 1429 of the Panamanian Civil Code). Such presumed good faith of the grantor of proxy in the revoked power and the substitute executing that power, in either case at the time they are exercised (and never, of course, at any later time such as that of reception by the Registry of the title granted or of other contradictory evidence or certificates, for *mala fides superveniens non nocet*, may be questioned in court, but it must be presumed for purposes of notarisation and registration".

XV. COMPETITION LAW

XVI. INVESTMENTS AND FOREIGN EXCHANGE

– *STSJ* Madrid. 22 January 2003. Web Aranzadi JUR 2003\208695.

Investment in a foreign company without requesting the appropriate administrative verification.

"Legal Grounds:

This appeal challenges a decision by the Directorate General of the Treasury and Financial Policy, issued on 13 de April de 1998, whereby the appellant was fined two million pesetas for a minor infringement of article I0.2 of the Exchange Control Act, Law 40/1979 of 10 December. The charge consisted in having invested in a foreign company using shares in Spanish companies without having requested administrative verification as required under article 19.2 of Royal Decree 672/1992 of 2 July on Spanish investment overseas.

(. . .) 'In light of the terms of the Community regulations cited, the appellant is right in stating that there is provision for liberalisation as regards the movement of capital; however, such acknowledgement and such liberalisation of barriers and restrictions on capital movement do not mean that Member States cannot introduce control mechanisms in some respects, as is the case of Spain. (. . .) From the view adopted by the Court of Justice of the European Communities it follows that the requirement of prior verification is not contrary to the principles enshrined in the Treaty on European Union regarding the free movement of capital. The system of prior declarations in this matter is compatible with EC Law inasmuch as it provides a record of the nature of the transaction and the identity of the declarer, enabling Member States to verify the nature and authenticity of the transactions or transfers involved. This formality allows the Administration to check that an investment is not in specially protected sectors and to verify its destination. Freedom of investment is not thereby constrained; verification is merely declaratory and entails no limitation on the free movement of capital".

XVII. FOREIGN TRADE LAW

XVIII. BUSINESS ASSOCIATION/CORPORATIONS

– *RDGRN*. 23 April 2003. Web Aranzadi *RJ* 2003\4033.

Constitution of a European Economic Interest Grouping. Translation and legalisation of documents.

"Legal Grounds:

Upon presentation at the Mercantile Registry of a private document of Constitution of a European Economic Interest Grouping comprising three private companies, one Spanish and two Belgian, accompanied by a certificate from the board of management of the Spanish company and photocopies of a number of documents in

French, the Registrar suspended registration on the ground that the additional documents must be translated and legalised.

(. . .) Without at this point prejudging whether the documents presented are sufficient or necessary for the stated purpose (to accredit the representation of the constituent foreign companies and register this with the appropriate Mercantile Registry), the requirement of a translation is absolutely correct, given that the Registrar is not obliged to know a foreign language and the available option of not requiring a translation is simply that – an option, which the Registrar did not exercise in this case.

(. . .) The fact that article 22.3 of the Economic Interest Groupings Act allows such groupings to be constituted by means of a private document with notarised signatures does not imply that when the constituents are legal persons there is no need to accredit the representative status of the physical persons signing such document, and if the documents presented for that purpose are issued by a foreign authority, then the requirement of legalisation is unimpeachable (*cf.* article 6.3 of the Mercantile Registry Regulations), there being no provision for exemption from such requirement in the specific legislation regarding European Economic Interest Groupings (EEC Regulation of 25 July 1985 and the Act of 29 April 1991) to which the article 268 of the Mercantile Registry Regulations remit in connection with evidence of title".

– *STS.* 3 March 2003. Web Aranzadi *RJ* 2003\3377.

Obligation on the Spanish subsidiary of a dominant foreign company unlisted in Spain to inform the National Stock Market Commission.

"Legal Grounds:

An Order of the Ministry of Economy and Finance of 16 March 1994 imposed a fine of 300 million pesetas on Kokmeeuw Holdings BV for a very serious infringement as defined in paragraph p) of article 99 of the Stock Market Act, Law 24/1988 of 28 July, for failure to inform the National Stock Market Commission of acquisition of a holding in Ercros, SA in December 1990 through an intermediary, Mesa Redonda, SL.

(. . .) The issue is complicated by National Stock Market Commission Circular 6/1989, implementing the said Act, Rule 1.2 of which states that:

'Acquisitions or assignments of shares in listed companies whereby the assignee acquires 5% or multiples thereof of the share capital or the assignor's holding falls below such percentages must be reported:

a) In any case by the assignee or the direct assignor of the shares, whether a public or private enterprise or a natural or legal person, if his own holding thereby exceeds or falls short of such percentages.

b) By the dominant partner in the group of companies, as defined in art. 4 of Law 24/1988, where such acquisition exceeds or falls short of the said percentages. Where such a dominant partner is a foreign company unlisted in Spain, the duty to report falls to the Spanish subsidiary that controls any other Spanish companies belonging to the group.

c) By any natural person controlling, as defined in art. 4 of Law 24/1988, one or more companies, if the sum of his own direct holdings and those of the said companies exceeds or falls short of the said percentages.

d) By any natural or legal person who, in circumstances other than those contemplated in the foregoing paragraphs, acquires or assigns shares through an intermediary whereby his holding exceeds or falls short of the said percentages'.

In the case under consideration, the only paragraph of the above that can apply to the appellant is b): there is no direct acquisition (paragraph a); the appellant is not a natural person (paragraph c); and the allegation of use of an intermediary – Mesa Redonda, SL – to acquire shares in Ercros, SA (paragraph d) is not directed at it but at Grupo Torras, SA.

To continue, the appellant is a foreign company unlisted in Spain, and although the statement of proven facts shows that it is the dominant partner in Grupo Torras, SA, under Rule 1 section b) it is up to the latter and not the appellant to make the report.

This ground must therefore be admitted. The problem is not one of regulatory hierarchy as adduced by the challenged decision, in which the higher ranking regulation (article 53 *LMV*) must prevail over that of lower rank (Circular 6/1989). It is a matter of culpability, which exists where the infringing party is clearly conscious of acting in a manner deemed reprehensible. When in the exercise of its functions the National Stock Market Commission issues a Circular, which must be presumed to interpret the Law, its subjects cannot be required to do more than the law dictates. The Circular may or may not be valid, but it most certainly exculpates anyone acting in accordance with its dictates. In this respect, where a foreign company unlisted in Spain is the dominant partner of the company actually making the acquisition, the Circular releases the former from the obligation to report and places that obligation on the latter".

XIX. BANKRUPTCY

XX. TRANSPORT LAW

– *STS* 918/2003. 8 October 2003. Web Aranzadi *RJ* 2003\7383.

International carriage of goods by road. Liability of the carrier for theft of the merchandise. Geneva Convention of 19 May 1956.

"Legal Grounds:

AGF SEGUROS, S.A. sued TRANSPORTES SANFELIX, S.A. The action was based on the claim that AGF insured Tiba Internacional, S.A. for the carriage of certain goods by the defendant from Milan to Valencia. The defendant was unable to deliver the goods as the vehicle and trailer carrying them were stolen in Milan; Tiba was obliged to accept liability vis-à-vis the addressees of the goods, and AGF, as the insurer, was obliged to pay compensation, in the amount it is now claiming. AGF automatically became subrogated to the rights and actions of the insured once the insurance claim was paid.

(. . .) Art. 17 of the Geneva Convention of 19 May 1956 on the Contract for International Carriage of Goods by Road relieves the carrier of liability through circumstances which he could not avoid and the consequences of which he was unable to prevent. Theft is not in itself an inevitable occurrence in the area where it took place, albeit it occurred very frequently there; the point is that to try and prevent it occurring a professional carrier must adopt vehicle security measures in accordance with traffic customs and the current state of the art in security measures. If such measures are adopted, theft may or may not occur in the event, but there is no doubt that the carrier will have done all that due professional diligence requires of him.

(. . .) Despite lacking any more effective protection, the vehicle was parked in a street in central Milan, under no particular vigilance other than that afforded to all by public security, and for an excessive length of time (from 16:30 to 17:00 hours). This Bench harbours no reasonable doubt that the professional conduct of the carrier was less than diligent, and he cannot therefore be relieved of liability under the terms of the Geneva Convention of 1956".

– S. Court of First Instance of Vizcaya. 14 March 2003. Web Aranzadi *AC* 2003\253. Loss of baggage. Liability of carrier by reason of culpable negligence.

"Legal Grounds:

The plaintiffs brought an action for damages sustained as a result of misplacement of their suitcase by the airline carrying it, to the value of the garments that they had to purchase, the contents of their baggage, the cost of the hotel and other pain and suffering damages arising from inability to fully enjoy their vacation for three days, totalling 6,478.48 euros.

(. . .) The defending airline is correct in stating that air transport is subject to specific legislation (. . .) consisting essentially of the Air Navigation Act of 21 July 1960 in the case of domestic air transport, and in the case of international transport as is the case here, of the Warsaw Convention of 12 October 1929 (ratified by Spain on 31 January 1930 and amended by Protocol of the Hague Convention of 28 September 1955, ratified by Spain on 6 December 1965) and by the Montreal Protocol of 25 September 1975 (ratified on 20 December 1984), article 22 of which limits the carrier's liability to very specific – one might say token – sums in the event of loss, damage to or delay of checked-in baggage in the absence of a special declaration of value, unless the carrier has acted maliciously or with culpable negligence – art. 25 (. . .)

In the case here at issue, Iberia has not offered the slightest explanation for the total and absolute loss without trace of the suitcase, or any account of the steps taken to discover its whereabouts, or whether it ever left Bilbao airport, and there is not even any record of doubts as to whether it has been lost for two years in Iberia's facilities or that its theft has been reported. Moreover, no suggestion has been offered as to whether the disappearance was due to traffic saturation, strikes, accidents or technical failures.

(. . .) There has therefore clearly been culpable negligence in the handling, care,

carriage and management of baggage, bearing in mind furthermore that it is not even known whether the suitcase left any airport or where it is. Therefore, we order that the plaintiffs be paid the full amount of compensation for the damages sustained".

XXI. LABOUR LAW AND SOCIAL SECURITY

– *STSJ* Madrid. 7 July 2003. Web Aranzadi JUR 2003\260239.

Law applicable to contracts of employment. Regulations governing bonus payments. Primacy of the will of the parties.

"Legal Grounds:

The plaintiffs are employed by the Ministry of Foreign Affairs (. . .) In its relations with employees, the Ministry of Foreign Affairs applies Italian social laws.

The Italian regulations regarding personnel of Embassies, Consulates, Legations, Cultural Institutions and International Organisations are contained in a text entitled '*Disciplina del rapporto di lavora dei dipendenti delle ambasciate, consolati, lagazioni, instituti culturali ed organismi internazionali*'.

Article 25 of these regulations provides for a thirteenth and a fourteenth monthly payment in the form of summer and Christmas bonuses as provided by Spanish law, and these are paid on the 20th of June and December.

(. . .) In order to determine whether Italian or Spanish labour law is applicable in the present case with a view to resolving the litigation between the parties, we have to look at what is agreed in the individual contracts of employment originally signed by the parties, which are appended to the record of proceedings and were submitted as documentary evidence by the defendant.

In these contracts (folios 309 *et seq.*) there are two clauses, three and seven, which are of crucial importance in settling the issue at the heart of these proceedings: clause seven expressly states that the employee is to be subject to the employment regime established by Italian law, and hence this settles the issue as regards that point; however, we must also consider that according to clause three, which is as valid and as binding as clause seven, 'the employee shall receive gross annual remuneration amounting to 25,379,991 Italian Lira (euro 13,107.67) covering all items, including bonus payments'.

(. . .) This individual contractual condition, then, is the law binding the contracting parties and takes precedence over Italian and Spanish law. In this connection we would cite the rules set forth in article 10 of our Civil Code and in the Rome Convention of 1980, which determine the national law applicable to contracts or labour relations: in both cases, the will of the parties as set forth in the individual contract takes precedence over any laws. The appeal brought by the State Attorney must therefore necessarily be upheld, given that even although the parties in litigation were subject *in genere* to Italian labour law as regards regulation of conditions of employment, they also agreed to specific conditions constituting special rules that override the general rules, namely the total annual remuneration including bonus payments. It is this contractual rule, clause or

condition that applies in the present case and not the laws of Spain or Italy, which would only apply in absence of the express agreement made by the parties".

XXII. CRIMINAL LAW

– *SAP* Madrid 285/2003. 13 June 2003. Web Aranzadi JUR 2003\247560.

Industrial property offence. Registration of well-known trade marks as a requirement of unlawfulness.

"Legal Grounds:

The jurisprudence has established the following requirements for consideration as offences against industrial property:

. . . As to unlawfulness, that a breach of the law be so classified under the rules governing industrial property, for which it is essential that title in such property be protected by prior registration, and also that there be social rejection for such action to constitute attempted fraud.

. . . Given the foregoing, the only element in question is the judicial accreditation of registration of these trade marks, in some cases because documentary proof was submitted in the form of photocopies, in others because no proof was presented, and in yet others because photocopied documents in other languages were presented without the appropriate translation.

In this case, therefore, the issue is not – as the appellants claim – whether the trade marks are protected as international, EC or national trade marks and whether the applicable law is that of national legislation on patents and trade marks or, as postulated, the Madrid Arrangement on International registration of Trade Marks of 14 April 1891, as revised at Stockholm on 14 July 1967. The problem is not therefore substantive but strictly procedural. The court *a quo* considered that the burden of proof of registration of these trade marks lay with the plaintiffs, and that for reasons imputable solely to the passivity of the various plaintiffs, such proof was not forthcoming or was improperly and inadequately accredited, in that no proof of registration of the trade mark was furnished or that proof was offered in the form of simple photocopies.

(. . .)

To accredit the registration and currency of the trade mark does not constitute an insufferable and unbearable burden for the plaintiffs. The relevant original documents can be readily obtained and authenticated, as the case may be, by public attestation of the Clerks of Court in criminal actions where this is required. Hence, the absence of such accreditation, particularly where it clearly involves a constituent element of the type that is definitely required by jurisprudential doctrine (all *STS* 2 of June 1998), can only be put down to passivity on the part of the plaintiffs.

It being the case, then, that accreditation of this element of the type would have been readily obtainable, there can be no accepting of forced and contrived interpretations or of inferences *contra reo* drawn from the renown or reputation of these trade marks. The appeals as lodged are therefore dismissed and the original judgment is confirmed".

XXIII. TAX LAW

– *STS.* 22 May 2003 (Web Aranzadi *RJ* 2003\5364).

Deduction for investments by an exporting company.

"Legal Grounds:

(. . .) The point of interest here is that the original court took the view that with regard to deduction for investments by exporting companies under art. 234 of the Company Tax Regulations of 1982, 'in the present case Técnicas Reunidas SA engages in export activities and, as accredited in the proceedings, the expenses refer to commercial expenses on exportation and on the prospecting and opening of new markets (travel, commissions, etc.), and these are recognised by the defending Authority as expenses in connection with the securing of certain contracts abroad . . .'.

The crux of the matter lies in whether in the specific case of engineering exporting companies, such companies may benefit from deductions for investments by exporting companies in respect of expenses entailed in the preparation of bids for specific projects abroad, there being no other expenses on publicity that could be deemed 'analogous' to attendance at 'trade fairs' and 'expositions' for purposes of prospecting and opening of markets, and the former expenses lacking an 'extra-annual' dimension.

This Bench dealt with the issue in a Decision of 22 February 2003, on appeal in cassation no. 2878/1998, in which the respondent was likewise a party in a practically identical case.

The cited Decision, following a close analysis of the historical evolution of rules regarding deduction for investment by exporting companies, states, significantly, that unquestionably TECNICAS REUNIDAS, SA cannot advertise its engineering know-how, its technological expertise or the projects that it has undertaken in the same way as one advertises an automobile, a television set, a washing machine, a bottle of whisky or any other perishable or consumer goods, nor can it set up a stand at a fair or market with a sign saying 'come in and try our projects'. As is clearly stated in the writ of complaint, the export activity of engineering firms, which export on a turnkey basis, differs substantially from that of companies exporting consumer goods, and they achieve a reputation and promote themselves in allied industrial sectors essentially on the basis of the specifications and results of each specific project that they undertake. It is the actual quality of each project that constitutes their publicity and advertising.

Similarly, the requirement that publicity and advertising expenses be extra-annual sits ill with the specific nature of engineering export activity, which consists in a multitude of highly diverse turnkey projects and installations. Indubitably engineering companies cannot publicise and advertise products and goods because they do not export them, and as for their projects – for instance a nitric acid plant or a fluid catalytic cracking plant at a petrochemical facility – the Bench considers that they cannot reasonably engage in publicity and advertising. The fact is that these engineering companies make themselves known and appreciated

project by project and not through publicity campaigns on radio, TV, hoardings on streets and roadsides, or again at fairs or expositions.

It follows from the terms of the above-cited legal and regulatory provisions that, other than the creation of foreign branches and the equivalent acquisition of significant holdings in other foreign companies, there are two kinds of expenses susceptible of deduction as investments by exporting companies: on the one hand those incurred abroad in the organisation of publicity campaigns lasting more than one year for purposes of launching products or opening and prospecting markets, and on the other hand expenses for attendance at fairs, expositions and other analogous events, likewise for purposes (so it is understood despite the poor syntax in the drafting of the provisions) of launching products or opening and prospecting markets.

In the case of engineering products, the fact is that if no other means of advertising are used and the preparation of bids entailing travel and work abroad to launch the product and open and prospect markets is not deemed susceptible of deduction as investment, then such companies would not qualify for the deduction as provided, and that would be contrary to the purpose of promoting exports of Spanish products, this being the justification for the tax benefit, from which there is no good reason to exclude intangible products of this kind.

Furthermore, having regard to this type of export engineering company and to the specific case at issue here, it is by no means stretching the meaning to consider – as did the challenged Decision – that such expenses arising from the prospecting of specific bids are covered by the terms 'analogous events' and 'fairs and expositions', given that in both cases the aim is to bring the individual product concerned to the notice of potential customers".

XXIV. INTERLOCAL CONFLICT OF LAWS

– *SAP* Girona. 17 March 2003. *AC* 2003/756.

Testamentary succession. Applicable Catalan regulations. No mention of regional citizenship in the testator's will.

"Legal Grounds:

The references to certain articles of the Civil Code in the complaint and in the challenged decision are not correct, since the applicable statute is the Catalan *Codi de Successions*; at the time of his death, the testator possessed Catalan regional citizenship by virtue of the time – approximately sixty years – during which he had demonstrably resided in Catalonia until his death, and there is no record of his having at any time officially registered a desire to preserve his original regional citizenship, which would have been Mallorcan to judge by his place of birth. The doubts that the plaintiff seeks to raise in this respect – albeit for reasons unconnected with this suit – cannot be reconciled with the citation of the current Catalan regulations in the writ of appeal.

There is alleged infringement of article 162 of the Notarial Regulations on the ground that the testator's regional citizenship is not mentioned in his will. Here

again, the *Codi* contains no provision in this respect. This ground of appeal appears to obey a purpose quite divorced from the suit here at issue; the complaint appears to state that there is a dispute with regard to certain goods belonging to the testator and that these are subject to survivorship agreements existing in Catalan law and not in Mallorcan law. The apparent thrust of the argument is that at the time of death the testator possessed Mallorcan rather than Catalan regional citizenship. For the purposes of these proceedings, as already noted, such a claim is quite unfounded given the length of time during which the testator resided in Catalonia up until his death. The plaintiff could easily have produced a certificate from the Civil Registry recording a declaration by her late father that he wished to retain his original regional citizenship, but this she did not do. Also, the complaint digresses into questions about the financial regime that ought to apply to the marriage of the appellant's father. These questions are quite redundant as regards this case, given that there is no reason why such regime should not have been subject at one time to the common law or a particular civil or regional law and that by the time of his death the testator should not have acquired a regional citizenship other than that which determined the earlier applicability of a given matrimonial regime, without prejudice to the rights acquired by third parties. In short, the issue of the mention of regional citizenship in the testator's will is not essential, and hence its absence cannot determine the nullity of the will".

– *RDGRN.* 17 March 2003. *RJ* 2003\4128

Extra-marital descent. Comprehensive regulation in the New *Fuero* of Navarra: *Cc* not applicable.

"Legal Grounds:

Underlying this appeal is the undisputed fact that the child possesses Spanish nationality and Navarrese regional citizenship (*cf.* arts. 14 and 17 *Cc*), and hence all issues arising in connection with the determination of descent must be resolved in light of the applicable personal law (art. 9.4 *Cc*): that is, civil regulations currently in force in Navarra . . . The Navarrese *foral* statutes comprehensively regulate acknowledged extra-marital descent, and there can therefore be no supplementary resort to rules of the Civil Code".

– *RDGRN.* 18 June 2003. *RJ* 2003\4467; and *RDGRN.* 11 March 2003. *RJ* 2003\3949.

Hereditary succession: interpretation of art. 9.8 *Cc*: harmonising interpretation in arts. 9.2, 9.8 and 16.2 *Cc*: principle of unity of succession. Transitional law.

"Legal Grounds:

. . . The entry into force of Law 11/1990 of 16 October forced a reappraisal of the issue of what law applies to the rights of the survivor as regards succession upon the decease of the spouse. We should note that the cited Law is applicable to conflicts of both international and inter-regional law.

The question of succession is always complex, involving a variety of elements – legal capacity, legitimate forms, etc. – and frequently requires the classification of prior issues – descent, marriage, etc. . . . The complexity of this classification

sometimes raises issues of compatibility between the institutions involved, a clear example of this being the situation of a widowed spouse; here, there may be an overlapping or an absence of rights depending on the connection between rights under the matrimonial property regime and rights in the succession of the predeceased spouse.

There are two ways of addressing this issue: to consider that the effects of matrimony include the matrimonial property regime established at the commencement of the marriage, with the exception of any mobility conflict; or to consider that since this is mutable in all Spanish civil law systems, the authors of our Code refer solely to those family rights relating to matrimony that can be upheld in succession whatever the matrimonial property regime governing the property relations of the spouses may be.

Any resolution of the issue must be based on the principle of unity and universality of succession; this is characteristic of our system and is rooted in the concept of nationality, as befits a country with a history of large-scale emigration, like the laws existing in Southern Europe generally, and it is given form in article 9.8 of the Civil Code . . .

Exception *ex post*, based on the principle of conservation of testamentary acts – *favor testamenti* – does not affect mandatory rights of inheritance, which are governed by a sole Law of succession (*cf. STS* of 21 May 1999) that reaffirms the supremacy of uniformity of succession, and the limitations on exceptions thereto – in this case, secondary renvoi from English to Spanish law.

It is in this context that we must view paragraph 3 referring to the law applicable to the rights of succession of the widowed spouse . . .

The same paragraph, which adopts the same approach as in the regulation of *amor testamenti*, safeguards mandatory rights of inheritance, but curiously enough only those of the descendants.

This provision . . . adopts a formula that is technically inferior to that used in the *in fines* paragraph of article 16.2, or indeed to any means of direct determination of the rights of the spouse. The effects of the marriage are determined not at the time succession arises but at the commencement of the marital relationship.

The remittal in this provision to the law applicable to the effects of matrimony is in fact not clear, given that the nexus is not determined by the matrimonial property regime, inasmuch as article 9.3 provides a solution to the mobility conflict that obviates the immutability of the matrimonial property regime . . .

What raises questions as to the effects of matrimony referred to in article 9.2 is the fact that post-Constitution, it is possible to modify the matrimonial property regime in those civil law systems where it was hitherto prohibited (Civil Code and Compilation of Vizcaya).

The cited provision adopts a different approach to the effects of matrimony from that contemplated in the version prior to Law 11/1990. Then, personal effects were dealt with separately from property, so that article 9.2 applied only to the former where no more specific rule applied (*e.g.*, descent), and there was dissent as to whether it could be extended to the so-called primary marital regime.

In its current version, as noted, the personal and property effects of matrimony are determined first; subsidiary rules of conflict are then provided for the event of conflicting personal laws, to apply equally in all aspects of the effects of matrimony. This differs from the previous system in that before, the nexus was considered only at the final moment – possessing or having possessed, according to the provision – and only subsidiarily; moreover, only the personal law of the husband at the time of marriage was considered, thus rendering it null by reason of discrimination.

In other words, given observance of the constitutional principle of equality between the spouses in the nexuses established by the regulation – an issue having little to do with the solution here analysed – the Law on matrimony equally affects regulation of the personal sphere and of the economic regime, by means of special economic rules (community of acquisitions, *conquistas*, community or separation of property – . . . art. 16 *in fine*) and basic conditions (habitual dwelling, perpetrations by reason of matrimony, regime of domestic authority and other safeguards contemplated by the applicable material laws). It also extends, where applicable, to special widowhood regimes, provided that these are accompanied by conditions of regional citizenship and economic regime such as permit their application . . .

In treating pacts and contracts stipulating, modifying or substituting the conjugal economic regime as exceptional, the third paragraph of article 9 *Cc* is not intended to render all other primary personal or economic effects of matrimony immutable in all cases, but simply to extend the material law whereby it is possible by mutual agreement to alter the economic regime (not only the law established as common in the previous paragraph, but also the law corresponding to the nationality or habitual residence of either of the parties at the time of the agreement).

If the spouses subsequently acquire a common personal law which is applicable at the time of determination of the regulating law and agree to the legal regime of that citizenship, the personal and property effects of matrimony will be unified once more. Thus, . . . , if the husband died in possession of Navarrese citizenship, a Navarrese widow cannot be denied *fealdat* under an agreed arrangement of *conquistas* even if the law applicable at the outset of the marriage meant the common law.

The rules laid down in article 9.2, as recalled, in manifest extrapolation to a context of non-discrimination by reason of sex, are therefore intended to establish a common law as from the outset of the marriage but not to render it immutable, and in no way detract from the spouse's rights as determined by the law of succession.

The flexible interpretation thus chosen allows us to approach the issue raised in article 9.8 from a different standpoint that will make it possible to reconcile the interests at stake.

In effect, it is possible to take the view that the survivor's rights of inheritance are always of the nature of . . . in an interpretation of article 16.2 of the Civil Code,

of which 9.8 is a mere generalisation, so that the applicable law would be that corresponding to the conjugal economic regime of the spouses, as a consequence thereof affecting matters of family and inheritance, as determined by the law regulating the effects of matrimony.

At the other extreme, however, it could also be held that since uniformity of solutions in complex legal relationships of succession is essential to judicial safety, where these entail personal elements governed by different Laws, the principle of unity of the Law governing succession ought to prevail in the totality of these relationships, irrespective of the individual nature of the component personal elements and subject to no exceptions other than those arising out of the existence of other preferential statutes; the spouse's rights must therefore be governed by the Law of succession of the testator, and the remittal to the Law governing the effects of matrimony must be construed as applying solely to those relating to the personal effects or primary property status (*cf.* year of mourning, *tenuta, aventajas*, household goods, foral rights of widows in a family context or any others that the applicable Law may determine) (sic).

To determine the survivor's rights in succession upon the decease of one of the spouses, their personal law must be determined *ex post facto* (this is presumed from article 69 *Cc*) or else it must be determined in the manner laid down in article 9.2, in order to isolate the rights established as appertaining to the survivor (cf. art. 16.2; 1321 *Cc*) and the mandatory rules that must prevail over the provisions of the testator or the conjugal rights of the widow or widower.

This harmonising interpretation of articles 9.2, 9.8 and 16.2 of the Civil Code is consistent with the principle of unity in succession; it prevents the breakdown of succession into irreconcilable parts, so that a single solution is applicable to testate and intestate succession without this affecting the order of succession determined by the personal Law of the testator or producing conclusions inconsistent with different economic regimes and rules of succession; thus for example, there being no concept of *mejora* in Catalan succession, the survivor of a Catalan whose marital regime was community of acquisitions cannot be awarded usufruct as provided in art. 834 *Cc*.

Furthermore, this argument is consistent with the international instruments currently in force if not yet ratified by Spain. In this respect we would cite the Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes (applicable in the Netherlands, Luxembourg, France and Austria), which expressly excludes succession rights of a surviving spouse, and the Hague Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons (in force in the Netherlands, Luxembourg, Switzerland and Argentina), which excludes issues relating to conjugal economic regime and to property rights, interests or assets created or transferred otherwise than by succession, such as in joint ownership with right of survival.

According to article 7 of the latter Convention, it governs, among others, the respective shares of heirs and legatees, obligations imposed upon them by the deceased, the disposable part of the estate, indefeasible interests and other restric-

tions on dispositions of property upon death, and other matters which are considered by that State to be governed by the law of succession.

A doubt still remains regarding the transitional Law, namely how this affects marriages celebrated or testators dying subsequent to the reform of the Civil Code (irrespective of the date of marriage) before and after 1990.

As the Registrar observes, absent a transitional provision on this point in Law 11/1990, the Civil Code is subsidiarily applicable, and given that the object is demonstrably rights in succession, the relevant precept is transitional provision 12, whereunder the applicable law is that in force at the time of commencement of succession procedures.

We would draw attention to the material injustice (and the absurdity) that this solution would entail as regards alteration of the personal and economic status of the spouses at the time of marrying – possibly also affecting succession by either one – were another view adopted whereby the spouse's rights of succession are associated with supposedly immutable effects indissolubly linked to a conjugal economic arrangement that may be altered by agreement".

– *SAP* Barcelona. 16 April 2003. JUR 2003\254138.

Assignment of family dwelling. Regional Citizenship. Applicability of the Catalan Family Code.

"Legal Grounds:

It is quite surprising how often errors are made as to whether one or other law ought to be applied. If both spouses possess Catalan regional citizenship, as in the present case, then the Catalan Family Code must be applied as provided in article 107 of the Civil Code in application of the criterion laid down in 16.1 of the same Code. In such issues of applicability of the Family Code, therefore, the Civil Code cannot properly be invoked or applied to matters specifically regulated in the law of Catalonia. In many cases both laws are invoked; this is of no great moment where, as occurs in many cases, the regulation is the same in both laws, but it is important where there are differences, as in the present case.

Having regard to assignment of use of the family dwelling, the rules laid down in the Family Code differ from those of the Civil Code; in the former, absent agreement between the parties, as in the present case, use must be assigned to the spouse and not to children who are minors, which can be of practical importance, wherefore the wife's appeal must be upheld in this case.

Also, the Court further assigned 'enjoyment' of the dwelling. The question of enjoyment is another curious matter. Both the Civil Code and the Family Code refer only to 'use', and yet there is a widespread tendency to employ the expression 'use and enjoyment', which is surprising. To enjoy a thing is to receive the fruits thereof, and hence to assign enjoyment may be considered tantamount to assigning usufruct, which the Law definitely does not permit. Those using the expression 'use and enjoyment' may not be aware of this, but it is so nonetheless. We must therefore confine ourselves to assigning the lady . . . the use of the family dwelling, which is what the Law provides".

– *SAP* Zaragoza. 14 April 2003. *AC* 2003\1239.

Determination of regional citizenship at the time of marriage; mere inclusion in the roll of inhabitants is not sufficient proof of residence for civil purposes. Widow's usufruct regulated by Aragonese Law.

"Legal Grounds:

. . . Arts. 9, 14 and 1325 of the *Cc* in the form current at the time the spouses were married provided that the conjugal economic regime was subject to the regional citizenship of the male; hence, given immutability of the conjugal economic regime, that citizenship will determine whether the marriage was subject to the regime of consortium as claimed by the wife and upheld by the judgment here challenged, or the Catalan regime of separation of estates as claimed by the defendant.

. . . We must be clear that according to reiterated jurisprudential doctrine, mere details from the roll of inhabitants do not constitute proof positive of residence for civil purposes since, as noted in *STS* 7–11–1977, the Local Authority's municipal roll of inhabitants, like the entries in any registry, does not possess the qualities required to demonstrate authenticity (. . .), for the only thing that such a Roll of itself proves is that the declarant and the public official involved, as the case may be, made the statements there contained, but it does not prove that such statements are accurate, which is essential to establish beyond doubt the veracity of facts at odds with those established by the court of instance in the challenged judgment . . .

In short, the state of evidence being so, the applicable provision is art. 14.6 of the *Cc*, according to which 'In case of doubt, the prevailing civil citizenship shall be that of the place of birth' and therefore, the husband being Aragonese, it follows that his marriage was subject to the conjugal economic regime of Aragon. This is in no way gainsaid by the fact that in various public documents notarised in 1967, 1978 and 1986, Mr. . . . declared that he was subject to the Catalan regime, . . ., since the situation in those years has no bearing on the situation in 1950, which is the situation that must prevail given the immutability of the conjugal economic regime, and given that according to art. 1217 of the Civil Code the probative value of notarial deeds, as public documents, is confined to what the notary certifies and deduces from personal observation but never to facts there stated, which, despite their inclusion in the deed, have no more value than that corresponding to their nature.

The judgment went on to declare A) that in addition to her share of common property, Ms. . . . was entitled to the widow's usufruct recognised by the Aragonese Compilation, and that the second provision of the will made by her husband on 16 July 1998 assigning to the wife her legal entitlement according to the Code of Successions of Catalonia was null . . .

This declaration must stand.

. . . Given that whereas the succession was initiated under the law of the testator's civil citizenship at the time of his decease (art. 9.8 *Cc*), art. 16.2 of the Civil Code provides that 'The widow's right as regulated in the Aragonese Compilation

applies to spouses subject to the conjugal economic regime of the Compilation, even if they subsequently change their regional citizenship, excluding in this case the inalienable portion prescribed by the law of succession".

- *SAP* Barcelona 752/2003. 4 November 2003.
  Testamentary succession. Regional citizenship. Fraud in law.
  "Legal Grounds:
  Consequently, given that, as the Court *a quo* judged, the tying of a married woman to the regional citizenship of her spouse was abolished upon publication of the Constitution on 29 December 1978, given that this rule was abolished as being clearly unconstitutional and that section 3 of the Repeal Provision provided for the repeal of all provisions conflicting with the terms of the Constitution, it follows that Mr. . . . recovered his Catalan regional citizenship on 29 December 1988, having resided in Barcelona for more than ten years.
  Likewise, even admitting that subjection to the regional citizenship of the spouse ended on 20 April 1986 with the death of Mr. . . . consequently, Ms. . . . recovered her Catalan regional citizenship on 20 April 1996 by reason of residing continuously in Barcelona for more than ten years, and the declaration made on 20 February 1996 is null . . . by reason of evident fraudulent intent.
  We conclude that there has been fraud in law since the examination of evidence in the proceedings – and specifically the statements of witnesses . . ., the statement made to the Police on 3 September 1.987 giving . . . Barcelona as the place of domicile, and lastly the fact that the testator died in the *Clínica del Pilar* in Barcelona – tends to show that Mr. . . . had his habitual and permanent residence in Barcelona excepting three months of the year when he resided at . . . Sitges; therefore, from the statement made on 20 February 1996, two months short of the elapse of ten years since the death of her spouse Mr. . . ., there can be no doubt that the sole purpose of the said statement was to claim spurious Navarrese foral citizenship (covering law), so evading application of the law of succession under the Catalan civil code (*Codi de Successions*) and thus depriving her son, the plaintiff . . ., of his right to receive the inalienable portion due him under article 355 of the *Codi de Successions*, which clearly comes within the meaning of fraud in law".
  In short, it having been accredited that the testator had recovered Catalan regional citizenship, his succession is governed by Catalan civil law, wherefore the applicable statute is the *Codi de successions per causa de mort en el dret civil de Catalunya*".

Spanish Literature in the Field of Private and Public International Law and Related Matters, 2003

This survey, prepared and compiled by Dr. E. Crespo Navarro and B. Arp (Assistant Lecturers in Public International Law), and M. Guzmán Peces and J. I. Paredes Pérez, (Associated Lecturers in Private International Law), under the direction of Dr. I. García Rodríguez (Lecturer in Private international Law) at the University of Alcalá, Madrid, is designed to provide information for international lawyers and law students on matters concerning Public International Law, International Relations, Private International Law and Community Law published in Spain or by Spanish authors.[1]

PUBLIC INTERNATIONAL LAW AND RELATED MATTERS

1. Essays, Treaties and Handbooks

BARBÉ IZUEL, E., *Relaciones Internacionales*, (International Relations), 2nd ed., Tecnos, 2003, 352 p.

CASTILLO DAUDÍ, M., *Derecho internacional de los derechos humanos*, (International Human-Rights Law), Tirant lo Blanch, Valencia 2003, 187 p.

BUENO ARÚS, F. and ZARAGOZA, J. de M., *Manual de derecho penal internacional*, (A Handbook of International Criminal Law), Univ. Pontificia de Comillas, Madrid 2003, 472 p.

CEZÓN GONZÁLEZ, C. and CHOCLÁN MONTALVO, J. A. (Eds.), *Derecho extradicional*, (Extradition Law), Dykinson, Madrid 2003, 370 p.

CHUECA SANCHO, A. G., *El derecho internacional público en la práctica. Textos*, (Public International Law in Practice), Prensas Universitarias de Zaragoza, Zaragoza 2003, 471 p.

DÍEZ DE VELASCO, M., *Instituciones de Derecho Internacional Público*, (Institutions of Public International Law), 14th ed., Tecnos, Madrid 2003, 1023 p.

---

[1] The enormous volume of works published on EC Law has made it necessary to select only those which focus on general Community Law. We have been careful to include the works of authors who lecture in the fields of Public International Law, International Relations, and Private International Law.

- *Las Organizaciones internacionales*, (International Organizations), 13th ed., Tecnos, Madrid 2003, 864 p.

FERNÁNDEZ DE CASADEVANTE ROMANÍ, C., *Derecho Internacional Público*, (Public International Law), Dilex, Madrid 2003, 250 p.

- *Derecho internacional de los derechos humanos*, (International Human-Rights Law), Dilex, Madrid 2003, 681 p.

FERNÁNDEZ TOMÁS, A., SÁNCHEZ LEGIDO, A. and ORTEGA TEROL, J. M., *Manual de derecho internacional público*, (A Handbook of Public International Law), Tirant lo Blanch, Valencia 2003, 636 p.

GONZÁLEZ CAMPOS, J. D., SÁNCHEZ RODRÍGUEZ, L. I. and ANDRÉS SÁENZ DE SANTAMARÍA, P., *Curso de Derecho Internacional Público*, (A Course in Public International Law), 3rd ed., Thomson/Civitas, Madrid 2003, 1035 p.

- *Materiales de prácticas de Derecho Internacional Público*, (Material for Practicals in Public International Law), 3rd ed., Tecnos, Madrid 2003, 912 p.

- *Legislación básica de Derecho internacional público*, (Basic Legislation in Public International Law), 3rd ed., Tecnos, Madrid 2003, 1087 p.

GONZÁLEZ CAMPOS, J. D. and ANDRÉS SÁENZ DE SANTA MARÍA, M. P., *Legislación básica de Derecho Internacional Público*, (Basic Legislation in Public International Law), 3rd ed., Tecnos, Madrid 2003, 1088 p.

JIMÉNEZ PIERNAS, C., (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, (An Introduction to Practice in International Law and European Community Law), Marcial Pons/Univ. de Alcalá, Madrid 2003, 676 p.

Globalization and Spain's economic development are increasingly bringing practising lawyers face to face with proceedings before international institutions, be they the European Court of Justice, the European Court of Human Rights, the United Nations Administrative Tribunal or the United Nations Human Rights Committee, among others. On occasions, jurists, in conjunction with sociologists and politologists if necessary, have to defend the interests of States or private clients at international forums, advising, reporting, negotiating or lobbying at Brussels and other headquarters. Nonetheless, practical experience in these fields continues to be a sphere reserved for very few. The editor of this book therefore proposed gathering the experience and knowledge of reputed experts in order to provide professionals interested in these matters and, in particular, young professionals, with an insight into forensic practice at the leading European and international institutions and courts.

The book is basically structured by theme into five parts. The first deals with practice at international courts and tribunals and analyses the working of the International Court of Justice and the practice of small and developing countries with respect to this court, and the United Nations Administrative Tribunal and European Court of Human Rights. The first addresses practice within international organizations and includes chapters on multilateral diplomacy and human rights practice of the Human Rights Committee and of the extraconventional mechanisms for protecting these rights. The third part is devoted to European Union practice, with five chapters on the various aspects of proceedings brought before the European Court of Justice, including preliminary rulings and the intervention of civil society in the European Union's decision making processes. The fourth part analyses national practice in the application of international law, that is, the traditional diplomatic and consular function as well as the international legal advice provided to governments from both inside the country, by government officials, and from external advisers hired for the purpose.

The fifth and last part includes a number of technical tools for assisting lawyers. The reader will find methodological recommendations and advice and a brief guide to international practice resources on the Internet. The book also includes a documentary CD-Rom that is designed to provide very useful introductory information on professional practice in both the community and international spheres.

The contributors include, among others, leading experts in the relevant areas such as Ambassador Juan Antonio Yáñez-Barnuevo, Professors Manuel Díez de Velasco, Julio González Campos, Antonio Remiro Brotóns, Luis Ignacio Sánchez Rodríguez and Gil Carlos Rodríguez Iglesias, and the secretary of the International Court of Justice, Philippe Couvreur.

MARIÑO MENÉNDEZ, F., VACAS FERNÁNDEZ, F. and FERNÁNDEZ GÓMEZ, M., *Derecho de los conflictos internacionales. Instrumentos jurídicos y textos básicos de la práctica internacional*, (Law of International Conflicts. Legal Instruments and Basic Texts of International Practice), *BOE*/Univ. Carlos III de Madrid, Madrid 2003, 512 p.

MUÑIZ, E., *Nuevo diccionario de derecho y relaciones internacionales*, (A New Dictionary of Law and International Relations), La Ley-Actualidad, Madrid 2003, 696 p.

PASTOR RIDRUEJO, J. A., *Curso de Derecho Internacional Público y organizaciones internacionales*, (A Course in Public International Law and International Organizations), 9th ed., Tecnos, Madrid 2003, 832 p.

PÉREZ DE FRANCISCO, E., *Lecciones de derecho humanitario bélico*, (Lessons in Humanitarian Law of War), Ministerio de Defensa, Madrid 2003, 230 p.

SÁNCHEZ RODRÍGUEZ, L. I. and GONZÁLEZ VEGA, J. A., *Derechos humanos. Textos internacionales*, (Human Rights. International Texts), 5th ed., Tecnos, Madrid 2003, 709 p.

SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia-San Sebastián Volumen IV*, (Courses in Human Rights of Donostia-San Sebastián. Volume IV), Univ. del País Vasco, Bilbao 2003, 432 p.

RODRÍGUEZ CARRIÓN, A., *Lecciones de Derecho Internacional Público*, (Lessons in Public International Law), 5th ed., Tecnos, Madrid 2003, 672 p.

VILARIÑO PINTOS, E., *Curso de Derecho Diplomático y Consular. Parte General y Derecho Diplomático*, (A Course in Diplomatic and Consular Law. General Part and Diplomatic Law), 2nd ed., Tecnos, Madrid 2003, 356 p.

VVAA., *Código de Derecho Internacional*, (International Law Code), La Ley-Actualidad, Madrid 2003, 1012 p.

VVAA., *Introducció a les relacions internacionals: lectures*, (Introduction to International Relations: Lectures), Editorial UOC, Barcelona 2003, 180 p.

2. Books in Honour of

COLNERIC, N., EDWRAD, D., PUISSOCHET, J-P. and RUÍZ-JARABO COLOMER, D., (Eds.), *Une communauté de droit. Festschrift für Carlos Rodríguez Iglesias*, (A Community of Law. Tribute to Carlos Rodríguez Iglesias), Berliner Wissenschafts-Verlag, Berlín 2003, 648 p.

VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, (Church, State and International Society. Homage to Mr. José Jiménez y Martínez de Carvajal), Univ. San Pablo-CEU, Madrid 2003, 655 p.

3. Monographs and Collective Works

ADAME MARTÍNEZ, M. A. and ADAME MARTÍNEZ, F. D., *Régimen jurídico y fiscal de los traslados transfronterizos de residuos peligrosos*, (Legal and Tax System of Cross-Border Movement of Dangerous Waste), Comares, Granada 2003, 164 p.

ALÍA PLANA, M., *La prohibición de las armas químicas y biológicas por el derecho internacional y el derecho español*, (The Ban on Chemical and Biological Weapons in International Law and Spanish Law), Vision Net, Madrid 2003, 248 p.

ALONSO FERNÁNDEZ, J. A. (Compil.), *Financiación del desarrollo y coherencia en las políticas de los donantes*, (Development Funding and Coherence in Donor Policies), Catarata, Madrid 2003, 304 p.

ÁLVAREZ-OSSORIO ALVARIÑO, I., BARREÑADA, I. and HROUB, K., *Informe sobre el conflicto de Palestina: de los acuerdos de Oslo a la hoja de ruta*, (Report on the Palestinian Conflict: From the Oslo Accords to the Route Map), Ediciones del Oriente y del Mediterráneo, Guadarrama 2003, 499 p.

BELTRÁN MONTOLIU, A., *Los tribunales penales internacionales ad hoc para la ex Yugoslavia y Ruanda: organización, proceso y reglas de procedimiento y prueba*, (The *ad hoc* International Criminal Tribunals for the Former Yugloslavia and Rwanda: Organization, Trial and Rules of Procedure and Evidence), Tirant lo Blanch, Valencia 2003, 157 p.

BLANC ALTEMIR, A., *Conflictos territoriales, interétnicos y nacionales en los estados surgidos de la antigua Unión Soviética*, (Territorial, Interethnic and National Conflicts in the States arising from the Former Soviet Union), Tirant lo Blanch, Valencia 2003, 405 p.

BONET PÉREZ, J., *Las políticas migratorias y la protección internacional de los derechos y libertades de los inmigrantes. Un análisis desde la perspectiva del ordenamiento jurídico español*, (Migratory Policies and the International Protection of the Rights and Freedoms of Immigrants. An Analysis from the Perspective of the Spanish Legal System), Univ. de Deusto, Bilbao 2003, 118 p.

CARACUEL RAYA, M. A., *Los cambios de la OTAN tras el fin de la Guerra Fría*, (The Changes in NATO following the End of the Cold War), 2nd ed., Tecnos, Madrid 2003, 436 p.

CARRILLO SALCEDO, J. A., *El Convenio europeo de derechos humanos*, (The European Convention on Human Rights), Tecnos, Madrid 2003, 157 p.

CATALINA AYORA, J. I. and ORTEGA TEROL, J. M., *Globalización y Derecho. Reflexiones desde el Seminario de Estudios Internacionales "Luis de Molina"*, (Globalization and Law. Thoughts from the "Luis de Molina" Seminar on International Studies), Univ. de Castilla-La Mancha, Albacete 2003, 176 p.

DE LA DEHESA, G., *Globalización, desigualdad y pobreza*, (Globalization, Inequality and Poverty), Alianza, Madrid 2003, 311 p.

DEL CAMPO, S. and CAMACHO, J. M., *Informe INCIPE 2003. La opinión pública española y la política exterior*, (INCIPE Report 2003. Spanish Public Opinion and Foreign Policy), INCIPE, Madrid 2003, 162 p.

ECHEVARRÍA JESÚS, C., GARCÍA PICAZO, P. and OLMOS SÁNCHEZ, I., *La sociedad internacional en el cambio de siglo (1885–1991)*, [International Society at the Turn of Century (1885–1991)], UNED, Madrid 2003, 204 p.

ESPÓSITO MASSICI, C. D., *La Organización Mundial del Comercio y los particulares*, (The World Trade Organization and Individuals), Dykinson, Madrid 2003, e-book at www.dykinson.com.

FARREL, M. D., *Ética en las relaciones internas e internacionales*, (Ethics in Internal and International Relations), Gedisa, Madrid 2003, 320 p.

FERNÁNDEZ LÓPEZ, J., (Coord.), *25 años de Constitución y Fuerzas Armadas*, (25 Years of Constitution and Armed Forces), Libros Pórtico, Zaragoza 2003, 238 p.

FERNÁNDEZ MANJÓN, D., *Proyección internacional de la diversidad territorial*, (International Projection of Territorial Diversity), IVAP, Vitoria 2003, 374 p.

GILES CARNERO, R., *La amenaza contra la capa de ozono y el cambio climático: respuesta jurídico internacional*, (The Threat of the Ozone Layer and Climate Change: A Response from International Law), Univ. Huelva, Huelva 2003, 293 p.

GÓMEZ COLOMER, J. L., *El Tribunal Penal Internacional, investigación y acusación*, (The International Criminal Court, Investigation and Indictment), Tirant lo Blanch, Valencia 2003, 203 p.

GÓMEZ COLOMER, J. L., GONZÁLEZ CUSSAC, J. L. and CARDONA LLORÉNS (Eds.), J., *La Corte Penal Internacional (Un estudio interdisciplinar)*, [The International Criminal Court (An Interdisciplinary Study)], Tirant lo Blanc, Valencia 2003, 382 p.

GÓMEZ ISA, F., (Ed.), *El caso Awas Tingui contra Nicaragua. Nuevos horizontes para los derechos humanos de los pueblos indígenas*, (The *Awas Tingui v. Nicaragua* Case. New Perspectives for the Human Rights of the Indigenous Peoples), Univ. de Deusto, Bilbao 2003, 279 p.

GÓMEZ ISA, F., (Dir.), *La protección internacional de los derechos humanos en los albores del siglo XXI*, (The International Protection of Human Rights at the Dawn of the 21st Century), Univ. de Deusto, Bilbao 2003, 835 p.

GROIZARD CARDONA, J. L. (Ed.), *Globalització i desenvolupament: reflexions entorn a la cooperación internacional*, (Globalization and Development: Thoughts on International Cooperation), Univ. de las Islas Baleares, Palma de Mallorca 2003, 289 p.

GUTMAN, R. and RIEFF, D., *Crímenes de Guerra: lo que debemos saber*, (War Crimes: What we Should Know), trans. by M. Chocano and Jolis Olivé, Debate, Barcelona 2003, 448 p.

HERRERO DE LA FUENTE, A., *La cooperación transfronteriza hispano-portuguesa en 2001*, (Spanish-Portuguese Cross-Border Cooperation), Tecnos, Madrid 2003, 256 p.

HINOJOSA MARTÍNEZ, L., *Comercio justo y derechos sociales. La condicionalidad social en el comercio internacional*, (Fair Trade and Social Rights. Social Conditionality in International Trade), Tecnos, Madrid 2003, 208 p.

HUICI SANCHO, L., *El Comité de las Regiones: su función en el proceso de integración europea*, (The Committee of the Regions; Its Function in the Process of European Integration), Univ. de Barcelona, Barcelona 2003, 295 p.

IGLESIAS BERLANGA, M., *La regulación jurídica de los recursos vivos de la alta mar: especial referencia a los intereses españoles*, (The Regulation of Live Marine Resources: Special Reference to Spanish Interests), Dilex, Madrid 2003, 384 p.

IGLESIAS VELASCO, A. J., *Los problemas del mantenimiento internacional de la paz*, (The Problems of International Peacekeeping), Ministerio de Defensa, Madrid 2003, 406 p.

– *Las operaciones de mantenimiento de la paz: Concepto, evolución histórica y características*, (Peacekeeping Operations: Concept, Historical Development and Characteristics), Univ. Autónoma de Madrid, Madrid 2003, 360 p.

KELSEN, H., *La paz por medio del derecho*, (Peace through Law), trans. by L. Echávarri, Trotta, Madrid 2003, 155 p.

LÓPEZ-JACOISTE DÍAZ, M. E., *Actualidad del Consejo de Seguridad de las Naciones Unidas, la legalidad de sus decisiones y el problema de su control*, (Current Situation of the United Nations Security Council, the Legality of its Decisions and the Problem of Control), Civitas, Madrid 2003, 396 p.

MARIÑO MENÉNDEZ, F. M. and PUENTES COBO, I., *El conflicto del Sahara Occidental*, (The Western Sahara Conflict), Univ. Carlos III de Madrid, Madrid 2003, 149 p.

MARTÍN LÓPEZ, M. A., *El incumplimiento de los tratados internacionales*, (Failure to Abide by International Treaties), Univ. de Córdoba, Córdoba 2003, 60 p.

MARTÍN RODRÍGUEZ, P. J., *Flexibilidad y tratados internacionales*, (Flexibility and International Treaties), Tecnos, Madrid 2003, 250 p.

NAVARRO MÉNDEZ, J. I., *La acción exterior de la Comunidad Autónoma de Canarias: marco teórico y praxis*, (The External Action of the Autonomous Region of the Canary Islands: Theoretic Framework and Praxis), Tirant lo Blanch, Valencia 2003, 340 p.

PEÑAS, F. J., *Hermanos y enemigos. Liberalismo y relaciones internacionales*, (Brothers and Enemies. Liberalism and International Relations), Catarata, Madrid 2003, 318 p.

PETIT DE GABRIEL, E., *Las exigencias de humanidad en el Derecho Internacional tradicional (1789–1939). El marco normativo y doctrinal de la intervención de humanidad y de la asistencia humanitaria*, [The Requirements of Humanity in Traditional International Law (1789–1939). The Regulatory and Doctrinal Framework of the Intervention of Humanity and Humanitarian Assistance], Tecnos, Madrid 2003, 264 p.

PIGNATELLI Y MECA, F., *El Estatuto de la Corte Penal Internacional. Antecedentes y textos complementarios*, (The Statute of the International Criminal Court. Background and Supplementary Texts), Ministerio de Defensa, Madrid 2003, 579 p.

– *La sanción de los crímenes de guerra en el Derecho español*, (The Punishment of War Crimes under Spanish Law), Ministerio de Defensa, Madrid 2003, 758 p.

QUERALT JIMÉNEZ, A., *El Tribunal de Estrasburgo: una jurisdicción internacional para la protección de los derechos fundamentales*, (The Strasbourg Court: An International Jurisdiction for the Protection of Fundamental Rights), Tirant lo Blanch, Valencia 2003, 436 p.

RELAÑO PASTOR, E., *La protección internacional de las minorías religiosas*, (The International Protection of Religious Minorities), Centro de Estudios Políticos y Constitucionales, Madrid 2003, 408 p.

RIPOL CARULLA, S., *El desarrollo de la potestad sancionadora del Consejo de Seguridad de las Naciones Unidas*, (The Development of the Sanctioning Power of the United Nations Security Council), IVAP, Oñate 2003, 151 p.

ROMEO CASABONA, C. M., *El convenio de derechos humanos y biomedicina del Consejo de Europa: su entrada en vigor en el ordenamiento jurídico español*, (The Council of Europe Convention on Human Rights and Biomedicine: Its Entry into Force under Spanish Law), Comares, Granada 2003, 568 p.

SALAMANCA AGUADO, E., *La zona internacional de los fondos marinos. Patrimonio común de la humanidad*, (The International Seabed Area. A Common World Heritage), Madrid 2003, 348 p.

SÁNCHEZ LEGIDO, A., *Jurisdicción universal penal y derecho internacional*, (Universal Criminal Jurisdiction and International Law), Tirant lo Blanch, Valencia 2003, 421 p.

SAURA ESTAPÁ, J., *El cumplimiento del Protocolo de Kioto sobre el cambio climático*, (Compliance with the Kyoto Protocol on Climate Change), Univ. de Barcelona/CEI, Barcelona 2003, 155 p.

SOCÍAS SALVÁ, A. (Ed.), *Entorn social, jurídic i econòmic de la cooperació per al desenvolupament*, (Social, Legal and Economic Environment of Development Cooperation), Fundació Universitat Empresa de les Illes Balears, Palma de Mallorca 2003, 166 p.

SODUPE CORCUERA, K., *La teoría de las Relaciones Internacionales a comienzos del siglo XXI*, (The Theory of International Relations at the Beginning of the 21st Century), Univ. del País Vasco, Vitoria 2003, 253 p.

VACAS FERNÁNDEZ, F., *Las operaciones de mantenimiento de la paz de Naciones Unidas y el principio de no intervención*, (United Nations Peacekeeping Operations and the Principle of Non-Intervention), Tirant lo Blanch/Instituto Universitario de Estudios Internacionales y Europeos Francisco de Vitoria, Valencia 2003, 430 p.

VALLE GÁLVEZ, A. del, (Dir), *Los nuevos escenarios internacionales y europeos del Derecho y la seguridad*, (The New International and European Law and Security Environments), Escuela Diplomática/AEPDIRI, Madrid 2003, 252 p.

VVAA., *V Jornadas de Derecho Internacional Humanitario: migraciones*, (5th Conference on International Humanitarian Law: Migration), Germanía, Alzira 2003, 208 p.

VVAA., *Centroamérica: Perspectivas de Futuro*, Tribuna Internacional, 4, Centre d'Estudis Internacionals (CEI), Barcelona 2003, 218 p.

VVAA., *Convenio de cooperación para la defensa entre el Reino de España y los Estados Unidos de América*, (Convention on Defence Cooperation between the Kingdom of Spain and the United States of America), Ministerio de Defensa, Madrid 2003, 276 p.

VVAA., *La Secretaría de Cooperación Iberoamericana: un organismo internacional*, (The Secretariat for Ibero-American Cooperation: An International Organization), Lunwerg Editores, Barcelona 2003, 192 p.

VVAA., *Refugiats de Guerra en el món: Conferencia Internacional de Refugiados de Guerra celebrada en Barcelona los días 9, 10 y 11 de abril de 2002*, (War Refugees in the World: International Conference on War Refugees held in Barcelona on 9, 10 and 11 April 2002), Fundación Autónoma Solidaria, Barcelona 2003, 130 p.

VVAA., *La carta europea de las lenguas regionales y minoritarias: una perspectiva sobre su aplicación*, (The European Charter of Regional and Minority Languages: A View on its Implementation), Fundación Euskara Kultur Elkargoa, Pamplona 2003, 472 p.

ZAPATERO, P., *Derecho del comercio global*, (Global Trade Law), Civitas, Madrid 2003, 627 p.

4. Articles and notes

ALÍA PLANA, M., "La prohibición de las armas químicas y biológicas en sede internacional y en sede española", (The Ban on Chemical and Biological Weapons Internationally and in Spain), *REEI*, n. (2003), [www.reei.org], 108 p.

ANDRÉS SÁENZ DE SANTA MARÍA, M. P., "El Consejo de seguridad en la guerra contra Irak: ¿ONG privilegiada, convalidador complaciente u órgano primordial?", (The Security Council in the War on Iraq: Privileged NGO, Indulgent Validator or Primordial Organ?), *REDI*, vol. LV (2003) n. 1, 205–222.

ARP, B., "*Navigare necesse est*: la Red al servicio de comunitaristas e iusinternacionalistas", (*Navigare necesse est*: Internet at the Service of Specialists in Community and International Law), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 607–640.

BLÁZQUEZ PEINADO, M. D., "La Corte Penal Internacional y su aportación a la teoría general de las Organizaciones Internacionales", (The International Criminal Court and its Contribution to the General Theory of International Organizations), in GÓMEZ COLOMER, J. L., GONZÁLEZ CUSSAC, J. L. and CARDONA LLORÉNS (Eds.), J., *La Corte Penal Internacional (Un estudio interdisciplinar)*, 107–137.

BONET PÉREZ, J., "La lucha internacional contra la explotación infantil: entre la utopía y la realidad", (The International Fight against Child Exploitation: Between Utopia and Reality), in SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia-San Sebastián Volumen IV*, 81–135.

CARMONA LUQUE, R., "La no discriminación como principio rector de la Convención sobre los Derechos del niño", (Non-Discrimination as the Guiding Principle of the

Convention on the Rights of the Child), in SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia- San Sebastián Volumen IV*, 173–188.

CALDUCH CERVERA, R., "Cultura y civilización en la Sociedad internacional", (Culture and Civilization in International Society), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 299–321.

CARDONA LLORÉNS, J., "La Corte Penal Internacional y el mantenimiento de la paz y la seguridad internacionales", (The International Criminal Court and the Maintenance of International Peace and Security), in GÓMEZ COLOMER, J. L., GONZÁLEZ CUSSAC, J. L. and CARDONA LLORÉNS (Eds.), J., *La Corte Penal Internacional (Un estudio interdisciplinar)*, 61–103.

CARREÑO GUALDE, V., "Nuevas medidas de prevención de la contaminación marina por buques adoptadas por España tras el accidente del *Prestige*: el Acuerdo hispano-francés de 26 de noviembre de 2002", (New Measures for Preventing Marine Pollution by Vessels Adopted by Spain following the *Prestige* Accident: the Spanish-French Agreement of 26 November 2002), *REDI*, vol. LV (2003) n. 1, 279–290.

CARRILLO SALCEDO, J. A., "La búsqueda de una solución normativa a la protección de los derechos humanos en la Unión Europea", (Seeking a Regulatory Solution to the Protection of Human Rights in the European Union), in VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 323–336.

CASTILLO DAUDÍ, M., "La ocupación militar de Irak ante el Derecho internacional", (The Military Occupation of Iraq vis-à-vis International Law), *REDI*, vol. LV (2003) n. 1, 223–243.

CONTRERAS, D., "El Sahara Occidental: la asignatura pendiente de la ONU", (The Western Sahara: The UN's Pending Issue), in VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 337–349.

DE ALMEIDA NASCIMENTO, A., "El control de buques mercantes en alta mar por parte de los efectivos de la Armada española que participan en la operación *Libertad duradera*: el episodio del *So Sane*", (The Monitoring of Merchant Vessels on the High Seas by Spanish Naval Troops Participating in Operation *Enduring Freedom*), *REDI*, vol. LV (2003) n. 1, 267–278.

DE TOMÁS MORALES, S., "Crímenes de guerra y estatuto de la Corte Penal Internacional", (War Crimes and Statute of the International Criminal Court), in

VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 507–536.

DEL ARENAL, C., "La política española hacia América Latina en 2002", (Spanish Policy towards Latin America in 2002), *Anuario Elcano América Latina* (2002–03), 14–41.

DÍEZ-HOCHLEITNER, J. and IZQUIERDO, C., "Las inversiones a través de sociedades locales en los APPRIs celebrados por España con países de Latinoamérica", (Investments through Local Enterprises in the APPRI Agreements between Spain and Latin and American Countries), *REEI*, n. 7 (2003), [www.reei.org], 27 p.

FERNÁNDEZ SOLA, N., "Conflictos armados y derechos del niño", (Armed Conflicts and Rights of the Child), in SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia-San Sebastián Volumen IV*, 221–253.

GAMARRA CHOPO, Y., "La cuestión de la constitucionalidad de la participación de las Fuerzas Armadas españolas en misiones internacionales y su control político", (The Question of the Constitutionality of the Participation of the Spanish Armed Forces in International Missions and their Political Control), in FERNÁNDEZ LÓPEZ, J. (Ed.), *25 años de Constitución y Fuerzas Armadas*, Libros Pórtico, Zaragoza 2003, 127–163.

– "Más inacción que acción de la OTAN en la guerra de Irak", (More NATO Inaction than Action in the Iraq War), *REDI*, vol. LV (2003) n. 1, 245–265.

GARCÍA PICAZO, P., "Religión y cultura en la configuración de la sociedad internacional", (Religion and Culture in Shaping International Society), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 351–374.

GONZÁLEZ CAMPOS, J., "Sobre la práctica en Derecho Internacional y Comunitario: los datos de su evolución histórica y las tareas del jurista en la realidad actual", (On Practice in International and Community Law: Its Historical Development and the Current Tasks of the Jurist), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 3–17.

GONZÁLEZ DEL MIÑO, P., "Mohamed VI: ¿Cambio o continuidad en Marruecos?", (Mohammed VI: Change or Continuity in Morocco?), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 375–398.

GUTIÉRREZ CASTILLO, V. L., "Análisis histórico-jurídico de la isla andaluza de Alborán", (A Legal-Historical Analysis of the Andalusian Island of Alborán), *REEI*, n.6 (2003), [www.reei.org], 8 p.

JIMÉNEZ PIERNAS, C., "La práctica internacional y sus medios de prueba (guía breve para abogados jóvenes)", [International Practice and Means of Proof (A Brief Guide for Young Lawyers)], in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 583–606.

JUSTE RUIZ, J., "El accidente del *Prestige* y el Derecho internacional: de la prevención fallida a la reparación insuficiente", (The *Prestige* Accident and International Law: From Failed Prevention to Insufficient Reparation), *REDI*, vol. LV (2003) n. 1, 15–42.

LACLETA MUÑOZ, J. M., "Fronteras en el mar. Política, derecho y equidad en la delimitación de los espacios marinos", (Frontiers in the Sea. Politics, Law and Equity in Delimiting Marine Areas), *Documento de trabajo del Real Instituto Elcano* n. 23/2003.

– "Las aguas españolas en la costa africana", (Spanish Waters off the African Coast), *REEI*, n. 7 (2003), [www.reei.org], 14 p.

– "La función diplomática y consular", (The Diplomatic and Consular Function), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 461–505.

MADRAZO RIVAS, E., "Naciones Unidas, autodeterminación y el Timor Oriental", (United Nations, Self-Determination and East Timor), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 399–452.

MARQUINA BARRIO, A., "El proceso de globalización como punto de encuentro en la esfera internacional", (The Globalization Process as a Meeting Point in the International Sphere), in VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 453–468.

PÉREZ GIRALDA, A., "La asesoría jurídica internacional de Gobiernos desde la función pública", (International Legal Advice Provided to Governments from the Civil Service), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 507–533.

PÉREZ GONZÁLEZ, M., "La legítima defensa puesta en su sitio: observaciones críticas sobre la doctrina Bush de la acción preventiva", (Legitimate Defence Put in its Place: Critical Observations on Bush's Doctrine of Preventive Action), *REDI*, vol. LV (2003) n. 1, 187–204.

PETSCHEN VERDAGUER, S., "La Santa Sede y los países bálticos", (The Holy See and the Baltic States), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 247–262.

PRIETO GUTIÉRREZ, M.G., "Presente y futuro de la OTAN. La polémica sobre la ampliación", (Present and Future of NATO. The Controversy on Enlargement), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 469–483.

PUENTE EGIDO, J., "La doble legitimidad en la relación Derecho Internacional-Derecho interno y Derecho comunitario-Derecho de los Estados miembros", (Dual Legitimacy in Relations between International Law-Internal Law and Community Law-Law of Member States), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 485–505.

PUEYO LOSA, J., "Una valoración sobre el naufragio del *Prestige* desde la perspectiva del derecho del mar", (An Assessment of the Sinking of the *Prestige* from the Perspective of the Law of the Sea), *Boletín das Ciencias*, n. 52 (2003), 215–229.

PUEYO LOSA, J., LIROLA DELGADO, I. and JORGE URBINA, J., "En torno a la revisión del régimen jurídico internacional de seguridad marítima y protección del medio marino a la luz del accidente del *Prestige*", (Concerning the Revision of the International Legal System of Marine Safety and Protection of the Marine Environment in the light of the *Prestige* Accident), *REDI*, vol. LV (2003) n. 1, 43–77.

REMIRO BROTÓNS, A., "La asesoría jurídica internacional de Gobiernos *desde fuera*", (*External* International Legal Advice for Governments), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 535–580.

– "International Law after the Pinochet Case", in DAVIS, M. (Ed.), *The Pinochet Case. Origins, Progress and Implications*, Institute of Latin American Studies, London 2003, 231–251.

– "Las instituciones del Sistema de Integración Centroamericana y su futuro", (The Institutions of the Central American Integration System and their Future), in VVAA., *Centroamérica: Perspectivas de Futuro*, 77–181.

– "¿Nuevo Orden o Derecho Internacional?", (New Order or International Law?), *Claves de Razón Práctica,* n. 132 (mayo 2003), 4–14.

– "La tentación de la agresión: ilegalidad del unilateralismo", (The Temptation of Aggression: Illegality of Unilateralism), *Política Exterior,* (marzo – abril 2003), 19–23.

RIVERA, G., "Desarrollos jurisprudenciales sobre procedimientos de solución de diferencias en la OMC", (Case-Law Developments in Procedures for Settling Differences at the WTO), *REEI*, n. 6 (2003), [www.reei.org], 30 p.

RODRÍGUEZ MANZANO, I. and SOTILLO LORENZO, J. A., "Relaciones internacionales, política exterior y cooperación al desarrollo: reflexiones para un debate en el caso español", (International Relations, Foreign Policy and Development Cooperation: Thoughts for Debate in the Case of Spain), *REDI*, vol. LV (2003) n. 1, 149–186.

ROIS MADARRO, L., "El control por el Estado de sus nacionales como medio para combatir las actividades pesqueras ilícitas", (State Control of Nationals as a Means of Combating Illegal Fishing Activities), *REEI*, n. 6 (2003), [www.reei.org], 12 p.

SÁNCHEZ RODRÍGUEZ, L. 1 and LÓPEZ MARTÍN, A. G., "Los países pequeños y en vías de desarrollo ante la Corte Internacional de Justicia: algunos problemas prácticos", (The Small and Developing Countries vis-à-vis the International Court of Justice: Some Practical Problems), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 83–103.

SANZ CABALLERO, S., "A propósito de las sentencias *Goodwin* e *I* o el debate sobre el matrimonio de transexuales ante el TEDH", (Concerning the *Goodwin and I* Judgments or the Debate on Transexual Marriage at the ECHR), *REDI*, vol. LV (2003) n. 1, 307–315.

TORRECUADRADA GARCÍA-LOZANO, S., "La Sentencia de la Corte Internacional de Justicia de 27 de junio de 2001 en el caso Lagrand", (Tbe International Court of Justice Judgment of 27 June 2001 on the Lagrand Case), *REEI*, n. 6 (2003), [www.reei.org], 43 p.

TRINIDAD NUÑEZ, P., "El 'talón de Aquiles' de la Convención sobre los Derechos del niño: una aproximación a las declaraciones y reservas formuladas por los estados parte", (The 'Achilles' Heel' of the Convention on the Rights of the Child: An Approach to the Declarations and Reservations made by the States Parties), in SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia-San Sebastián Volumen IV*, 387–412.

TRUYOL Y SERRA, A., "El catolicismo liberal italiano en la época del Risogimento Rosmini-Gioberti", (Italian Liberal Catholicism in the Age of the Risogimento Rosmini-Gioberti), in VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 585–597.

URIÓS MOLINER, S., "Antecedentes históricos de la Corte Penal Internacional", (Historical Background of the International Criminal Court), in GÓMEZ COLOMER, J. L., GONZÁLEZ CUSSAC, J. L. and CARDONA LLORÉNS (Eds.), J., *La Corte Penal Internacional (Un estudio interdisciplinar)*, 23–59.

VILLÁN DURÁN, C., "El funcionamiento de los mecanismos extraconvencionales de protección internacional de los derechos humanos", (The Working of the Extra-

Conventional Mechanisms for the International Protection of Human Rights), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 277–313.

YÁÑEZ-BARNUEVO GARCÍA, J. A., "Apuntes sobre la diplomacia multilateral", (Notes on Multilateral Diplomacy), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 191–213.

PRIVATE INTERNATIONAL LAW

1. Essays, treaties and handbooks

ABARCA JUNCO, P. (Dir.), *Derecho Internacional Privado. Vol I*, (Private International Law. Vol I), 4rd ed., UNED, Madrid 2003, 558 p.

– *Prácticas de Derecho Internacional Privado*, (Practice in Private International Law), 3rd ed., Colex, Madrid 2003, 320 p.

ÁLVAREZ GONZÁLEZ S., ESPLUGUES MOTA, C., RODRÍGUEZ MATEOS, P. and SÁNCHEZ LORENZO, S., (Eds.), *Legislación de Derecho Internacional Privado*, (Legislation of Private International Law), 6th ed., Comares, Granada 2003, 666 p.

BORRÁS RODRÍGUEZ, A., BOUZA VIDAL, N., GONZÁLEZ CAMPOS, J. D. and VIRGÓS SORIANO, M., *Legislación básica de Derecho Internacional Privado*, (Basic Legislation of Private International Law), 13th ed., Tecnos, Madrid 2003, 1131 p.

CALVO-CARAVACA, A. L. and CARRASCOSA GONZÁLEZ, J., *Derecho Internacional Privado. Vol I*, (Private International Law. Vol I), 4th ed., Comares, Granada 2003, 487 p.

ESPLUGUES MOTA, C., PALAO MORENO, G., ESPINOSA CALABUIG, R. and, FERNÁNDEZ MASIA, E., *Legislación básica del comercio internacional*, (Basic Legislation on International Trade), 3rd ed., Tirant lo Blanch, Valencia 2003, 880 p.

ESPLUGUES MOTA, C. and LORENZO SEGRELLES, M. de, *Legislación de extranjería*, (Legislation on Aliens), Tirant lo Blanch, Valencia 2003, 315 p.

– *Derecho Internacional Privado. Vol II*, (Private International Law. Vol II), 4th ed., Comares, Granada 2002, 608 p.

FERNÁNDEZ ROZAS, J. C. and FERNÁNDEZ PÉREZ, A., *Ley de extranjería y legislación complementaria*, (Law on Aliens and Supplementary Legislation), 2nd ed., Tecnos, Madrid 2003, 768 p.

IRIARTE ÁNGEL, J. L., PÉREZ BEVIÁ, J. A. and COMTE GUILLEMET, N., (Eds.), *Código de Derecho Internacional Privado*, (A Code of Private International Law), Aranzadi, Navarra 2003, 837 p.

2. Books in Honour of

FERNÁNDEZ ROZAS, J. C. (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, (International Registry Law. Tribute to the Memory of Professor Rafael Arroyo Montero), Iprolex, Madrid 2003, 629 p.

3. Monographs and Collective Works

AÑOVEROS TERRADAS, B., *Los contratos de consumo intracomunitarios*, (Intra-Community Consumer Contracts), Marcial Pons, Madrid 2003, 269 p.

ARRIAGA IRABURU, I., *El derecho a la vida familiar de los extranjeros en la jurisprudencia de Estrasburgo*, (Aliens' Right to Family Life in Strasbourg Case-Law), Eunsa, Ediciones de la Univ. de Navarra, Barñáin 2003, 364 p.

BLÁZQUEZ RODRÍGUEZ, I., *Los nacionales de terceros países en la Unión Europea*, (The Nationals of Third States in the European Union), 2nd ed., Universidad de Córdoba, Córdoba 2003, 536 p.

CAMAS RODA, F., *La normativa internacional y comunitaria de seguridad y salud en el trabajo*, (International and Community Regulations on Safety and Health at Work), Tirant lo Blanch, Valencia 2003, 348 p.

CORTÉS MARTÍN, J. M., *La protección de las indicaciones geográficas en el comercio internacional e intracomunitario*, (The Protection of Geographical Indications in International and Intra-Community Trade), Ministerio de Agricultura, Pesca y Alimentación, Madrid 2003, 584 p.

CALVO BABÍO, F., *Reconocimiento en España de las adopciones simples realizadas en el extranjero*, (Recognition in Spain of Simple Adoptions Carried out Abroad), Universidad Rey Juan Carlos/Dykinson, Madrid 2003, 463 p.

CALVO CARAVACA, A. L. and CARRASCOSA GONZÁLEZ, J., *Derecho de familia internacional*, (International Family Law), Colex, Madrid 2003, 354 p.

- *Curso de contratación internacional*, (A Course in International Trading), Colex, Madrid 2003, 752 p.

- *Mercado único y libre competencia en la Unión Europea*, (Single Market and Free Competition in the European Union), Colex, Madrid 2003, 1308 p.

CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., *Globalización y Derecho*, (Globalization and Law), Colex, Madrid 2003, 624 p.

CARRILLO CARRILO, B. L., *Adopción internacional y Convenio de la Haya de 29 de mayo de 1993*, (International Adoption and The Hague Convention of 29 May 1993), Comares, Granada 2003, 328 p.

DIAGO DIAGO, M. P., *La obtención de pruebas en la Unión Europea*, (The Procurement of Evidence in the European Union), Aranzadi, Navarra 2003, 137 p.

ESLAVA RODRÍGUEZ, M., *Contratos públicos internacionales*, (International Public Contracts), Colex, Madrid 2003, 196 p.

ESPLUGUES MOTA, C., (Dir.), *Derecho del comercio internacional*, (International Trade Law), Tirant lo Blanch, Valencia 2003, 390 p.

ESPLUGUES MOTA, C., PALAO MORENO, G. and LORENZO SEGRELLES, M. de, *Nacionalidad y extranjería*, (Nationality and Aliens), 2nd ed., Tirant lo Blanch, Valencia 2003, 238 p.

ESTEBAN DE LA ROSA, F., *La protección de los consumidores en el mercado interior europeo*, (Consumer Protection in the European Internal Market), Comares, Granada 2003, 304 p.

FERNÁNDEZ ARROYO, D. P. (Coord.), *Derecho internacional privado de los Estados del MERCOSUR*, (Private International Law of the MERCOSUR States), Zavalia, Buenos Aires 2003, 1438 p.

GARCÍA CANO, S., *Protección del menor y cooperación internacional entre autoridades*, (Protection of Minors and International Cooperation between Authorities), Colex, Madrid 2003, 280 p.

GARDEÑES SANTIAGO, M., *Las fundaciones en Derecho internacional privado español*, (Foundations in Spanish Private International Law), Eurolex, Madrid 2003, 263 p.

GÓMEZ BENGOECHEA, B., *Aspectos civiles de la sustracción internacional de menores. Problemas de aplicación del Convenio de la Haya de 25 de octubre*, (Civil Aspects of International Child Abduction. Problems of the Application of The Hague Convention of 25 October), Dykinson, Madrid 2003, 152 p.

GONZALO QUIROGA, M., *Orden público y arbitraje international en el marco de la globalización comercial*, (Public Order and International Arbitration in the Framework of Trade Globalization), Dykinson, Madrid 2003, 300 p.

- *Arbitrabilidad de la controversia internacional*, (Arbitrability of International Disputes), Alhulia, Granada 2003, 312 p.

MILÁNS DEL BOSCH PORTOLÉS, I., MADRAZO RIVAS, E., and DE LA TORRE DÍAZ, F. J. (Coords.), *Migraciones y desarrollo humano*, (Migration and Human Development), Dykinson, Madrid 2003, 250 p.

MOYA ESCUDERO, M. and RUEDA VALDIVIA, R., *Régimen jurídico de los trabajadores extranjeros en España*, (Legislation on Foreign Workers in Spain), La Ley-Actualidad, Madrid 2003, 336 p.

ORTÉU CEBRIÁN, F. and ALÍAS GAROZ, I., *Exequátur de laudos arbitrales al amparo del convenio de Nueva York de 10–6–1958: doctrina de la sala primera del Tribunal Supremo*, (Exequatur of Arbitral Awards under the New York Convention of 10–6–1958: Doctrine of the First Chamber of the Supreme Court), Bosch, Barcelona 2003, 464 p.

PALAO MORENO, G., PRATS ALBENTOSA, L. and REYES LÓPEZ, M. J. (Coords.), *Derecho patrimonial europeo*, (European Property Law), Aranzadi, Navarra 2003, 400 p.

PALAO MORENO, G. and CLEMENTE MEDRO, M. (Coords.), *El diseño comunitario*, (The Community Design), Tirant lo Blanch, Valencia 2003, 408 p.

RODRÍGUEZ GAYÁN, E., *Salvamento marítimo internacional*, (International Marine Salvage), Valencia 2003, 260 p.

RODRÍGUEZ RODRIGO, J., *Régimen jurídico de la abogacía internacional*, (Legislation on the International Legal Profession), Comares, Granada 2003, 347 p.

SÁNCHEZ LORENZO, S. and MOYA ESCUDERO, M., (Eds.), *La cooperación judicial en materia civil y la unificación del Derecho privado en Europa*, (Judicial Cooperation in Civil Matters and the Unification of Private Law in Europe), Dykinson, Madrid 2003, 410 p.

SANCHO VILLA, D., *Transferencia internacional de datos personales*, (International Transfer of Personal Data), Agencia de Protección de Datos, Madrid 2003, 294 p.

4. Articles and Notes

AGUILAR BENÍTEZ DE LUGO, M., "El matrimonio consular", (Consular Marriage), *BIMJ*, n. 1937 (2003), 825–850.

ÁLVAREZ GONZÁLEZ, S., "La concesión de la nacionalidad española por residencia a los estudiantes extranjeros", (The Granting of Spanish Nationality to Foreign Students through Residence), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, Iprolex, Madrid 2003, 363–374.

– "Derecho interregional: Pasado, presente y futuro", (Inter-Regional Law: Past, Present and Future) *Anuario Español de Derecho Internacional Privado*, t. III (2003), 37–73.

– "Competencia judicial internacional y ley aplicable en la contratación electrónica internacional", (International Jurisdiction and Applicable Law in International Electronic Trading), in MORO ALMARAZ, M. J. (Dir.), *Internet y comercio electrónico*, Universidad de Salamanca, Salamanca 2003, 35–60.

ÁLVAREZ RUBIO, J. J., "Competencia: Derechos de retransmisión de acontecimientos deportivos", (Competence: Broadcasting Rights for Sporting Events), *Revista Jurídica de Cataluña*, n. 3 (2003), 287–297.

AMORES CONRADI, M. A., "*Ubi societas europaea.* Sobre el domicilio social y legislación (es) aplicable (s) a la Sociedad Anónima Europea (SE)", (*Ubi societas europaea.* On Registered Office and Legislation Applicable to the European Company), *Revista Jurídica de la Universidad Autónoma de Madrid*, n. 8 (2003), 25–52.

ARENAS GARCÍA, R., "La función del Registro mercantil en el Derecho Internacional privado", (The Function of the Companies Register in Private International Law), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 545–577.

ARTUCH IRIBERRI, E., "Matrimonios mixtos: Diversidad cultural y Derecho Internacional Privado", (Mixed Marriages: Cultural Diversity and Private International Law), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 199–222.

BELTRÁN DE HEREDIA RUIZ, I., "La aplicación del Derecho del trabajo en el espacio internacional", (The Application of Labour Law in the International Environment), *Actualidad Laboral*, n. 39 (2003), 669–697.

BORRÁS RODRÍGUEZ, A., "Competencia judicial, reconocimiento y ejecución de decisiones en materia matrimonial: El Reglamento 1.347/2000, de 29 de mayo ('Bruselas II')", [Jurisdiction, Recognition and Enforcement of Decisions on Matrimonial Matters: Regulation 1347/2000, of 29 May (Brussels II)], *Revista Jurídica de Cataluña (Legislación)*, n. 2 (2003), 37–62.

BORRÁS RODRÍGUEZ, A. and PELLISÉ, C., "Jurisprudencia del Tribunal de Justicia de las Comunidades Europeas", (Case-Law of the European Court of Justice), *Revista Jurídica de Cataluña (Legislación)*, n. 3 (2003), 271–281.

BOUZA VIDAL, N. and VINAIXA MIQUEL, M., "La responsabilidad por daños ambientales transfronterizos: Propuesta de regulación europea y Derecho Internacional Privado", (Liability for Cross-Border Environmental Damage: Proposal for European Regulation and Private International Law), *Anuario Español de Derecho Internacional Privado*, t. III (2003), 75–106.

CALVO CARAVACA, A. L., "Globalización y adopción internacional", (Globalization and International Adoption), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 23–71.

CAMPUZANO DÍAZ, B., "El derecho contractual europeo en el marco de la globalización", (European Contractual Law in the Framework of Globalization), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 73–85.

CARBALLO PIÑEIRO, L., "Control jurisdiccional de la actividad de la DGRN en materia de nacionalidad", (Jurisdictional Control of the Activity of the *DGRN* in Matters of Nationality), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 375–387.

– "Acciones de reintegración de la masa y normas de Derecho Internacional Privado en la Ley concursal", (Asset Recovery and Rules of International Law in the Bankruptcy Law), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 139–169.

CARBONE, S. M., "Dos intentos regionales de regulación de los contratos internacionales: El Convenio de Roma de 1980 sobre ley aplicable a las obligaciones contractuales y su relación con la Convención interamericana de 1994 sobre derecho aplicable a los contratos internacionales", (Two Regional Attempts at Regulating International Contracts: The Rome Convention of 1980 on the Law Applicable to Contractual Obligations and its Relationship with the Inter-American Convention of 1994 on the Law Applicable to International Contracts), *Revista Jurídica de Castilla-La Mancha*, n. 34 (2003), 45–60.

CARRASCOSA GONZÁLEZ, J., "Ley aplicable al nombre de las personas físicas y la doctrina de la Dirección General de los Registros y del Notariado", (Law Applicable to the Name of Individuals and the Doctrine of the Directorate General of Registries and Notaries), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 137–153.

– "Contratos internacionales, prestación característica y la teoría de la *STEAM-OF-COMMERCE*", (International Contracts, Characteristic Presentation and the STEAM-OF-COMMERCE Theory), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 87–119.

CARRILLO CARRILO, B. L., "Adopción internacional: condicionantes sociales y jurídicos", (International Adoption: Social and Legal Conditioning Factors), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 121–189.

CONTRERAS MAZARÍO, J. M., "Globalización, Derechos Humanos y prácticas tradicionales en el ámbito de la familia. Especial referencia a las actividades de las Naciones Unidas", (Globalization, Human Rights and Traditional Practice in the Family Environment. Special Reference to the Activities of the United Nations), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 191–212.

DIAGO DIAGO, M. P., "El Derecho de los hijos a mantener relaciones personales con ambos progenitores. A propósito de la propuesta de Reglamento del Consejo relativo a la competencia, el reconocimiento y la ejecución de resoluciones judiciales en materia matrimonial y de responsabilidad parental y su extensión a la sustracción de menores", (The Right of Children to Maintain Personal Relations with Both Progenitors. Concerning the Proposal for a Council Regulation on Jurisdiction, Recognition and Enforcement of Judicial Decisions in Matrimonial and Parental Responsibility Matters and their Extension to Child Abduction), in SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia-San Sebastián Volumen IV*, 205–219.

DOWNES, N., "El ERBSCHEIN en la práctica notarial española: ¿Un documento necesario o simplemente útil?", (The ERBSCHEIN in Spanish Notary Practice: A Necessary or Simply Useful Document?), *Revista Jurídica del Notariado*, n. 46 (2003), 67–106.

DURÁN AYAGO, A., "La protección de menores en la era de la globalización: Del conflicto de leyes a las técnicas de flexibilización", (The Protection of Minors in the Age of Globalization: From the Conflict of Laws to Flexibilization Techniques), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 213–236.

ENRIQUE DE ROSAS, P., "Orden público internacional: Tendencias contemporáneas. Orden público en el ordenamiento de MERCOSUR", (International Public Order Policy: Modern Trends. Public Order Policy in the MERCOSUR System), *Boletín de la Facultad de Derecho de la UNED*, n. 22 (2003), 193–220.

ESLAVA RODRÍGUEZ, M., "Relaciones comerciales y flujos de inversión entre la UE e Iberoamérica", (Trade Relations and Investment Flows between the EU and Latin America), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, Colex, Madrid 2003, 237–261.

ESPINAR VICENTE, J. M., "Sobre la urgente necesidad de reformar la regulación jurídica del matrimonio", (On the Urgent Need to Reform the Regulation of Marriage), *Actualidad Civil*, n. 19 (2003), 477–493.

– "El Registro de los actos del estado civil: Su protección y garantía jurisdiccional", (The Registry of Personal Status: Its Protection and Jurisdictional Guarantee), *Consejo General del Poder Judicial*, (2003), 211–224.

ESPINIELLA MENÉNDEZ, A., "Derechos reales de empresas vinculadas en el marco de las quiebras comunitarias", (Real Property Rights of Related Enterprises in the Framework of Community Receiverships), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 185–208.

ESPLUGUES MOTA, C., "Todos somos extranjeros en algún lugar del mundo: incidencia de la extranjería en el Registro Civil español", (We are All Foreigners Somewhere in the World: Influence of Aliens on the Spanish Civil Registry), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 43–65.

ESTEBAN DE LA ROSA, F., "Repercusión de la insolvencia patrimonial de las sociedades dependientes en los grupos internacionales de sociedades", (Repercussion of the Bankruptcy of Dependent Undertakings on International Groups of Companies), *Anuario Español de Derecho Internacional Privado*, t. lII. (2003), 171–183.

ESTEBAN DE LA ROSA, G., "Inmigrantes menores de edad y su situación jurídica en España: algunas cuestiones controvertidas", (Under Age Immigrants and their Legal Status in Spain: Some Controversial Issues), *La Ley*, n. 5714 (2003), 2–7.

EZQUERRA UBERO, J. J., "Las sentencias canónicas de nulidad matrimonial en el Reglamento de la Comunidad Europea de 29 de mayo de 2002", (Canonical Judgments Anulling Marriage in the European Community Regulation of 20 May 2002), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 105–129.

FACH GÓMEZ, K., "El Reglamento 44/2001 y los contratos de agencia comercial internacional: aspectos jurisdiccionales", (Regulation 44/2001 and International Agency Contracts: Jurisdictional Aspects), *RDCE*, n. 14 (2003), 181–222.

- "Competencia judicial internacional en materia de acciones preventivas: interpretación del Tribunal de Justicia de las Comunidades Europeas", (International Jurisdiction in Matters of Preventive Actions: Interpretation of the European Court of Justice), *Noticias UE*, n. 225 (2003), 83–91.

FELDSTEIN DE CÁRDENAS, S. L., "El orden público internacional: Una mirada desde el Derecho Internacional Privado contemporáneo", (International Public Order Policy: An Approach from Contemporary Private International Law), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 263–278.

FERNÁNDEZ ARROYO, D. P., "Globalización y derecho: El caso de la reglamentación internacional de las garantías mobiliarias", (Globalization and Law: The Case of the International Regulation of Security Interests), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 279–312.

FERNÁNDEZ DEL POZO, L., "El Derecho Internacional del Registro Mercantil y la publicidad registral de la sociedad europea (*Societas Europaea*)", (The International Law of the Companies Register and the Public Registration of the European Company (*Societas Europaea*)), *Revista de Derecho Mercantil*, n. 248 (2003), 499–554.

FERNÁNDEZ MASÍA, E., "Primeras consideraciones sobre el Anteproyecto de Reglamento sobre la ley aplicable a las obligaciones extracontractuales (Roma II)", [Initial Considerations on the Draft Regulation on the Law Applicable to Extracontractual Obligations (Rome II)], *Actualidad Civil*, n. 34 (2003), 907–929.

FERNÁNDEZ ROZAS, J. C., "Rafael Arroyo, Internacionalista", (Rafael Arroyo, Internationalist), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 13–20.

FLORES DOÑA, M. S., "Conflicto entre dominio en internet y denominación de sociedad española: comentario a la resolución de la DGRN de 10 de octubre de 2000", (Conflict between Internet Domain and Spanish Company Name: Commentary on the DGRN Resolution of 10 October 2000), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 579–591.

FORNER DELAYGUA, J. J., "La contribución de la DGRN a la doctrina sobre cambios de vecindad civil por residencia", (The Contribution of the DGRN to Doctrine on Changes in *Vecindad Civil* due to Residence), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 389–402.

FUENTES CAMACHO, V., "Atribución de la nacionalidad española *iure sanguinis* y ley aplicable al establecimiento de la filiación por naturaleza", (Attribution of Spanish Nationality *iure sanguinis* and Law Applicable to the Establishment of Natural Filiation), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, Iprolex, Madrid 2003, 363–374.

FUENTES MAÑAS, J. B., "Determinación de la competencia judicial internacional en los "ilícitos a distancia" sobre derechos de autor en Internet", (Determining International Jurisdiction in "Distance Offences" relating to Internet Royalties), *Revista de la Corte Española de Arbitraje*, Vol. XVIII (2003), 119–147.

– "Las excepciones a la *Lex fori concursus principalis*: Ley aplicable a los derechos reales y las reservas de dominio en los procedimientos internacionales de insolvencia", (The Exceptions to the *Lex fori concursus principalis*: Law Applicable to Real Property Rights and Reservation of Title in International Insolvency Proceedings), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 209–221.

GARAU SOBRINO, F., "Las sentencias alemanas de divorcio y su acceso al Registro civil español: el divorcio entre la DGRN y el Tribunal Supremo", (German Divorce Judgments and their Access to the Spanish Civil Registry: Divorce between the DGRN and the Supreme Court), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 223–235.

– "La incompatibilidad con el Derecho comunitario de la normativa española sobre inversiones en empresas públicas privatizadas. Último acto y telón", (The Incompatibility with Community Law of Spanish Regulations on Investments in Privatized Public Undertakings. Final Act and Curtain Call), *Gaceta Jurídica de la UE*, n. 225 (2003), 56–68.

GARCÍA CATALÁN, I., "Nacionalidad y sucesión de estados: el caso español a la luz de las resoluciones de la DGRN", (Nationality and Succession of States: The Case of Spain in the Light of the DGRN Resolutions), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 419–435.

GARCÍA RODRÍGUEZ, I., "Las resoluciones de la DGRN y las inversiones extranjeras", (The DGRN Resolutions and Foreign Investments), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 593–617.

– "Los acuerdos de promoción y protección recíproca de inversiones: aspectos de autoridad competente y ley aplicable", (Agreements for the Promotion and Mutual

Protection of Investments: Aspects of Competent Authority and Applicable Law), *Anuario IHLADI*, v. XVI (2003), 379–417.

– "El individuo y la jurisdicción internacional: estudio práctico del Tribunal Administrativo de Naciones Unidas (TANU)", (The Individual and International Jurisdiction: A Practical Study of the United Nations Administrative Tribunal (UNAT)), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 155–188.

GARCIMARTÍN ALFÉREZ, F. J., "Derecho de establecimiento de las sociedades: reconocimiento de la capacidad jurídica y de la capacidad procesal", (Law on the Formation of Undertakings: Recognition of Legal Capacity and Procedural Capacity), *Revista Jurídica de Cataluña*, n. 3 (2003), 281–287.

– "La Directiva sobre acuerdos de garantía financiera y el gobierno de los riesgos conflictuales", (The Directive on Financial Collateral Arrangements and Managing Conflictual Risks), in Cabanillas Sánchez, A., *et al.*, *Estudios jurídicos en homenaje al Profesor Luis Díez-Picazo. Tomo IV*, Civitas, Madrid 2003, 6289–6305.

GARDEÑES SANTIAGO, M., "Problemática registral de las fundaciones extranjeras que ejerzan actividades en España", (Registration Problems of Foreign Foundations Operating in Spain), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 67–93.

– "Reflexiones sobre los orígenes históricos del Derecho Internacional Privado", (Thoughts on the Historical Origins of Private International Law), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 107–135.

GONZÁLEZ CAMPOS, J. D., "Sobre la vinculación del juez a la ley en Derecho internacional privado", (On the Binding of the Judge to the Law in Private International Law), in CABANILLAS SÁNCHEZ, A., MORALES MORENO, A. M. and MIQUEL GONZÁLEZ, J. M. (Coords.), *Estudios jurídicos en homenaje al Profesor Luis Díez-Picazo. Tomo IV*, Civitas, Madrid 2003, 6307–6322.

GOÑI URRIZA, N., "El comercio compensatorio internacional o *COUNTERTRADE*", (On International Compensatory Trade or COUNTERTRADE), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 313–330.

HEREDIA CERVANTES, I., "El artículo 5 del Reglamento comunitario 1346/2000 sobre procedimientos de insolvencia: Cuestiones relativas a los derechos reales sobre créditos", (Article 5 of Community Regulation 1346/2000 on Insolvency Proceedings: Questions Concerning Real Property Rights pertaining to Credits), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 223–234.

HERRANZ BALLESTEROS, M., "Comentario a la resolución de DGRN de 11 de mayo de 1999: de nuevo el reconocimiento de una adopción internacional en España a través del procedimiento de exequátur", (Commentary on the DGRN Resolution of 11 May 1999: Again the Recognition of an International Adoption in Spain through Exequatur Procedure), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 343–350.

– "Primeros pasos de la práctica registral española en la aplicación del reglamento en materia matrimonial: reflexiones al hilo de la resolución de la DGRN de 4 de mayo de 2002", (First Steps of Spanish Registry Practice in the Application of the Regulation on Matrimonial Matters: Thoughts on the DGRN Resolution of 4 May 2002), *La Ley*, n. 5715 (2003), 1–6.

JIMÉNEZ BLANCO, P., "Práctica de la DGRN sobre las declaraciones de la nacionalidad del art. 17.1.c) del Código civil", (DGRN Practice on the Statements on Nationality in Art. 17.1.c) of the Civil Code), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 437–462.

– "El tratamiento de las acciones colectivas en materia de consumidores en el Convenio de Bruselas", (The Treatment of Collective Action in Consumer Matters in the Brussels Convention), *La Ley*, n. 5709 (2003), 1–6.

– "Las libertades de circulación y de residencia de los miembros de la familia de los ciudadanos de la Unión Europea", (The Freedom of Movement and Residence of Family Members of European Union Citizens), *La Ley*, n. 5771 (2003), 1–13.

JUÁREZ PÉREZ, P., "Hacia un Derecho Internacional Privado intercultural", (Towards an Intercultural Private International Law), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 331–349.

KLEINHEISTERKAMP, J., "Seguridad jurídica en el MERCOSUR". La interpretación uniforme del Derecho comunitario", (Legal Certainty in MERCOSUR. The Uniform Interpretation of Community Law), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 1351–380.

LARA AGUADO, A., "Doctrina de la Dirección General de los Registros y del Notariado relativa a los nombres y apellidos", (Doctrine of the Directorate General of Registries and Notaries on Names and Surnames), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 155–173.

– "Nacionalidad e integración social (a propósito de la Ley 36/2002, de 8 de octubre)", (Nationality and Social Integration (Concerning Law 36/2002, of 8 October), *La Ley*, n. 5709 (2003), 1–11.

LÁZARO GONZÁLEZ, I., "Musulmanes en Europa. Estatuto personal, orden público y libertad religiosa", (Muslims in Europe. Personal Status, Public Policy and Religious Freedom), VVAA., *Iglesia, Estado y Sociedad internacional. Libro homenaje a D. José Giménez y Martínez de Carvajal*, 157–183.

MARÍN LÓPEZ, A., "Los derechos civiles, públicos, laborales, económicos y culturales de los extranjeros en España", (The Civil, Public, Labour, Economic and Cultural Rights of Aliens in Spain), *Revista de la Facultad de Derecho de la Universidad de Granada*, n. 6 (2003), 389–435.

MARTÍN SERRANO, J. M., "Los matrimonios homosexuales: una aproximación desde el Derecho internacional privado español", (Homosexual Marriages: An Approach from Spanish Private International Law), *REDI*, vol. LV (2003) n. 1, 291–305.

MASEDA RODRÍGUEZ, J., "La toma en consideración del Derecho extranjero por la DGRN en materia de adopción internacional", (The Consideration of Foreign Law by the DGRN in Matters of International Adoption), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 351–360.

MICHINEL ÁLVAREZ, M. A., "Inscripción registral de actos de disposición sobre bienes de una sociedad conyugal internacional", (Registry Inscription of Acts of Disposal of International Community Property), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 237–246.

MIGUEL ASENSIO, P. A. de, "La expansión del reconocimiento automático y su impacto sobre la actividad registral", (The Expansion of Automatic Recognition and its Impact on Registry Activity), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 23–42.

NADAL GÓMEZ, I., "Tratamiento procesal de la competencia internacional exclusiva en materia de derechos reales inmobiliarios (TS 1ª S. 11 febrero 2002)", [Procedural Treatment of Exclusive International Jurisdiction in Matters of Real Property Rights (TS 1ª S. 11 February 2002)], *Tribunales de Justicia. Revista Española de Derecho Procesal*, n. 4 (2003), 86–94.

OREJUDO PRIETO DE LOS MOZOS, P., "La doctrina de la DGRN en materia de reconocimiento registral de los matrimonios extranjeros, con especial referencia

al matrimonio consular", (DGRN Doctrine in Matters of Registry Recognition of Foreign Marriages, with Particular Reference to Consular Marriage), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 275–285.

– "Inclusión en los concursos de los créditos reconocidos por sentencias extranjeras conforme a la nueva Ley concursal", (Inclusion in Bankruptcy Proceedings of Credits Recognized by Foreign Judgments Pursuant to the New Bankruptcy Law), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 235–260.

OTERO GARCÍA-CASTRILLÓN, C., "La capacidad y la simulación en el matrimonio fraude y extranjería en la doctrina de la DGRN", (Capacity and Simulation in Fraud Marriage and Aliens in the DGRN Doctrine), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 287–296.

OVIEDO ALBÁN, J., "UNIDROIT y la unificación del Derecho Privado: Referencia a los principios para los contratos comerciales internacionales", (UNIDROIT and the Unification of Private Law: Reference to the Principles for International Contracts of Sale), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 407–462.

PALAO MORENO, G., "La atribución de la nacionalidad española por nacimiento en España: algunas reflexiones conflictivas", (The Attribution of Spanish Nationality due to Birth in Spain: Some Conflictive Thoughts), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 463–483.

PÉREZ BEVIÁ, A. and GARCÍA CANO, S., "Contribución de la Conferencia de la Haya a la globalización de los derechos del niño", (Contribution of The Hague Conference to the Globalization of the Rights of the Child), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 463–493.

PRADO, M., "Nuevas perspectivas de reconocimiento y aplicabilidad del *hardship* en la jurisprudencia arbitral internacional", (New Perspectives of Recognition and Applicability of Hardship in International Arbitral Case-Law), *Revista de la Corte Española de Arbitraje*, Vol. XVIII (2003), 13–42.

QUIÑONES ESCÁMEZ, A., "Limitaciones infundadas al *ius nubendi*: el repudio revocable. En torno a la resolución de la DGRN de 4 de junio de 2001, sobre autorización del matrimonio civil" (Unsubstantiated Limitations on *ius nubendi*: Revocable Repudiation. Concerning DGRN Resolution of 4 June 2001, on the Authorization of Civil Marriage), in FERNÁNDEZ ROZAS, J. C., (Coord.),

Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero, 297–303.

– "Note loi organique du 29 septembre 2003 concernant les mesures concrètes en matière sécurité publique, violence domestique et intégration sociales des étrangers," (Note on Organic Law of 29 September 2003 Concerning Specific Measures in Matters of Public Safety, Domestic Violence and Social Integration of Aliens), *Revue Critique de Droit International Privé*, n. 4 (2003), 783–790.

– "Búsqueda de soluciones efectivas en un ámbito europeo e internacional a la sustracción del menor por parte de sus padres", (Seeking Effective Solutions in a European and International Environment to the Abduction of Minors by their Parents), in SOROETA LICERAS, J., (Ed.), *Cursos de Derechos Humanos de Donostia-San Sebastián Volumen IV*, 311–354.

REQUEJO ISIDRO, M., "Libertades comunitarias y Registro civil: Algunos casos de incidencia mutua y pautas de solución", (Community Freedoms and Civil Registry: Some Cases of Mutual Influence and Solution Criteria), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 95–107.

– "Incertidumbre sobre la materia delictual en el Convenio de Bruselas de 27 de septiembre de 1968: método de delimitación y determinación del tribunal competente", (Uncertainty Concerning Tort in the Brussels Convention of 27 September 1968: Method of Delimiting and Determining the Competent Court), *La Ley*, n. 5709 (2003), 6–9.

– "Reflexiones en torno a la cesión de créditos de garantía en el comercio internacional: El caso de insolvencia del cedente", (Thoughts on the Granting of Guarantee Loans in International Trade: The Case of Insolvency of the Endorser), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 261–280.

RODRÍGUEZ BENOT, A., "La influencia de la globalización en la elaboración, aplicación e interpretación del sistema de Derecho Internacional Privado: Especial referencia al comercio electrónico y a la contratación internacional", (The Influence of Globalization on the Shaping, Application and Interpretation of the System of Private International Law: Special Reference to Electronic Commerce and International Trading), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 507–536.

RODRÍGUEZ GAYÁN, E. M., "La simulación en España de nacimientos acaecidos en el extranjero: una cuestión de prueba", (The Simulation in Spain of Births occurring Abroad: A Question of Proof), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 175–195.

– "Claves de Derecho privado en el asunto del *Prestige*", (Key Issues of Private Law in the *Prestige* Affair), *REDI*, vol. LV (2003) n. 1, 117–147.

RODRÍGUEZ VÁZQUEZ, M. A., "Los efectos de la globalización en el sector de la eficacia extraterritorial de resoluciones judiciales extranjeras: La superación del *exequatur*", (The Effects of Globalization on the Sector of Extraterritorial Effectiveness of Foreign Judicial Decisions: Overcoming *exequatur*), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 537–554.

SÁNCHEZ LORENZO, S., "La inconveniente doctrina de la DGRN acerca de los matrimonios de conveniencia", (The Inconvenient DGRN Doctrine Concerning Marriages of Convenience), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 247–273.

SANCHO VILLA, D., "Migraciones sociales en la doctrina de la DGRN", (Social Migration in DGRN Doctrine), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 619–629.

SANTOS BELANDRO, R. B., "El Derecho Internacional Privado latinoamericano y su relación con el Estado, la sociedad internacional y la globalización", (Latin American Private International Law and its Relationship with the State, International Society and Globalization), in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 569–604.

TOMÁS ORTIZ DE LA TORRE, J. A., "Pérdida de la nacionalidad española por servir en armas o cargo público de un Estado extranjero: evolución y doctrina de la DGRN", (Loss of Spanish Nationality through Serving in the Armed Forces or Holding a Public Post in a Foreign State: Development and Doctrine of the DGRN), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 485–518.

– "Ante la anunciada reforma del artículo 107 del Código Civil", (Vis-à-vis the Announced Reform of Article 107 of the Civil Code), *Actualidad Civil*, n. 3 (2003), 75–97.

TRINIDAD GARCÍA, M. L., "Apuntes sobre el Registro de fundaciones extranjeras", (Notes on the Registry of Foreign Foundations), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 109–126.

TRUNK, A., "Insolvencia transfronteriza en Alemania: Comparación con la normativa comunitaria", (Cross-Border Insolvency in Germany: A Comparison with Community

Regulations), *Anuario Español de Derecho Internacional Privado*, t. III. (2003), 281–290.

VARELA AGRELO, J. A., "Reglamento 44/01 (Bruselas-I) sobre competencia judicial internacional, reconocimiento y ejecución de resoluciones judiciales en materia civil y mercantil", (Regulation 44/01 (Brussels-I) on International Jurisdiction, Recognition and Enforcement of Judicial Decisions in Civil and Commercial Matters), *Boletín de Información del Ministerio de Justicia*, n 1955 (2003), 4203–4214.

VARGAS GÓMEZ-URRUTIA, M., "Matrimonio poligámico, orden público y extranjería", (Polygamous Marriage, Public Policy and Aliens), *Actualidad Laboral*, n. 33 (2003), 581–601.

VILLAFRUELA CHAVES, P., "Los llamados "matrimonios de conveniencia" en la doctrina de la DGRN correspondiente al bienio 2000–2001", (The So-called "Marriages of Convenience" in DGRN Doctrine during 2000–2001), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 325–339.

VIÑAS I FARRE, R., "La pérdida de la nacionalidad española por renuncia en el Derecho español y en las resoluciones de la DGRN", (Loss of Spanish Nationality through Renunciation in Spanish Law and in the DGRN Resolutions), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 519–529.

– "Proceso de integración económica y modalidades alternativas de solución de conflictos en el ámbito civil y mercantil (ADR)", [Process of Economic Integration and Alternatives Means of Settling Conflicts in the Civil and Commercial Sphere (ADR)], in CALVO CARAVACA, A. L. and BLANCO-MORALES LIMONES, P., (Dirs.), *Globalización y Derecho*, 605–617.

VIRGÓS SORIANO, M. and RODRÍGUEZ PINEAU, E., "La doble nacionalidad y los vínculos especiales con otros Estados: la experiencia española", (Dual Nationality and Special Links to Other States: The Spanish Experience), in CABANILLAS SÁNCHEZ, A., MORALES MORENO, A. M. and MIQUEL GONZÁLEZ, J. M., (Coords.), *Estudios jurídicos en homenaje al Profesor Luis Díez-Picazo. Tomo IV*, Civitas, Madrid 2003, 6323–6347.

ZABALO ESCUDERO, E., "Sucesión de lugares de trabajo y competencia judicial internacional: nuevos problemas planteados ante el TJCE", (Succession of Workplaces and International Jurisdiction: New Problems raised at the ECJ), *RDCE*, n. 14 (2003), 225–239.

ZAMORA CABOT, F. J., "Un apunte sobre el Registro de entidades religiosas", (A Note on the Registry of Religious Institutions), in FERNÁNDEZ ROZAS, J. C., (Coord.), *Derecho registral internacional. Homenaje a la memoria del Profesor Rafael Arroyo Montero*, 127–134.

ZAMORA CABOT, F. J. and CAMARERO SUÁREZ, V., "Un ejemplo de proyección exterior por los Estados Unidos de la tutela de derechos fundamentales: La *International Religious Freedom Act* (IRFA), de 1998", [An Example of the External Projection by the United States of the Safeguarding of Fundamental Rights: The International Religious Freedom Act (IRFA) of 1998], *Anuario de Derecho Eclesiástico del Estado*, v. XIX (2003), 79–120.

EUROPEAN COMMUNITY LAW

1. Essays, Treaties and Handbooks

ABELLÁN HONRUBIA, V., VILÀ COSTA, B. and PIÑOL RULL, J. L., *Prácticas de Derecho comunitario europeo*, (Practices in European Community Law), 2nd ed., Tecnos, Madrid 2003, 492 p.

LINDE PANIAGUA, E. and MELLADO PRADO, P., *Iniciación al Derecho de la Unión Europea. Adaptada al Tratado de Niza*, (An Introduction to the European Union Law. Adapted to the Treaty of Nice), Colex, Madrid 2003, 218 p.

MANGAS MARTÍN, A., (Ed.), *Tratado de la Unión Europea, Tratados constitutivos de las Comunidades Europeas y otros actos básicos de Derecho comunitario*, (Treaty on European Union, Treaties Establishing the European Communities and Other Basic Acts of Community Law), 10th ed., Tecnos, Madrid 2003, 928 p.

PARDELLAS DE BLAS, X. (Coord.), *A Unión Europea: unha visión multidisciplinar*, (The European Union: A Multidisciplinary View), Edicións Xerais de Galicia, Vigo 2003, 224 p.

SORIANO GARCÍA, J. E. and ROMERO REY, C., *Jurisprudencia Comunitaria comentada*, (Community Case Law with Commentaries), Dykinson, Madrid 2003, 318 p.

VVAA., *Código Unión Europea*, (European Union Code), La Ley-Actualidad, Madrid 2003, 307 p.

ZAPATER DUQUE, E., CASES PALLARÉS, L. and PI LLORENS, M., *Institucions de dret comunitari*, (Institutions of Community Law), UOC, Barcelona 2003, 212 p.

2. Books in Honour of

3. Monographs and Collective Works

ALDECOA LUZÁRRAGA, F., *"Una Europa". Su proceso constituyente*, ("A Europe". The Constitutional Process), Biblioteca nueva, Madrid 2003, 341 p.

ALONSO GARCÍA, R., *El juez español y el Derecho Comunitario (Premio Rafael Martínez Emperador 2002)*, (The Spanish Judge and Community Law (Rafael Martínez Emperador Prize 2002), CGPJ, Madrid 2003, 339 p.

– *Las sentencias básicas del Tribunal de Justicia de las Comunidades Europeas*, (The Basic Judgments of the European Court of Justice), 2nd ed., BOE/Centro de Estudios Políticos y Constitucionales, Madrid 2003, 656 p.

ÁLVAREZ VERDUGO, M., *La política de seguridad y defensa en la unión Europea*, (Security and Defence Policy in the European Union), Dykinson, Madrid 2003, 304 p.

ASOCIACIÓN ESPAÑOLA DE PROFESORES DE DERECHO INTERNACIONAL Y RELACIONES INTERNACIONALES, *La Unión Europea ante el siglo XXI: los retos de Niza. (Actas de las XIX Jornadas de la Asociación Española de Profesores de Derecho internacional y Relaciones Internacionales)*, [The European Union vis-à-vis the 21st Century: The Challenges of Nice (Minutes of the XIX Conference of the Spanish Association of Lecturers in International Law and International Relations)], BOE, Madrid 2003, 437 p.

BELLIDO BARRIONUEVO, M., *La directiva comunitaria*, (The Community Directive), Dykinson, Madrid 2003, 384 p.

BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea. (The Government of Europe. Institutional Design for the European Union)*, Dykinson, Madrid 2003, XXVIII + 547 p.

BIGLINO CAMPOS, P., (Coord.), *La política europea de las Comunidades Autónomas y su control parlamentario*, (The European Policy of the Autonomous Regions and their Parliamentary Control), Valencia 2003, 285 p.

BORREL, J., CARNERO, C. and LÓPEZ GARRIDO, D., *Construyendo la Constitución Europea. Crónica política de la Convención*, (Building the European Constitution. A Political Chronicle of the Convention), Real Instituto Elcano, Madrid 2003, 269 p.

CALONGE VELÁZQUEZ, J. A. (Dir.), *Actas del Congreso internacional "El Futuro de Europa a Debate"*, (Acts of the International Congress on "The Future of Europe under Debate"), Univ. de Valladolid, Valladolid 2003, 476 p.

CALVO HORNERO, A., *Integración económica y regionalismo: principales acuerdos regionales*, (Economic Integration and Regionalism: Main Regional Agreements), 3rd ed., Centro de Estudios Ramón Areces, Madrid 2003, 272 p.

CARRERA HERNÁNDEZ, F. J., *La cooperación policial en la Unión Europea: Acervo Schengen y Europol*, (Police Cooperation in the European Union: Schengen Acquis and Europol), Colex, Madrid 2003, 207 p.

CEBADA ROMERO, A. and PÉREZ GONZÁLEZ, C., *El Alto Representante de la PESC y la nueva Política Europea de Seguridad y Defensa*, (The High Representative for CFSP and the New European Security and Defence Policy), Dykinson, Madrid 2003, 164 p.

CONSEJO FEDERAL ESPAÑOL DEL MOVIMIENTO EUROPEO, *Las ONG's y los partidos políticos: tensión y colaboración para la construcción europea*, (NGOs and Political Parties: Tension and Collaboration in Building Europe), Dykinson, Madrid 2003, 120 p.

– *El papel de la Unión Europea en la paz y justicia mundiales*, (The Role of the European Union in World Peace and Justice), Dykinson, Madrid 2003, 176 p.

– *Jornada sobre el proyecto de tratado por el que se instituye una constitución europea (29/09/2003)*, [Conference on the Draft Treaty Establishing a European Constitution (29/09/2003)], Universitas, Madrid 2003, 120 p.

CUERDA RIEZU, A., *De la extradición a la euro-orden de detención y entrega: con un análisis de la doctrina del Tribunal Constitucional español*, (From Extradition to the European Arrest and Surrender Warrant: With an Analysis of the Doctrine of the Spanish Constitutional Court), Centro de Estudios Ramón Areces, Madrid 2003, 240 p.

FERRER I JUNQUÉ, X., *Cap a una constitució europea*, (Towards a European Constitution), Mediterrània, Barcelona 2003, 144 p.

GARCÍA URETA, A., *Enlarging the European Union. Achievements and Challenges. Report of Wim Kok to the European Commission*, European University Institute, Florencia 2003, 78 p.

– *Information: A new Field of Cooperation between Non-Governmental Organisations and the European Union*, European University Institute, Florence 2003, 153 p.

– *La participación de las regiones en Europa*, (The Participation of the Regions in Europe), Institut d'Estudis Autonòmics, Barcelona 2003, 190 p.

GARCÍA PÉREZ, R., *Política de seguridad y defensa en la Unión Europea*, (Security and Defence Policy in the European Union), UNED, Madrid 2003, 158 p.

GARRIDO REBOLLEDO, V., (Coord.), *La configuración de la nueva Europa: aspectos políticos, institucionales y estratégicos*, (Shaping the New Europe: Political, Institutional and Strategic Aspects), Univ. Francisco de Vitoria, Madrid 2003, 224 p.

GODES SALTO, M., *El papel de la UE en las recientes Cumbres Internacionales*, (The Role of the EU in the Recent International Summits), Fundación Universitaria San Pablo, Madrid 2003, 56 p.

GONZÁLEZ ALONSO, L. N., *Transparencia y acceso a la información en la Unión Europea*, (Transparency and Access to Information in the European Union), Editorial Constitución y Leyes, Madrid 2003, 182 p.

HAY, J., (Comp.), *Desafíos. La Unión Europea ante su ampliación*, (Challenges. The European Union vis-à-vis its Enlargement), Siddaharta Mehta Ediciones, Madrid 2003, 28 p.

HUICI SANCHO, L., *El comité de las regiones: su función en el proceso de integración europea*, (The Committee of the Regions: Its Function in the Process of European Integration), Univ. de Barcelona, Barcelona 2003, 295 p.

LIÑÁN NOGUERAS, D. J., (Dir.) and LÓPEZ-JURADO, C., (Coord.), *La reforma de la delimitación competencial en la futura Unión Europea*, (The Reform of the Delimitation of Competences in the Future European Union), Universidad de Granada, Granada 2003, 349 p.

MARISCAL, N., *Teorías políticas de la integración europea*, (Political Theories of European Integration), Tecnos, Madrid 2003, 366 p.

MARCÉN NAVAL, A., *Mundialización y sociedad de la información en la Unión Europea*, (Globalization and Information Society in the European Union), Real Instituto de Estudios Europeos, Zaragoza 2003, 174 p.

MORATA, F., *Europa i la governabilitat global*, (Europe and Global Governance), UOC, Barcelona 2003, 240 p.

NAVARRO CONTRERAS, E., *La ampliación de Europa y el Derecho del comercio internacional: los acuerdos europeos*, (European Enlargement and International Trade Law: The European Agreements), Alhulia, Solobreña 2003, 254 p.

ORTIZ BLANCO, L. and LEÓN JIMÉNEZ, R. (Coord.), *Derecho de la competencia europeo y español. Curso de Iniciación. Vol IV.*, (European and Spanish Competition Law. An Introductory Course. Vol IV), Dykinson, Madrid 2003, 2824 p.

ORTÚZAR ANDÉCHAGA, L., *Derecho y jurisprudencia de la Unión Europea*, (European Union Law and Case-Law), Aranzadi, Pamplona 2003, 1432 p.

PAU VALL, F., *Parlamentos y regiones en la construcción de Europa: IX Jornadas de la Asociación Española de Letrados de Parlamentos, celebrado en Santa Cruz de Tenerife, septiembre de 2002*, (Parliaments and Regions in Building Europe: IX Conference of the Spanish Association of Parliamentary Counsels, held in Santa Cruz de Tenerife, September 2002), Tecnos, Madrid 2003, 312 p.

PELÁEZ MARÓN, J. M., *Globalización, deuda externa y exigencias de justicia social*, (Globalization, Foreign Debt and Requirements of Social Justice), Ediciones Akal, Madrid 2003, 198 p.

PÉREZ BERNARDEZ, C., *Las relaciones de la Unión Europea con organizaciones internacionales. Análisis jurídico de la práctica internacional*, (The European Union's Relations with International Organizations. Legal Analysis of International Practice), Consejería de Educación de la Comunidad de Madrid, Madrid 2003, 670 p.

SOBRIDO PRIETO, M., *Las Comunidades Autónomas ante el Tribunal de Justicia y el Tribunal de Primera Instancia de las Comunidades Europeas*, (The Autonomous Regions before the European Court of Justice and Court of First Instance), Tirant lo Blanch, Valencia 2003, 518 p.

SORIANO DE TORRES, F., *Tratamiento de las libertades básicas en la Unión Europea*, (Treatment of Basic Freedoms in the European Union), Vision Net, Madrid 2003, 100 p.

TIRADO ROBLES, C., *Eurojust: la coordinación de la cooperación judicial penal en la Unión Europea*, (Eurojust: The Coordination of Judicial Cooperation in Criminal Matters in the European Union), Real Instituto de Estudios Europeos, Zaragoza 2003, 128 p.

TOMÁS MORALES, M. S. de, VAQUERO LAFUENTE, M. E. and VALLE LÓPEZ, J. M., *El día de Europa: presente y futuro de la Unión Europea. Jornadas en Conmemoración del Día de Europa de la Universidad Pontificia de Comillas*, (Europe Day: Present and Future of the European Union. Conferences to Commemorate Europea Day at the Universidad Pontificia de Comillas), Univ. Pontificia de Comillas, Madrid 2003, 191 p.

TORRES KUMBRÍAN, R. D. and GONZÁLEZ ESTEBAN, J. L., *Polonia y España ante el futuro de la Unión Europea*, (Poland and Spain vis-à-vis the Future of the European Union), Popular Libros, Albacete 2003, 318 p.

TRINIDAD GARCÍA, M. L., ROBLES ALMECIJA, J. M. and FUENTES MAÑAS, J. B., *Guía jurídica de extranjería, asilo y ciudadanía de la Unión*, (A Legal Guide to Aliens, Asylum and Citizenship of the Union), 5th ed., Comares, Granada 2003, 336 p.

TRUJILLO HERRERA, R., *La Unión Europea y el derecho de asilo*, (The European Union and Right of Asylum), Dykinson, Madrid 2003, 486 p.

VILLAPALOS SALAS, G. and CORREA GARCÍA, M. D., *Cataluña en la Unión Europea: los perfiles históricos, jurídicos y políticos de una realidad diferenciada*, (Catalonia in the European Union: The Historical, Legal and Political Profiles of a Differentiated Reality), Entidad Autónoma del Diario Oficial y de Publicaciones (Cataluña), Barcelona 2003, 257 p.

VVAA., *La inmigración en la UE: situación y perspectivas para Euskadi*, (Immigration in the EU: Situation and Perspectives for the Basque Country), Consejo Vasco del Movimiento Europeo, Vitoria 2003, 300 p.

VVAA., *¿Quién gobernará Europa? Jornadas sobre los Trabajos de la Convención para el Futuro de la Unión Europea, celebrados el 13 de diciembre de 2002, en Madrid*, (Who Will Govern Europe? Conferences on the Work of the Convention for the Future of the European Union, held in Madrid on 13 December 2002), Diputación San Andrés de los Flamencos/Fundación Carlos de Amberes, Madrid 2003, 64 p.

4. Articles and notes

ABAD CASTELOS, M. and REY ANEIROS, A., "Algunas consideraciones en torno al nuevo Reglamento de base de la Política Pesquera Común", (Some Considerations Concerning the New Regulation for the Common Fisheries Policy), *Noticias de la UE*, n. 227 (2003), 9–13.

ALCOCEBA GALLEGO, M. A., "Del acervo comunitario y otras pizzas: contribución de la integración diferenciada a la transformación del acervo", (On the Acquis Communautaire and Other Pizzas: Contribution of Differentiated Integration to the Transformation of the Acquis), *RDCE*, n. 14 (2003), 97–139.

ALDECOA LUZÁRRAGA, F., "El resultado definitivo de la Convención Europea: la existencia de una Constitución para Europa", (The Final Result of the European

Convention: The Existence of a Constitution for Europe), *Documentos de Trabajo del Real Instituto Elcano*, n. 24 (2003).

ARTEAGA MARTÍN, F., "El espacio europeo de libertad, seguridad y justicia en el proyecto de tratado de Constitución", (The European Area of Freedom, Security and Justice in the Draft Constitutional Treaty), *ARI*, n. 94/2003.

– "La estrategia de seguridad de la Unión en perspectiva española", (The Security Strategy of the Union from a Spanish Perspective), *ARI*, n. 117/2003.

BENEYTO PÉREZ, J. M., "El establecimiento de una delimitación más precisa de las competencias entre la Unión Europea y los Estados miembros", (The Establishment of a More Precise Delimitation of Competences between the European Union and the Member States), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea. (The Government of Europe. Institutional Design for the European Union)*, 401–412.

– "El proyecto de Constitución europea de la Convención y la emergencia del gobierno europeo", (The Convention's Draft European Constitution and the Emergence of the European Government), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea. The Government of Europe. Institutional Design for the European Union*, 535–547.

BIGLINIO CAMPOS, P., "Derechos fundamentales y competencias de la unión: el argumento de Hamilton", (Fundamental Rights and Competences of the Union: Hamilton's Argument), *RDCE*, n. 14 (2003), 45–68.

BORRÁS RODRÍGUEZ, A., "Significado y alcance del espacio judicial europeo en materia civil: hacia la reforma del título IV TCE", (Significance and Scope of the European Judicial Area in Civil Matters: Towards the Reform of Title IV ECT), *Noticias de la UE*, n. 225 (2003), 11–20.

CARDONA LLORENS, J., "La Presidencia de la Unión Europea: reflexiones utilizando como excusa la contribución franco alemana de 14 de enero de 2003", (The Presidency of the European Union: Thoughts taking as an Excuse the Franco-German Contribution of 14 Germany 2003), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea. The Government of Europe. Institutional design for the European Union*, 93–99.

CARRERA HERNÁNDEZ, F. J., "Simplificación de los instrumentos jurídicos en el Proyecto de Tratado constitucional", (Simplification of the Legal Instruments in the Draft Constitutional Treaty), *RDCE*, n. 16 (2003), 1041–1063.

CASADO CERVIÑO, A., "La protección del diseño en Europa. El Reglamento sobre los dibujos y modelos comunitarios", (The Protection of Design in Europe. The Regulation on Designs and Community Models), *Gaceta Jurídica de la UE*, n. 224 (2003), 97–114.

– "El vínculo entre los sistemas comunitario e internacional de protección de marcas", (The Link between the Community and International Systems for Protecting Trademarks), *Gaceta Jurídica de la UE*, n. 228 (2003), 3–10.

CEBADA ROMERO, A., "La naturaleza jurídica de la Unión Europea: una contribución al debate sobre su personalidad jurídica a la luz de los trabajos de la Convención sobre el futuro de Europa", (The Legal Nature of the European Union: A Contribution to the Debate on its Legal Personality in the light of the Work of the Convention on the Future of Europe), *RDCE*, n. 14 (2003), 281–304.

CIENFUEGOS MATEO, M., "Reflexiones en torno a la autonomía del Derecho Comunitario Europeo", (Thoughts on the Autonomy of European Community Law), *Noticias de la UE*, n. 226 (2003), 9–42.

CISNEROS LABORDA, G. and BECERRIL ATIENZA, B., "El estado actual del Convenio Europeo de Derechos Humanos en los Estados de la Unión Europea", (The Current State of the European Convention on Human Rights in the European Union States), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 261–275.

CORTÉS MARTÍN, J. M., "Afectación individual (230.4 EC): ¿un obstáculo infranqueable para la admisibilidad del recurso de anulación de los particulares?", (Individual Concern (230.4 CE): An Insuperable Obstacle for the Admissibility of an Action for Cancellation Brought by Natural Persons?), *RDCE*, n. 16 (2003), 1119–1173.

DÍAZ BARRADO, C. M., "La cooperación policial y la cooperación judicial en materia penal en el seno de la Unión Europea. Nuevas perspectivas", (Police Cooperation and Judicial Cooperation in Criminal Matters within the European Union. New Perspectives), *Noticias de la UE*, n. 218 (2003), 35–47.

DÍEZ DE VELASCO, M., "El Tribunal de Justicia de las Comunidades Europeas y el Tribunal Constitucional Español: Aspectos Comparativos", (The European Court of Justice and the Spanish Constitutional Court: Comparative Aspects), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 407–426.

DÍEZ-HOCHLEITNER, J.,"El sistema competencial comunitario ante la CIG'04: los trabajos de la Convención", (The System of Community Competences vis-à-vis the IGC'04: The Work of the Convention), in LIÑÁN NOGUERAS, J. D. (Dir.) and LÓPEZ JURADO, C. (Coord.), *La reforma de la delimitación competencial en la futura Unión Europea*, 27–81.

ESPÍN GUTIÉRREZ, C., "La Directiva 2002/92/CE sobre la mediación en los seguros y su influencia en el ordenamiento jurídico español", (Directive 2002/92/EC on Insurance Mediation and its Influence on Spanish Law), *RDCE*, n. 15 (2003), 629–651.

FARAMIÑÁN GILBERT, J. M. de, "El Tribunal de Primera Instancia a partir del Tratado de Niza", (The Court of First Instance following the Treaty of Nice), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea. The Government of Europe. Institutional design for the European Union*, 253–260.

FERNÁNDEZ DE CASADEVANTE ROMANÍ, C., "Los derechos humanos en la Unión Europea: mucho más que una cuestión retórica o doctrinal", (Human Rights in the European Union: Much More than a Rhetorical or Doctrinal Question), *Noticias de la UE*, n. 218 (2003), 49–62.

FERNÁNDEZ SÁNCHEZ, P. A., "La reforma institucional del Poder Judicial comunitario respecto a la protección de los derechos humanos", (The Institutional Reform of the Community Judiciary in respect of Human Rights Protection), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 245–260.

FERNÁNDEZ SOLA, N., "La política exterior y la proyección externa de la Unión Europea", (The European Union's Foreign Policy and External Projection), in *Revista de Estudios Políticos*, n. 119 (2003), 381–416.

FONSECA MORILLO, F., "La orden de detención y entrega europea", (The European Arrest and Surrender Warrant), *RDCE*, n. 14 (2003), 69–95.

– "Garantizar la ejecución de normas comunes. Distinción entre delegación legislativa y normas de ejecución", (Guaranteeing the Enforcement of Common Regulations. Distinction between Legislative Delegation and Rules of Enforcement), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 151–154.

FREIXES SANJUÁN, T., "El Tribunal Europeo de Derechos Humanos y las libertades de la comunicación", (The European Court of Human Rights and Freedoms of Communication), *RDCE*, n. 15 (2003), 463–497.

GALÁN CORONA, E., "Notas sobre el Reglamento (CE) n. 1/2003 del Consejo, de 16 de diciembre de 2002, para la aplicación de los artículos 81 y 82 del Tratado de Roma", (Notes on Council Regulation (EC) no. 1/2003, of 16 December 2002, for the Application of Articles 81 and 82 of the Treaty of Rome), *RDCE*, n. 15 (2003), 499–525.

GARCÍA GARCÍA-REVILLO, M., "La Comunidad Europea y el Tribunal Internacional del Derecho del Mar", (The European Community and the International Tribunal for the Law of the Sea), *Noticias de la UE*, n. 227 (2003), 15–32.

GARCÍA MARTÍN, I., "Aproximación a la última etapa en la consecución del mercado único asegurador, y su incidencia en el derecho español", (An Approach to the Last Stage in Achieving a Single Insurance Market, and its Influence on Spanish Law), *RDCE*, n. 16 (2003), 1177–1198.

GIL IBÁÑEZ, A., "Los parlamentos nacionales y la Unión Europea: ¿primer o cuarto poder?", (The National Parliaments and the European Union: First or Fourth Power?), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 191–235.

– "Jerarquía y tipología normativa, procesos legislativos y separación de poderes en la Unión Europea: hacia un modelo más claro y tansparente", (Hierarchy and Types of Regulations, Legislative Processes and Separation of Powers in the European Union: Towards a Clearer and more Transparent Model), BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 413–442.

GIRÓN LARRUCEA, J. A., "Las competencias externas de la CEE. Las sentencias "cielos abiertos" de 5 de noviembre de 2002", (The External Competences of the EEC. The "Open Skies" Judgments of 5 November 2002), *Noticias de la UE*, n. 226 (2003), 53–63.

GONZÁLEZ ALONSO, L. N., "De las declaraciones a los hechos: las primeras operaciones de gestión de crisis de la unión Europea", (From Declarations to Facts: The European Union's First Crisis-Management Operations), *RDCE*, n. 15 (2003), 653–682.

GUTIÉRREZ ESPADA, C., "La reforma de las instituciones en el proyecto de Tratado constitucional presentado por la Convención (2003)", (The Reform of the Institutions in the Draft Constitutional Treaty Presented by the Convention (2003)), *RDCE*, n. 16 (2003), 897–942.

- "Sobre la conveniencia (o no), dada la ampliación que viene (2004, 2007,°), de renunciar formalmente al compromiso de Luxemburgo (1966)", (On the Appropriateness (or not), in View of the Forthcoming Enlargement (2004, 2007°) of Formally Renouncing the Luxembourg Commitment (1966)), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 155–173.

HERNÁNDEZ GARCÍA, M., "La realización del comercio responsable de los productos pesqueros en la nueva política común de pesca", (The Achievement of Responsible Trade in Fishery Products in the New Common Fisheries Policy), *Noticias de la UE*, n. 227 (2003), 59–71.

HERRERO DE LA FUENTE, A. A., "La política exterior y de seguridad común de la Unión Europea tras la 'cumbre' de Niza. La política europea de seguridad y defensa", (The European Union's Common Foreign and Security Policy after the Nice "Summit". European Security and Defence Policy), *Noticias de la UE*, n. 218 (2003), 63–78.

HINOJOSA MARTÍNEZ, L. M., "La acción de oro en Derecho comunitario: activismo judicial *versus* intervencionismo estatal", (The Golden Share in Community Law: Judicial Activism versus State Interventionism), *Gaceta Jurídica de la UE*, n. 228 (2003), 11–31.

JANER TORRENS, J. D., "El ámbito de aplicación personal del principio de no discriminación por razón de nacionalidad: algunas consideraciones en torno a la discriminación inversa", (The Scope of Personal Application of the Principle of Non-Discrimination on Grounds of Nationality: Some Considerations concerning Inverse Discrimination), *RDCE*, n. 14 (2003), 305–320.

LIÑÁN NOGUERAS, D. J., "El Parlamento Europeo y el papel de los parlamentos nacionales", (The European Parliament and the Role of National Parliamentarians), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 177–190.

LÓPEZ ESCUDERO, M., "Reformas jurídico-institucionales en el "gobierno económico" de la UE", (Institutional-Legal Reforms in the "Economic Government" of the EU), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 445–477.

LÓPEZ JURADO, C. and SEGURA SERRANO, A., "La aplicación judicial del Derecho comunitario en España durante 2002", (The Judicial Application of Community Law in Spain in 2002), *RDCE*, n. 15 (2003), 801–844.

MANGAS MARTÍN, A., "La Unión Europea y su futuro: el debate competencial", (The European Union and its Future: The Debate on Competences), *Noticias de la UE*, n. 218 (2003), 79–93.

MARÍN LÓPEZ, A., "Transporte aéreo y contaminación acústica. La Directiva comunitaria 2002/30/CE, de 26 de marzo", (Air Transport and Accoustic Pollution. Community Directive 2002/30/EC, of 26 March), *Noticias de la UE*, n. 223/224 (2003), 93–99.

MARTÍN ARRIBAS, J. J., "La dimensión internacional de la política común de transportes en los albores del siglo XXI", (The International Dimension of the Common Transport Policy at the Dawn of the 21st Century), *Noticias de la UE*, n. 216 (2003), 59–74.

MARTÍN Y PÉREZ DE NANCLARES, J., "La cláusula de cooperación reforzada a la luz del Tratado de Niza: crónica de una modificación necesaria", (The Clause on Enhanced Cooperation in the light of the Treaty of Nice: Chronicle of a Necessary Modification), *Noticias de la UE*, n. 218 (2003), 95–109.

– "El proyecto de Constitución europea: reflexiones sobre los trabajos de la Convención", (The Draft European Constitution: Thoughts on the Work of the Convention), *RDCE*, n. 15 (2003), 527–572.

– "Hacia una política transatlántica de cielos abiertos", (Towards a Transatlantic Open Skies Policy), *RDCE*, n. 14 (2003), 241–264.

– "La Comisión: la (insuficiente) reforma de Niza y las (inciertas) perspectivas de la Convención", (The Commission: The (Insufficient) Reform of Nice and the (Uncertain) Prospects of the Convention), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 103–139.

MARTÍNEZ LAGE, S., "Cambio de cultura: Aprobada, al fin, la reforma de las normas de aplicación de los artículos 81 y 82 CE (partes I y II)", [Change in Culture: Approved, at last, the Reform of the Rules of Application of Articles 81 and 82 EC (Parts I and II)], *Gaceta Jurídica de la UE*, n. 223 and 224 (2003), 3–10 and 3–9.

– "La reforma del Reglamento comunitario de concentraciones", (The Reform of the Community Regulation on Concentrations), *Gaceta Jurídica de la UE*, n. 225 (2003), 3–11.

MERCHÁN PUENTES, M. J., "El Tratado bilateral hispano-portugués sobre cooperación transfronteriza de 2002", (The Bilateral Spanish-Portuguese Treaty of 2002 on Cross-Border Cooperation), *RDCE*, n. 15 (2003), 717–740.

MOREIRO GONZÁLEZ, C. J., "La sociedad civil organizada europea: el Comité Económico y Social Europeo", (European Organized Civil Society: The European Economic and Social Committee), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 367–372.

PALOMARES AMAT, M., "Algunas reflexiones en torno a las relaciones entre el Parlamento Europeo y los Parlamentos nacionales", (Some Thoughts on Relations between the European Parliament and National Parliaments), *Noticias de la UE*, n. 217 (2003), 3–15.

PÉREZ GONZÁLEZ, M. "El papel de las regiones en el proceso de integración europea: aspectos institucionales", (The Role of the Regions in the Process of European Integration: Institutional Aspects), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 279–298.

PONS RAFOLS, J., "La Unión Europea ante la Corte Penal Internacional", (The European Union vis-à-vis the International Criminal Court), *RDCE*, vol. 16 (2003), 1067–1118.

RODRÍGUEZ IGLESIAS, G. C., "La constitucionalización de la Unión Europea", (The Constitutionalization of the European Union), *RDCE*, n. 16, 893–896.

RODRÍGUEZ IGLESIAS, G. C. and CASTILLO DE LA TORRE, F., "El procedimiento ante el Tribunal de Justicia de las Comunidades Europeas", (Proceedings before the European Court of Justice), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 317–356.

ROIS MADARRO, L., "Efectos sobre la Política Pesquera Común de la ampliación de la Unión Europea", (Effects on the Common Fisheries Policy of the European Union Enlargement), *Noticias de la UE*, n. 227 (2003), 73–92.

ROLDÁN BARBERO, J., "La Carta de Derechos Fundamentales de la UE: su estatuto constitucional", (The Charter of Fundamental Rights of the EU: Its Constitutional Status), *RDCE*, n. 16 (2003), 943–992.

RUIZ MIGUEL, C., "El derecho a la protección de datos personales en la Carta de Derechos Fundamentales de la Unión Europea: análisis crítico", (The Right to the Protection of Personal Data in the Charter of Fundamental Rights of the European Union: A Critical Analysis), *RDCE*, n. 14 (2003), 7–43.

SÁENZ DE SANTA MARÍA, P. A. and FERNÁNDEZ PÉREZ, B., "La reforma del sistema jurisdiccional de la Unión Europea en el Tratado de Niza. Balance y

perspectivas", (The Reform of the Jurisdictional System of the European Union in the Treaty of Nice. Assessment and Prospects), *Noticias de la UE*, n. 218 (2003), 9–24.

SANTOS VARA, J., "El desarrollo de las competencias de la oficina Europea de Policía (EUROPOL): el control democrático y judicial", [The Development of the Competences of the European Police Office (EUROPOL): Democratic and Judicial Control], *RDCE*, n. 14 (2003), 141–179.

SOBRINO HEREDIA, J. M., "El sistema jurisdiccional en el Proyecto de Tratado constitucional de la Unión Europea", (The Jurisdictional System in the Draft Constitutional Treaty of the European Union), *RDCE*, n. 16 (2003), 993–1040.

– "La revisión de la Política Pesquera Común y los principios generales del Derecho Comunitario", (The Revision of the Common Fisheries Policy and the General Principles of Community Law), *Noticias de la UE*, n. 227 (2003), 93–120.

"La acción de la Unión Europea en materia de seguridad marítima", (The Action of the European Union in Marine Safety Matters), *REDI*, vol. LV (2003) n. 1, 79–116.

– "La reforma del servicio exterior de la Unión Europea", (The Reform of the European Union External Service), in BENEYTO PÉREZ, J. M. (Dir) and BECERRIL ATIENZA, B., (Coord.), *El gobierno de Europa. Diseño institucional de la Unión Europea*, 513–522.

SOBRIDO PRIETO, M., "El Plan Renove I industrial (comentario a la sentencia de 26 de septiembre de 2002", [The Plan Renove 1 Industrial (Commentary on the Judgment of 26 September 2002)], *RDCE*, n. 14 (2003), 321–336.

STOFFEL VALOTON, N., "El espacio económico europeo: un ejemplo de integración diferenciada en las relaciones exteriores de la Unión Europea. La aplicación del acervo comunitario a terceros Estados", (The European Economic Area: An Example of Differentiated Integration in the European Union's External Relations. Application of the Acquis Communautaire to Third States), *RDCE*, n. 15 (2003), 573–625.

ÚBEDA DE TORRES, A., "La política de empleo de la UE y la igualdad entre hombres y mujeres: un desafío al futuro de Europa", (EU Employment Policy and Equality between Men and Women: A Challenge to the Future of Europe), *RDCE*, n. 15 (2003), 699–716.

URREA CORRES, M., "El dilema de la Convención: la búsqueda de una solución alternativa al modelo clásico de reforma de los Tratados", (The Dilemma of the Convention: Seeking an Alternative Solution to the Classical Model of Reform of the Treaties), *RDCE*, n. 14 (2003), 265–280.

– "El régimen de autorizaciones administrativas previas en las empresas privadas: comentario a la sentencia del TJCE de 13 de mayo de 2003, Comisión asunto C-463/00 c. Reino de España", (The System of Prior Authorization in Private Undertakings: Commentary on the ECJ Judgment of 13 May 2002, Commission Case C-463/00 v. Kingdom of Spain), *RDCE*, n. 15 (2003), 683–697.

VALLE GÁLVEZ, A. del, "Las cuestiones prejudiciales y su procedimiento ante el Tribunal de Justicia de las Comunidades Europeas", (Preliminary Rulings and their Procedure at the European Court of Justice), in JIMÉNEZ PIERNAS, C. (Ed.), *Iniciación a la práctica en Derecho internacional y Derecho comunitario europeo*, 381–405.