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1. Corte di Cassazione (plenary session), 7 September 2016 No 17676 612

Pursuant to Article 3 of Regulation (EC) No 2201/2003 of 22 November 2003, Italian courts have jurisdiction over the application for legal separation lodged by an Italian citizen habitually residing in Italy against his wife, a British citizen habitually residing in Italy until seven months before the judgment was rendered, when she traveled to the United Kingdom, with the consent of her husband, to give birth to their son, with the understanding that she would return to Italy after the birth of the child. Pursuant to the principle of *perpetuatio fori* and Article 19 of Regulation No 2201/2003 – and absent a specific provision allowing a shift in jurisdiction –, once a court is properly seized jurisdiction cannot be shifted on the grounds that an action for parental responsibility is subsequently commenced by the wife before a foreign court.

Pursuant to Article 8 of Regulation (EC) No 2201/2003, as well as Article 5(2) of Regulation (EC) No 44/2001 of 22 December 2000, which is applicable *ratione temporis* to the instant case, Italian courts do not have jurisdiction over child custody and maintenance claims of the parties to a matrimonial dispute, since the habitual residence of the child, identified in the place of the concrete and continuous development of the child's personal life, is located in the United Kingdom, where the child was born and lives without ever having been to Italy. Consequently, jurisdiction on these matters lies exclusively with the English courts.

2. Corte di Cassazione (criminal division), 21 November 2016 No 49261 201

The recognition and enforcement in Italy of a ruling on a civil claim rendered in the context of criminal proceedings in Switzerland is governed by the Lugano Convention of 30 October 2007. However, this does not prevent the party seeking recognition and enforcement from making use of the procedure set forth in Article 741 of the Code of Criminal Procedure, which differs from the procedure put forth under the Convention in that it is adversarial in all its phases. The fact that the Code does not envision an initial *ex-parte* phase is actually detrimental to the interests of the party seeking enforcement: consequently, the party against whom enforcement is sought cannot object to the fact that the other party opted in favour of the procedure put forth by the Code. Apart from this, the procedures under the Code and under the Convention must be applied concurrently, since the former lends itself to the concrete application of the latter, to the extent it is compatible with it. Consequently, for the purposes of recognition and enforcement of such judgment, the documents required under Article 54 of the Convention must be submitted and the court of the requested State shall verify that the judgment does not meet the grounds for refusal pursuant to Article 34, even when such conditions are not entirely in line with those provided at Article 733 of the Code of Criminal Procedure, referred to in Article 741 of the Code of Criminal Procedure.

3. Milan Tribunal, order of 13 June 2017 203

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012 and Article 5(3) of the Lugano Convention of 30 October 2007, Italian courts have jurisdiction over an action for a provisional measure seeking the pre-trial inhibition of the online sale of counterfeit products brought by an exclusive Italian distributor of watches against, respectively, a Slovenian company, owner of websites accessible from Italy where such products are offered for sale; a Swiss company responsible for the marketing and shipping of the products in question; and another Swiss company in its capacity as hosting provider. Italy is at least in partly indicated by the plaintiff both as a place of conduct (advertising, offer for sale and delivery of counterfeit products) and as a place where the event suffered by the injured party (at its headquarters) occurred: therefore, it meets the criterion of the place where the tort was committed (*forum commissi delicti*). Moreover, the jurisdiction of Italian courts may be established pursuant to Article 10 Law of 31 May 1995 No 218, since the provisional measure sought is to be executed, at least in part, in Italy (with respect, for instance to the blocking of the website, etc.).

The principle of exhaustion of the rights conferred by a trademark provided at Article 7 of Directive 89/104/EEC of 21 December 1988 and implemented with Article 5 of the Italian Code on Intellectual Property implies that the burden of proof lies in general with the operator who invokes the existence of the trademark proprietor's consent and is not satisfied by proving of having purchased the product from a retailer operating in the European Union or in the European Economic Area: rather, to satisfy such burden it is also necessary to prove that the retailer, in turn, purchased the goods from the trademark proprietor or from an authorized reseller.

The limitation of the hosting provider's liability under Articles 16 and 17 of Legislative Decree 9 April 2003 No 70 implementing Directive 2000/31/EC of 8 June 2000 does not preclude a court from adopting cease-and-desist measures in order to prevent, or at least make difficult, by actively discouraging online unauthorized consultation of the protected products. At the same time, to ensure that the measures in question do not hinder lawful trade, they have to comply with the principle of proportionality and must, therefore, be based on a fair assessment of the circumstances and balancing of the interests at stake.

4. Novara Tribunal, 28 June 2017 614

Pursuant to Article 2 of Regulation (EC) No 44/2001 of 22 December 2000, which is applicable *ratione temporis* to the instant case, Italian courts have jurisdiction over an action for the breach of a securities sale contract entered into in Germany between a company based in Germany and a German citizen, residing in Germany at time of the contract, brought by the former after the latter's transfer of domicile in Italy.

German law governs the contract, since the contract does not have cross-border features that justify recourse to private international law and international conventions: in particular, the contract does not fall within the scope of Article 1 of the Vienna Convention of 11 April 1980, which requires that the contract be concluded between parties established in different States, or within the scope of recital No 1 and Article 1 of Regulation (EC) No 593/2008

of 17 June 2008, which delimits the application of the Regulation to matters and circumstances that entail a conflict of laws in civil and commercial matters.

5. Corte di Cassazione, order of 3 July 2017 No 16356 207

Pursuant to Article 3(3)(a) of Legislative Decree No 251 of 19 November 2007, the court competent to grant international protection may not limit its assessment to the reasons that led the foreigner to leave its State of origin: to the contrary, the court shall examine the facts presented to it, also in light of the general social and political conditions in that State. Moreover, the right to subsidiary protection cannot be excluded on the grounds that serious damage is caused to the foreigner by private (as opposed to public) individuals, absent in the State of origin a State authority capable of assuring to the foreigner adequate and effective protection.

6. Corte di Cassazione, order of 21 July 2017 No 18130 208

With regard to subsidiary protection of the foreigner, pursuant to Article 14(c) of Legislative Decree 19 November 2007 No 251 the requirement of serious and individual threat to the life or safety of a civilian in situations of domestic or international armed conflict is not subject to the condition that the foreigner provide proof of being personally exposed to such threat. Rather, such requirement is also met if the degree of indiscriminate violence that characterizes the ongoing armed conflict, assessed by the competent national authorities, reaches such a level as to make it probable that, if returned to his State of origin, the foreigner's mere presence on the territory would expose him to the risk of actually suffering the effects of such threat.

7. Corte di Cassazione, order of 1 August 2017 No 19100 210

Pursuant to the Hague Convention of 5 October 1961, the exemption from legalization of the signature of a foreign notary certifing the authenticity of a power of attorney executed abroad is subject to the condition that the authority designated by the State of execution of the deed issue the *apostille* required by the same Convention to be affixed to the document itself or to an extension sheet. If this condition is not satisfied, Italian courts are precluded from attributing validating efficacy to mere certifications issued by the public official of a foreign State. It follows that the petition requesting an injunction filed on the grounds of such power of attorney is null and void, and such nullity cannot be cured in the subsequent phases of the proceeding.

8. Corte di Cassazione (plenary session), order of 13 September 2017 No 21191 211

Italian courts have jurisdiction over the request for the declaration of invalidity of the registration of a name as Protected Designation of Origin ("P.D.O.") on the grounds that it is abusive, confusing and parasitic with respect to a trademark, previously registered, containing the same wording. Italian courts also have jurisdiction over the further claims aimed at restoring the legal status of full title and exclusive exercise of the rights based on said trademark. On the one hand, P.D.O.s were initially recognized in Italy and subsequently protected in Europe by virtue of the transitional regime established at Article 51 of Regulation (EC) No 479/2008 of 29 April 2008: in light of this, the European Commission did not perform on P.D.O.s an assessment so compelling and

stringent that it could lead to discount the possibility that a claim be brought against the validity of a registration. On the other hand, the remedy (objection) put forth under Article 40 of the same Regulation may not be pursued in the present case. Moreover, absent in the instant claim the request to be assigned the P.D.O. in question, Article 263 TFEU (governing references to the Court of Justice of the European Union) offers a possibly concurrent remedy, but with limitations with respect to legal standing. If follows that access to national courts for the infringement of rights such as those directly arising from the freedom of enterprise – which is protected as a constitutional right under the Constitution (Article 41 of the Constitution), under EU law (Articles 18 and 19 of the Charter of Fundamental Rights of the European Union) and is included in competition law (Articles 101 and 102 TFEU) – cannot be abstractly excluded, in light of the subjective, objective and temporal limitations that restrict recourse to the institutions of the European Union and to the remedies available therefrom.

9. Corte di Cassazione (plenary session), order of 18 September 2017 No 21550 213

A foreign arbitration clause does not preclude a court from issuing an injunction, both because the lack of jurisdiction connected to the arbitration agreement concerns the decision of a "dispute" (and, therefore, is premised on an adversarial procedure, which is absent in the *ex-parte* procedure which precedes an injunction), and because the arbitration defense is optional and cannot be raised by the court on its own motion. However, this is not the case with the opposition to an injunction, which remains subject to arbitration.

Italian courts do not have jurisdiction over a dispute concerning the payment due by a foreign depositor to an Italian depository if the deposit contract contains a valid foreign arbitration clause. The reference for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*) brought by the contracting party making opposition against an injunction issued by the Italian court in favor of the other party is admissible.

10. Corte di Cassazione (plenary session), order of 19 September 2017 No 21622 143

Pursuant to Article 23(1) of Regulation (EC) No 44/2001 of 22 December 2000 (which, on this point, is identical to Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012), Italian courts do not have jurisdiction over an action brought by an Italian company against a German company for the breach of a contract concluded by exchange of e-mail messages, given that prorogation of jurisdiction in favour of German courts is deemed to have been agreed by the parties, as established in the contract terms and general conditions laid down by the aforementioned company German, expressly referred to in the order signed by the Italian company. In fact, in the instant case the prorogation agreement must be considered as concluded in writing, and is therefore valid according to Article 23(1) of Regulation No 44/2001, since it results from a "communication by electronic means which provides a durable record of the agreement", given that the text of the contract terms and general conditions, available on the German company's website, could be printed and recorded before the conclusion of the contract. On the contrary, Article 10(3) of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), according to which "contract terms and general con-

ditions provided to the recipient must be made available in a way that allows him to store and reproduce them", is not applicable to the instant case since, according to Article 1(4) of the Directive, "this Directive does not establish additional rules on private international law nor does it deal with the jurisdiction of Courts".

11. Corte di Cassazione, order of 21 September 2017 No 21922 447

Service of the document instituting the proceedings on an Italian national at its previous place of residence in Italy is not null and void on the grounds that the national transferred its residence abroad and fulfilled its duties arising from Article 6 of Law 7 October 1988 No 470 instituting the Registry of Italians abroad (AIRE). Pursuant to Article 44(1) of the Civil Code and Article 31 of the provisions implementing the Civil Code, to oppose a transfer of residence to third parties in good faith, such transfer must be proven with the double declaration made to the municipality that is abandoned and that of new residence: according to the rules on the civil registry (Article 16 of Presidential Decree 31 January 1958 No 136 and Article 18 of Presidential Decree 30 May 1989 No 223), the cancellation from the registry of the municipality where an individual was registered and the registration in the registry of the municipality of new residence must always have the same date, which is that of the transfer declaration made by the interested party in the municipality of new residence.

12. Corte di Cassazione, order of 22 September 2017 No 22220 449

According to Article 41(2) of Law 31 May 1995 No 218, the recognition in Italy of an adoption decree issued abroad can occur exclusively in accordance with Law of 4 May 1983 No 184 on children's right to family (as amended by Law 31 December 1998 No 476, authorizing the ratification and implementation of the Hague Convention of 29 May 1993) and notably in accordance with Articles 29 and 36, which specifically regulate international adoption, to the exclusion of the general rules of private international law on the recognition of foreign decisions.

13. Corte di Cassazione, order of 9 October 2017 No 23604 451

With respect to international protection, in the form of subsidiary protection pursuant to Articles 3 and 14(a)-(b) of Legislative Decree 19 November 2007 No 251, the actual risk of suffering serious harm in the event that the foreign national returns to its State of origin and cannot, because of this risk, avail itself of the protection of that State, also applies in the event that the State is unable to offer effective and enduring protection by adopting adequate measures to prevent persecutory acts or serious damages. In assessing the statements of the applicant for international protection, the court has to consider whether the applicant has made every effort to substantiate its application, produce the relevant elements in its possession, and justify the lack of other significant elements.

14. Parma Tribunal, 13 October 2017 616

In an action for divorce, custody and child maintenance brought by an Italian citizen, habitually residing in Italy with her children, against her husband, a Moroccan citizen who moved to France after the couple's legal separation,

Italian courts have jurisdiction pursuant to Articles 3 and 8 of Regulation (EC) No 2201/2003 of 27 November 2003 over the application, respectively, for divorce, custody and the assignment of the family home on the ground that the last common habitual residence of the spouses, where one of them still resides and the child's habitual residence are in Italy. Pursuant to Article 5(2) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over the maintenance claim since the maintenance creditor's habitual residence is in Italy. These questions are governed by Italian law: Italian law applies to the divorce pursuant to Article 8(d) of Regulation (EU) No 1259/2010 of 20 December 2010 by way of the residual application of the *lex fori*; it governs the custody and visitation matters in accordance with Article 15 of the Hague Convention of 19 October 1996; finally, since the couple's daughter has her habitual residence in Italy, it governs the question of child support in accordance with Article 3 of the Hague Protocol of 23 November 2007.

15. Corte di Cassazione (plenary session), 3 November 2017 No 26147 398

Pursuant to Article 138 of the Code of Civil Procedure, service of a summons is valid in the event that, after an unsuccessful attempt to serve the defendant at his registered residence in Luxembourg, the defendant was traced by the Italian bailiff in the district of the judicial office the bailiff was assigned to: in fact, personal service by in-hand delivery is always valid, even if it did not take place at the recipient's registered address.

The terms to appear under Article 163-*bis* of the Code of Civil Procedure are set not with regard to the place of possible service but to the place where the service actually and validly occurred. It follows that the longer term does not apply where, as in the instant case, the service of the summons has taken place at the hands of the defendant in Italy, being immaterial that the defendant, an Italian national, at the time of the service had his residence formally registered abroad.

Pursuant to Article 5(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action for the repayment of a sum of money given on loan brought by the creditor domiciled in Italy against the debtor domiciled in Luxembourg – subject to verification of the absolute simulation of the sale of a property concluded with a third party domiciled in Italy or, in the alternative, subject to revocation of the sales contract pursuant to Article 2901 of the Civil Code – since, as stated in a handwritten declaration signed by the debtor, the repayment of the obligation in question must be made in Italy, where the creditor is domiciled. Pursuant to Article 6(1) of the same Regulation – according to which a person domiciled in a Member State may also be sued, where he is one of a number of defendants, in the courts for the place where any one of them is domiciled – Italian courts also have jurisdiction over the simulation action and the claw-back action, since they have been brought also against the third-party buyer, domiciled in Italy.

16. Corte di Cassazione (plenary session), 15 November 2017 No 27091 563

For the purposes of Regulation (EC) No 2201/2003 of 22 November 2003, the application made by a mother against a father seeking authorization to live in the United Kingdom with the couple's children over whom both parents have custody, as stated in the Swiss judgment which declared the dissolution

of the marriage of the couple, falls within the scope of parental responsibility: in fact, not only matters relating to custody, but also the requests for a change of residence qualify as falling within the scope of parental responsibility, since they affect the exercise of the rights of the non-custodial or non-resident parent. Pursuant to Article 8 of the Regulation, Italian courts do not have jurisdiction over the aforementioned application if the habitual residence of the latter is not in Italy.

Pursuant to Article 3(c) and (d) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts do not have jurisdiction over maintenance claims aimed at regulating future obligations of the defendant towards his ex-wife and children (in particular, the obligation to pay the children's school tuition fees until the children become of age): maintenance claims towards minor children are in fact affected by the *vis attractiva* of the action on marriage and parental responsibility (which falls in the jurisdiction of the court of the place of habitual residence of the children, in the instant case located in London). The criteria established under Article 3(a)-(b) of the Regulation are applicable only absent the ancillary link between the action for parental responsibility and that for maintenance towards the children.

Pursuant to Article 2 of Regulation 44/2001 of 22 December 2000, which is applicable *ratione temporis*, Italian courts have jurisdiction over the request to ascertain the father's failure to fulfil his maintenance obligations towards the children and his ex-wife (such obligations having been stated in the Swiss judgment which declared the dissolution of the marriage of the couple) and over the claim for the compensation of the subsequent non-patrimonial damage, since the defendant's last known domicile is located in Milan (in spite of the fact that the defendant could not be traced) and, from the research carried out during the service of process, the defendant's domicile did not appear to be located in another place or in a different State. In fact, Regulation (EC) No 4/2009, which applies to maintenance obligations arising from a family relationship, parentage, marriage or affinity, does not apply to an action – as the instant one – for the compensation of the damage arising from the breach of maintenance obligations judicially established against the defendant, since the nature of the unfulfilled obligation as "maintenance obligation" does not affect the characterization of the action.

Pursuant to Article 8 of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction over the application for the authorization of the sale of immovable property owned by children, habitually resident in London, absent the father's consent, since, pursuant to Article 1(2)(e) of the Regulation, measures for the protection of the child relating to the administration, conservation or disposal of the child's property fall within the scope of the Regulation.

17. *Corte di Cassazione (plenary session), order of 20 November 2017 No 27441* 449

In case of an oral hearing held in accordance with Article 275 of the Code of Civil Procedure, the term within which to file a motion for a preliminary ruling on jurisdiction is postponed from the hearing where the parties state their conclusions to the moment in which, at the hearing scheduled before the court for the final discussion, the discussion ends and the court reserves its decision.

The judgment issued by the Court of Justice of the European Union pursuant to Article 267 TFEU further to a referral for a preliminary ruling made in the context of the same proceedings is binding.

Having regard to the principles of law established by the Court of Justice in its judgment of 13 July 2017 in case C-433/16, Italian courts do not have jurisdiction over the negative declaratory infringement action of Community designs owned by a car manufacturer based in Germany brought by an Italian company. On the one hand, the defence that the court lacks jurisdiction, raised in the alternative to that claiming that the service of the document instituting the proceedings was null and void, does not amount to tacit acceptance of jurisdiction pursuant to Article 24 of Regulation (EC) No 44/2001 of 22 December 2000. On the other hand, Article 5(3) of the same Regulation (providing specific jurisdiction criteria over torts) is not applicable to actions for the ascertainment of the absence of counterfeiting or to actions for the ascertainment of abuse of dominant position and unfair competition which, as in the instant case, are connected to such action and are premised on it. It follows that the criteria set out in Articles 81(b) and 82(1) of Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, in accordance to which negative actions are to be brought exclusively before the Community design court of the Member State where the defendant is domiciled, may not be derogated from.

18. Alessandria Tribunal, 11 December 2017 618

Pursuant to Articles 3(a) and 8 of Regulation (CE) No 2201/2003 of 27 November 2003 Italian courts have jurisdiction over the action for the dissolution of a marriage celebrated in Romania between Romanian spouses lodged together with an action for child custody and for the assignment of the family home since the spouses had their last habitual residence in Italy and one of them still resides there and since the habitual residence of the children is also found in Italy; pursuant to Article 3(b) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts also have jurisdiction over the maintenance claims brought in the same framework, since the maintenance creditor is habitually resident in Italy.

Pursuant to Article 5 of Regulation (EU) No 1259/2010 of 20 December 2010, Romanian law governs the dissolution of the marriage since it is the national law of the spouses and the spouses implicitly designated, in the respective introductory acts, such law to regulate this aspect, such designation being sufficient as it is not necessary for this purpose that the declarations of will of the spouses be contextual and contained in a single document. Pursuant to Articles 16 and 17 of The Hague Convention of 19 October 1996 and Article 3 of the Hague Protocol of 23 November 2007, Italian law governs the matters of child custody and maintenance since the habitual residence of the child, who is also the maintenance creditor, is located in Italy.

19. Prato Tribunal, 21 December 2017 878

The possibility of recognizing incidentally, in the context of the proceedings instituted in Italy for legal separation, a Moroccan judgment of dissolution of the marriage of a couple of Moroccan nationals having their habitual residence in Italy must be assessed in accordance with the requirements laid down in Article 64 of Law of 31 May 1995 No 218, since such judgment fails to meet

one of the preconditions established at Article 65, namely that it be issued by an authority of the State whose law is referred to by the Italian rules of private international law; in light of the primacy of Regulation (EU) No 1259/2010 of 21 December 2010, which has a universal application and must also be applied to disputes between citizens of non-EU Member States, these rules cannot be identified in Article 31(1) of Law No 218/1995. Pursuant to Article 8(a) of Regulation (EU) No 1259/2010, absent a choice of the parties, divorce and legal separation are governed by the law of the State of habitual residence of the spouses at the time the court is seised: hence, Italian law applies since both spouses were habitually resident in Italy when the action for the dissolution of the marriage was filed. Moroccan law would be applicable pursuant to Article 8(c) of said Regulation: however, paragraph (c) applies only residually. The conduct of the defendant-wife in the Moroccan proceedings may not be construed as a tacit acceptance of the Moroccan law as the law to govern divorce (thus inferring that a tacit agreement on the law applicable to divorce was reached by the spouses pursuant to Article 5 of Regulation (EU) No 1259/2010): while the defendant-wife defended herself on the merits before the Moroccan court without challenging the application of Moroccan law, she had already commenced, a few months earlier, the action currently pending in Italy, invoking the application of Italian law, with an attitude which is opposite to the one that she held in the foreign proceedings.

Pursuant to the joint reading of Articles 64 and 67(3) of Law No 218/1995, the Moroccan judgment in question is eligible to be recognized incidentally in Italy, with the subsequent termination of the claims for separation (and of the related claims on fault and for maintenance of the spouse), limited to the pronouncement on the status. In this regard, the requirement set forth in paragraph (a) of the aforementioned Article 64 is to be construed as satisfied, since the Moroccan court would have according to the Italian principles on jurisdiction, as supplemented by the EU principles on jurisdiction, in particular pursuant to Article 3(1)(b) of Regulation (EC) No 2201/2003 of 27 November 2003, in accordance to which the courts of the Member State of which both spouses are citizens have jurisdiction to decide matters relating to divorce, legal separation of spouses and marriage dissolution, among others. Likewise, the requirements set forth in paragraphs (b) and (c) of the aforementioned Article 64 are satisfied because the document introducing the proceedings was served on the defendant in accordance with the provisions of the law of the place where the proceedings took place, the fundamental rights of defence were not violated and the parties appeared in court according to the law of the place where the proceedings took place. In accordance with Article 64(d) of Law No 218/1995, the Moroccan judgment also satisfies the precondition that the judgment be final according to Moroccan law, because, in addition to the fact Article 128 of the Moroccan Family Code (*Mudawwana al-'usra*) provides for automatic irrevocability (only) of the decision on the dissolution of the marriage, a consular declaration of irrevocability was also produced. Furthermore, there is no conflict between the Moroccan judgment and a final Italian judgment (paragraph (e)) and no trial was instituted in Italy on the same cause of action and between the same parties before the Moroccan judgment (paragraph (f)) because the action for separation has claim and a cause of action different than the application for dissolution of the marriage brought in Morocco. Finally, the ruling on status does not conflict with public policy on the

grounds that Moroccan law does not provide for the institution of legal separation: according to a consolidated jurisprudence of the Court of Cassation, in this area of the law public policy is satisfied provided that the dissolution of marriage follows the rigorous assessment of the irreparable disintegration of the family communion, in compliance with the rights of defence of the parties and based on evidence showing absence of intent or collusion of the parties themselves. In the instant case, the divorce was pronounced as a result of the parties' disagreement or discord, in compliance with the relevant Moroccan rules, after an attempt at conciliation was made in the presence of the parties or at least of their proxies: this amounts to a situation with is comparable with the termination of the material and spiritual communion between the spouses and suggests equality between spouses and freedom for both to dissolve the marriage.

With regard to the decisions concerning the custody, placement, visitation and maintenance of the couple's child contained in the foreign divorce decree, the simplified recognition mechanism laid down at Article 65 of Law No 218/1995 may not be applied because this provision applies to declaratory or constitutive decisions relating to family relationships or to personality rights, but not to decisions that postulate the existence or inexistence of such relationships or rights. Pursuant to the joint reading of Articles 64 and 67(3) of Law No 218/1995, these decisions cannot even be recognized incidentally, since they fail to meet the requirement put forth at Article 64(a): pursuant to Article 8 of Regulation (EC) No 2201/2003, the judicial authorities of the Member State in which the minor habitually resides (in the instant case, Italy) have jurisdiction over questions concerning the parental responsibility. On the other hand, Article 12(1) of Regulation (EC) No 2201/2003 does not apply since – in spite of the fact that at least one of the spouses has parental responsibility over the child and that the jurisdiction of the Moroccan court was accepted tacitly, but unambiguously, by the defendant-wife in the proceedings before the Moroccan court – it is not in the child's best interest that jurisdiction over the related questions of parental responsibility be exercised by a court that lacks proximity to the child, a court that belongs to a State where the parents have not lived for six years and where the child was born but never actually lived, since such court lacks the elements to properly decide these issues.

Pursuant to the joint reading of Articles 64 and 67(3) of Law No 218/1995, the decisions on child maintenance are not eligible to be recognized incidentally in Italy, since they fail to satisfy the precondition laid down at Article 64(a) of Law No 218/1995, as integrated by Article 3 of Regulation (EC) No 4/2009 of 18 December 2008: in fact, the habitual residence of the parents is in Italy, where it was also at the time the proceedings was instituted, however, the jurisdiction of the Moroccan court on the action relating to the status is based exclusively on the nationality of the parties and, finally, such court did not have jurisdiction over the action on parental responsibility and, in any case, this action was based exclusively on the nationality of the parents.

20. Corte di Cassazione, order of 23 January 2018 No 1584 452

In an action for the compensation of the damage arising from denied boarding or cancellation of a flight or from the delayed arrival of the aircraft it suffices that the passenger produces the ticket or give an equivalent evidence: the mere

allegation of the air carrier's breach is then sufficient to sustain the claim. It is for the defendant (the air carrier) to prove that it performed its obligations under the contract or to prove the existence of one of the causes of exemption from liability in accordance with Article 19 of the Montreal Convention of 28 May 1999 for the unification of certain rules for international carriage by air and Articles 5(3) and 7(1)(b) of Regulation (EC) No 261/2004 of 11 February 2004 or, in the event of delay, that this was contained within the thresholds established at Article 6(1) of this Regulation.

21. Bologna Tribunal (company law division), 15 February 2018 938

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over an action for the negative ascertainment of the counterfeiting of a trademark registered in Germany, allegedly consisting in the use, by an advertiser, of a keyword identical to said trademark on the website of a search engine operating with a Italian first level national domain, since the criterion of the place where the harmful event occurred or may occur established by this provision must be interpreted, in accordance with the jurisprudence of the Court of Justice of the European Union with respect to the corresponding Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, in the sense that both the courts of the Member State in which the mark is registered and the courts of the Member State of the advertiser's place of establishment can be seised. Hence, when the use of the controverted datum presupposes its inclusion in the server of the site's manager, which is established in the plaintiff company's place of residence (which, in the instant case, is in Italy), the court of the place of establishment has jurisdiction.

This interpretation is not called into question by the fact that the court of another Member State, seized with an application for provisional measures in relation to the dispute, has in turn established its jurisdiction pursuant to Article 7(2) of Regulation (EU) No 1215/2012 as the court of the Member State of registration of the trademark, given that the defendant can be sued, at the plaintiff's choice, before the courts of either place indicated above. In the event of a dispute concerning the registration or validity of patents, trademarks and similar rights, for which the deposit or the registration is foreseen, Article 24(4) of Regulation (EU) No 1215/2012, which establishes the exclusive jurisdiction of the court of the Member State in which the deposit or registration of the industrial property right has been applied, is immaterial since such conduct amounts to the violation of a non-contractual obligation which may fall in the scope of the special ground of jurisdiction laid down at Article 7(2) of Regulation (EU) No 1215/2012.

In the event that appeal terms are pending in the Member State of origin over a provisional measure and the judgment on merits has not even been instituted, the *lis pendens* regime laid down at Article 29 of Regulation (EU) No 1215/2012 does not apply: only in case the judgment on the merits has been instituted before the court that rendered the provisional measure such court can be construed as "the court first seised" within the meaning of such provision, the relevant point in time to be identified with the date of the filing of the request for provisional relief.

Pursuant to Article 8 of Regulation (EC) No 864/2007 of 11 July 2007,

German law applies, as a law of the country for which protection is sought, to the request for the negative ascertainment of the counterfeiting of a trademark registered in Germany, which derives from conduct targeting Internet users, via a website.

22. Corte di Cassazione, 12 March 2018 No 5895 403

Only the parties (or their successors, in judgments on property rights and financial liability) to the proceedings held in the court of origin have active and passive legal standing in the proceedings for the recognition of the resulting foreign judgment. Recognition is not tantamount to a new ruling on the claim: to the contrary, it only supplements the foreign title with a view to the enforcement of the foreign judgment in the requested State. It follows that, in the event of the division of the company that was a party to the proceedings in the court of origin, recognition of the resulting judgment may not be sought against the company benefiting from the company branch that took the name of the divided company. To avoid that the division of the company be employed for the purpose of circumventing the financial liability of the debtor pursuant to Article 2740 of the Civil Code, such passive legal standing may not be inferred from Article 2506-*quarter*, paragraph 3, of the Civil Code in accordance to which all the companies participating in a merger are jointly liable and respond for the original company's debts.

23. Corte di Cassazione (plenary session), 30 March 2018 No 8042 572

Appeal in Cassation aimed at pointing out circumstances and facts that, in the appellant's opinion, were not considered or were insufficiently assessed by the lower court in determining a child's habitual residence for the purposes of Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003, is admissible since the ascertainment of jurisdiction under Article 8 of Regulation No 2201/2003 requires that the court examine a question of fact and is part of the tasks of the Court of Cassation, with which lies the final determination of jurisdiction. This is on par with what occurs in a preliminary ruling on jurisdiction.

Pursuant to Article 8 of Regulation (EC) No 2201/2003, Italian courts do not have jurisdiction over claims for joint custody and for the amendment of the visitation rights, as well as over the requests for verification of the unpaid child support and determination of the amount of such obligation towards the minor daughter brought by the father against the mother, since the daughter is habitually resident in London with the mother. Absent any specific determinations about the residence of the child, either taken by the parents consensually or judicially, in order to determine the child's habitual residence, considering her tender age and the lack of connecting factors outside the maternal and paternal families, it is necessary to focus on the mother's residence in London, grounded on specific professional and working reasons, and to consider indicators of a prospective nature, such as the enrollment of the daughter in a school in that city and the choices about pediatric assistance, which convey the mother's desire to keep this same residence for her current family unit. Taking into account the breadth and flexibility of the family relationships that the child experiences and benefits from, other factual elements – such as, in particular, the brief periods spent in Italy by the child with her grandparents – are not suitable to affect jurisdiction, due to the peculiarity

of the child's situation, who was only two years of age when the proceedings was initiated.

24. Corte di Cassazione, 30 April 2018 No 10321 145

Serbian law cannot be applied to the claims for compensation made against the driver's insurer by the relatives of the victim of a road accident occurred in Serbia, because it conflicts with the Italian public policy (*ordre public*). Said law, in fact, limits the right of the long-term cohabitant to compensation for non-pecuniary damage from loss of a family member, whereas, in the Italian legal system, cohabitation does not affect the compensation and, rather, only serves as an element to assess the existence of the damage and its intensity. To assess whether the application of a foreign law produces effects that are incompatible with the public policy of the forum, the rationale for the protection of moral damage under Italian law (as a prejudice deriving from the loss of a relative and the ensuing emotional pain and suffering, which may be independent from the factual element of cohabitation) must be taken into consideration.

25. Corte di Cassazione, 14 May 2018 No 11696 151

The recognition and registration of a same-sex marriage, contracted abroad between an Italian and a foreign citizen, is governed by Article 32-*bis* of Law 31 May 1995 No 218, regardless of whether the marriage was concluded prior to the entry into force of Law 20 May 2016 No 76 establishing civil unions. The application of this provision, pursuant to which a same-sex marriage contracted abroad by Italian citizens produces the effects of a civil union in Italy, does not amount to a violation of the principle of non-retroactivity of laws: in fact, the rationale of such provision lies precisely in the need to provide a uniform regulation for the circulation and recognition of the effects of same-sex unions contracted abroad, with the consequence that a temporal limit would hinder such objective.

The recognition of same-sex marriages and civil unions contracted abroad does not conflict with public policy (*ordre public*): this is reflected in Articles 32-*bis* and 32-*quinquies* of Law No 218/1995, according to which same-sex marriages and civil unions contracted abroad produce the same effects of civil unions concluded in Italy.

The recognition and registration of a same-sex marriage concluded abroad by foreign citizens is not governed by Article 32-*bis*: rather, it is governed by Articles 26 *et seq.* of Law No 218/1995.

Both the formulation of Article 32-*bis*, and the anomalous results to which the application of Articles 27 and 28 of Law No 218/1995 would lead, confirm that Article 32-*bis* applies to marriages contracted abroad between an Italian and a foreigner. This result does not amount to discrimination on the basis of sexual orientation: in fact, the choice of which same-sex union is recognized is left to the free appreciation of the States bound by the ECHR, provided a level of protection consistent with the right to a family life protected under Article 8 ECHR, as interpreted by the European Court of Human Rights, is ensured.

26. Corte di Cassazione, order of 21 May 2018 No 12473 163

The fact that a foreign divorce decree was pronounced, in accordance with the

law applicable in the State of origin, without the prior personal separation of the spouses and without an adequate period of time having elapsed to allow the spouses to reconsider their decision, is not in and of itself an obstacle to the recognition of the decision in Italy. In fact, pursuant to Article 64(1)(g) of Law 31 May 1995 No 218 in order for public policy (*ordre public*) to limit recognition it is necessary, but also sufficient, that the divorce decree ensue from the ascertainment of the irreparable loss of the communion of life between the spouses.

27. Corte di Cassazione, 28 May 2018 No 13271 166

Appeal in Cassation against a decision declaring a 2005 Polish child maintenance judgment enforceable in Italy is inadmissible if the appellant contends that the Polish judgment is contrary to public policy (*ordre public*) on the grounds that the Polish court based its ascertainment of paternity exclusively on the mother's statements, whereas the request for enforceability - made by the Italian Minister of the Interior in its capacity as designated authority in accordance with the New York Convention of 20 June 1965 on the Recovery Abroad of Maintenance – only addressed the Polish judgment in the part where it ruled on maintenance.

28. Corte di Cassazione, order of 31 May 2018 No 14007 168

Pursuant to the reference made in Article 41 of Law 31 May 1995 No 218 to the conditions put forth at Article 64 of the same Law, public policy (*ordre public*) does not act as a limit to the recognition in Italy and the registration in the civil registry of a French decision granting full adoption of a minor, issued in favor of the homosexual spouse of the child's biological mother, provided that, in this matter, said limit must be assessed in relation to the best interests of the child, to be understood as the child's right to maintain the stability established in the family life with both parental figures, regardless of the fact that both parental figures are of the same sex, since sexual orientation does not impact an individual's suitability to undertake parental responsibility.

29. Parma Tribunal, 2 August 2018 894

Pursuant to Articles 3(1)(a) and 8 of Regulation (EC) No 2201/2003 of 27 November 2003 (applicable irrespective of the nationality of the parties), Italian courts have jurisdiction in a proceedings, initiated in 2014, by a Nigerian national, who is habitually resident in Italy together with her minor daughter, against her husband, also a Nigerian national, for legal separation and for custody rights over the child as a result of, respectively, of the mother's habitual residence in Italy for at least one year before the application was made and of the child's habitual residence, habitual residence having to be understood as the place where an individual has established the permanent and habitual centre of his or her interests with a character of stability

According to Article 3 of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts also have jurisdiction over the child maintenance claim brought in the same trial, since the habitual residence of the food creditor is located in Italy. Finally, pursuant to Articles 3 and 32 of Law 31 May 1995 No 218 (absent any uniform rules), Italian courts have jurisdiction over the request for the assignment of the family home, also brought in the framework of the same

proceedings, since the habitual residence of the defendant (where the place where the family home is situated) is in Italy.

Italian law regulates all these questions: pursuant to Article 8(a) of Regulation (EU) No 1259/2010 of 20 December 2010, Italian law applies to the action for legal separation as a result of the location in Italy of the spouses' habitual residence; pursuant to Articles 1 and 2 of the Hague Convention of 5 October 1961, referred to in Article 42 of Law No 218 of 1995, Italian law governs the action for custody rights as a result of the child's habitual residence in Italy; and pursuant to Article 4 of the Hague Protocol of 23 November 2007 Italian law applies to the action for child maintenance since the maintenance creditor has filed her claim with the Italian authorities, where the debtor has his habitual residence.

30. Corte di Cassazione, order of 21 August 2018 No 20841 176

Pursuant to Article 27 of Regulation (EC) No 44/2001 of 22 December 2000, the acknowledgment, by a court of an EU Member State, of the fact that a proceeding involving the same cause of action and between the same parties is pending before the court of a different Member State mandates the court to stay the proceeding before it (as opposed to declaring that it lacks jurisdiction). The stay terminates when the proceeding first commenced is decided on the merits, thus ending the lispendency between the two proceedings.

Two claims, brought in Austria and in Italy, respectively, cannot be construed as being "between the same parties" within the meaning of Article 27 of Regulation (EC) No 44/2001 when, in relation to a road traffic accident, the driver, the insurer of the vehicle and the Austrian entity in charge of handling liquidation claims concerning vehicles registered abroad are summoned in Austria, whereas the first two individuals just mentioned and the individual appointed by the insurer as the liquidator of the claims in Italy are summoned in Italy: in fact, the claims are severable as a result of the fact that all these individuals are linked by joint and several guarantee ("*vincolo di solidarietà passiva*"). Moreover, while the claims relate to the same road traffic accident, they cannot be construed as the "same cause of action", given that compensation for monetary damage was sought in one proceeding and restitution of non-monetary damage was sought in the other: while the claims overlap in the part where they ask the court to ascertain liability, they differ as to the type and amount of the relief sought.

Pursuant to Article 33 of Regulation (EC) No 44/2001, the Italian court shall recognize a judgment given in another Member State and having *res judicata* effects when the foreign proceeding and the one pending before the Italian court involve the same cause of action.

The claim for compensation arising from an unlawful act occurred in Austria, against an Italian by an Austrian, is governed by the law of the place where the act occurred, notwithstanding the fact that it falls within the jurisdiction of the Italian courts. The fact that the application of a foreign law leads to denying compensation for non-monetary damage or liquidating it to a lesser extent than would be the case under Italian law does not amount to a violation of Italian or European Union law, or of the Italian Constitution.

31. Corte di Cassazione (plenary session), order of 21 September 2018 No 22433 187

Pursuant to Article 4(2) of Law 31 May 1995 No 218, Italian courts do not have jurisdiction over a dispute that the parties agreed to submit to foreign arbitration, since - as already previously recognized pursuant to the New York Convention of 10 June 1958 - an arbitration clause is valid even if, as in the instant case, both parties have their registered office in Italy, provided the dispute is on disposable rights.

Pursuant to Law No 218/1995, a reference for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*) may be filed, on the grounds of a foreign arbitration clause, also by a company based in Italy to challenge the jurisdiction of an Italian court seized *ex parte* by the plaintiff.

Pursuant to Article 41 of the Code of Civil Procedure, a reference for a preliminary ruling on jurisdiction is admissible pending opposition to an injunction, and it is not excluded by the issuance of a decree on opposition, which does not constitute a decision on the merits in accordance to the aforementioned provision.

As regards a reference for a preliminary ruling on jurisdiction filed in the framework of an opposition to an injunction, the assessment of the lack of jurisdiction precludes the continuation of the proceeding on merit: regardless of the fact that the court exercised its authority to issue the injunction, since it lacks jurisdiction the court no longer has the authority to decide the dispute, except to declare the injunction issued null and void.

32. Corte di Cassazione (plenary session), order of 22 October 2018 No 26597 191

Pursuant to Articles 3(1) of Law 31 May 1995 No 218 and 19 of Regulation (EC) No 44/2001 of 22 December 2000, on the grounds that the defendant was domiciled in Italy, Italian courts have jurisdiction over a dispute, brought by a Tunisian citizen against an Italian company, seeking the declaration of nullity or, in any event, of ineffectiveness of the duration term included in the numerous employment contracts concluded between the parties, with the consequent conversion of those contracts into a single permanent employment contract, as well as seeking the declaration of the unlawful termination of said contract. Neither the plaintiff's foreign nationality, nor the fact that the employment relationship was created and executed abroad, nor – again – the existence of an arbitration clause granting the employee the right to bring the claim to arbitration without, however, depriving it of the possibility of litigating the claim before Italian courts, are relevant.

33. Milan Tribunal, order of 24 October 2018 407

Pursuant to Articles 33 and 36 of Law 31 May 1995 No 218 "the status of child is determined by the national law of the child at the time of birth" and "the personal and patrimonial relations between parents and children, including parental authority, are governed by the national law of the child": consequently, the laws of California govern the status of parents of a registered same-sex couple that conceived a child abroad via artificial insemination by donor, since the child – having been born in California – is a U.S. citizen.

The recording of a birth certificate formed abroad and establishing a parent-child relationship between a registered same-sex couple and a child conceived

abroad via artificial insemination by donor does not conflict with public policy (*ordre public*). Public policy, does not preclude the circulation in Italy of foreign legal values merely of the grounds that they differ from the Italian ones: rather, it operates as a safeguard against conflicts arising between foreign legal acts and values that the Italian legal systems construes, also in accord with the fundamental values of the international community, as fundamental. This is, in any event, without prejudice to the need to protect the actual and specific interests of the child which, according to mandatory provisions of domestic and international law, have the absolute preeminence.

34. Milan Tribunal, 25 October 2018 193

Pursuant to Article 64 of Law of 31 May 1995 No 218, a U.S. court decision that approves a class action settlement, written in English and listing the options offered to its recipient and the consequences arising from it, and mailed via regular mail to an Italian company, which was a class member, to the address indicated in the invoices sent to the defendant (as opposed to the address of the company's legal seat published on a specific website and in specialized magazines) is eligible for recognition in Italy and, as such, it produces the preclusive effects that it produces in accordance with the law of the State where it was rendered. The applicable U.S. provisions do not require that the decision be served in the recipient's language: this *onus* would not exist even assuming the decision was served via formal service abroad of judicial documents provided that Article 10 of the Hague Convention of 15 November 1965 does not require that the document be translated into the language of the State of destination. For the purposes of the recognition of a judgment, the document instituting the proceedings must be served to the defendant in accordance with the law of the State where the proceedings took place, since the rule in accordance to which a proceedings is governed by the law of the forum State amounts to a general principle of private international law (of which Articles 12 and 64(1)(b) of Law No 218/1995 are an expression). In assessing the eligibility of a judgment for recognition, it is not necessary to rigorously apply the principles of service provided under Italian law (which, by the way, allows even less direct forms of service, such as service by public announcement pursuant to Article 150 of the Code of Civil Procedure). Rather, it is necessary to assess whether the document instituting the proceeding was served in accordance with the fundamental principles of Italian law, in such a manner as to avoid the infringement of the fundamental rights to defence.

A court decision that approves an opt-out class action settlement does not conflict with public policy (*ordre public*), since the subjection of these actions to procedural schemes other than those typical of the Italian legal system is not per se an obstacle to the recognition of the judgment's ruling. Moreover, the opt-out system is not intrinsically incompatible with the one, based on the opt-in model, chosen by the Italian legislator or with Italian constitutional principles.

35. Constitutional Court, 8 November 2018 No 194 383

The question of constitutional legitimacy of Article 3(1) of Legislative Decree 4 March 2015 No 23 in the matter of compensation owed to the worker in the event of unlawful dismissal, raised with respect to Article 117(1) of the Con-

stitution vis-à-vis Article 10 of the ILO Convention of 22 June 1982 No 158 on the termination of the employment relationship at the initiative of the employer, is inadmissible: compliance with the "constraints" deriving from "international obligations" imposed by the constitutional provision cannot extend to conventions that Italy has not ratified. Moreover, pursuant to Article 18 of the Vienna Convention of 23 May 1969 on the law of treaties the obligation of good faith pending ratification, with regard to treaties not yet in force, may go as far as to exclude the discretionary nature of the ratification of the treaty itself.

The question of constitutional legitimacy of Article 3(1) of Legislative Decree No 23/2015 raised, pursuant to Articles 76 and 117(1) of the Constitution vis-à-vis Article 30 of the Charter of Fundamental Rights of the European Union, is unfounded since the Charter, as specified in its Article 51, is applicable to Member States only when it comes to the implementation of European Union law, a condition which does not apply in the instant case.

Pursuant to Articles 76 and 117(1) paragraph of the Constitution vis-à-vis Article 24 of the Charter of Fundamental Rights of the European Union, Article 3(1) of Legislative Decree No 23/2015, both in the original text and in the text modified by Article 3(1) of Legislative Decree 12 July 2018 No 87, is unconstitutional in the part where it reads "for an amount equal to two months of the last reference salary for the calculation of the severance indemnity for each year of service", since the aforementioned provision fails to provide a "congruous" indemnity, such as to ensure adequate compensation for the actual prejudice suffered by the worker dismissed without a valid reason and to dissuade the employer from unlawful termination.

36. Corte di Cassazione (criminal division), 8 November 2018 No 50919 413

Pursuant to Article 46 ECHR, as interpreted by the Italian Constitutional Court in its judgment of 4 April 2011 No 113, the request for the declaration of "non-enforceability" of a seizure order, based on a ruling of the ECtHR recognizing a procedural defect in the proceeding that led to the order's issuance, must be rejected. The only proper remedy for the instant case is found in the "European review" mechanism (*revisione europea*), which is suited to place the applicant in a position where the procedural defect is expunged but the applicant is not necessarily discharged of liabilities.

37. Corte di Cassazione (plenary session), order of 20 November 2018 No 29879 419

Pursuant to Article 41 of the Code of Civil Procedure, a reference for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*) is admissible not only when the defendant in the action on the merits is domiciled or resident abroad, but also when the defendant, domiciled and resident in Italy, has challenged the jurisdiction of the Italian court on the grounds of a derogation clause in favor of a foreign court or foreign arbitration.

The defence stating that the preliminary ruling on jurisdiction is inadmissible – raised on the grounds that the motion for preliminary ruling was filed before the preliminary investigation was carried out at trial and on the basis that it is impossible to bring before the Court of Cassation evidence that is yet to be constituted; formulated in abstract and frustrating the very purpose of the request for a preliminary ruling on jurisdiction as a result of the fact that it

failed to indicate what the preliminary investigation should have consisted of with respect to the question of jurisdiction – must be rejected. The aforementioned impossibility to bring before the Court of Cassation evidence that is yet to be constituted implies the inadmissibility (without prejudice) of the request of reference for a preliminary ruling only in those cases where a pre-trial assessment, which is necessary for the purposes of deciding the question of jurisdiction, was actually and concretely precluded by such request made at the initiative of the other party: in fact, it is not sufficient that such assessment is merely possible, given the needs – that lie at the foundation of the reference for a preliminary ruling on jurisdiction – to balance the limits of the Court's powers of assessment with the need for a swift decision on jurisdiction.

Given the nature of arbitration to act as a substitute for jurisdiction, the defence challenging a court's jurisdiction on the ground of a foreign arbitration clause gives rise to a question of jurisdiction and makes the ruling on jurisdiction admissible in accordance with Article 41 of the Code of Civil Procedure.

38. Corte di Cassazione (plenary session), order of 23 November 2018 No 30420 427

In a dispute concerning a contract for the sale of pleasure boats between an Italian consumer and an Italian company, pursuant to Article 6(2) of the Brussels Convention of 27 September 1968 Italian courts have jurisdiction also on an action on a warranty or guarantee against the U.S. manufacturing company. The difference introduced by the Italian jurisprudence between *garanzia propria* (where the main action and the secondary action both relate to the same claim) and *garanzia impropria* (where the defendant seeks that a third party bears the consequences of its own non-performance of contract on the basis of a different claim than that in the main proceedings or a claim that is coincidentally connected with the main proceedings) is immaterial in the case at hand, and it is only necessary to verify that the action was not initiated in bad faith. To this end, it is irrelevant that a choice of court agreement was entered into between the defendant and the joined party, since the action on a warranty or guarantee is to be decided by the same judge that has jurisdiction over the main claim.

When, subsequent to the defendant's action on a warranty or guarantee, the plaintiff also extends its claims to the Italian court, pursuant to Article 6(1) of the Brussels Convention of 27 September 1968, in accordance to which a claim may be brought against multiple defendants in the State where one of them is domiciled, Italian courts have jurisdiction in the event of permissive joinder of parties and if the actions are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

39. Corte di Cassazione (plenary session), order of 26 November 2018 No 30527 430

Pursuant to Article 10(1) of the Constitution, a foreign public entity, in the instant case the *Académie de France* in Rome, against which an action is brought for the breach of a catering and restaurant services concession contract, is not immune from Italian jurisdiction, Foreign States and their entities are immune from jurisdiction only in relation to situations in which they act as subjects of international law and in any case *iure imperii*, to the exclusion of situations in which they operate as private subjects. In this respect, it is also

immaterial that the services deducted under the contract were provided in premises that the State in question considers as part of its own territory.

According to Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts do not have jurisdiction over the aforementioned dispute since the contract included a derogation clause in favor of French courts. Such clause is valid and effective since the contract does not qualify as a lease but, rather, as a contract for services or, in alternative, as a mixed lease and service contract in which the contractual nature prevails in light of the transaction, overall, and of the goals pursued with said contract by the parties. Consequently, the instant case is not subject to the exclusive jurisdiction provided at Article 24(1) of Regulation No 1215/2012 for proceedings which have as their object tenancies of immovable property.

40. Corte di Cassazione (plenary session), order of 27 November 2018 No 30657 575

Pursuant to Article 8(1) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts do not have jurisdiction over the visitation claims of a father, an Italian national habitually residing in Italy, who is the respondent in the divorce proceeding brought by his wife, a German national, since the children are habitually resident in Germany with the mother, as provided in the decision on the legal separation of the couple rendered by an Italian court in first instance and confirmed on appeal. This is reinforced by the fact that, on the one hand, the couple had reached an agreement on the visitation regime later approved by the competent German judge two months after the aforesaid separation was pronounced and, on the other hand, none of the exceptions to the criterion of habitual residence referred to in Article 8(1) of Regulation (EC) No 2201/2003 apply in the instant case.

Pursuant to Article 3 of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts do not have jurisdiction over a request for child support modification since this question is ancillary to that relating to parental responsibility, which is in turn founded on the habitual residence of the children, and since such outcome is in compliance with the need to concentrate, to the extent possible, all the legal actions concerning children in the same forum.

41. Siracuse Tribunal, order of 5 December 2018 434

Pursuant to Article 66 of Regulation (EU) No 1215/2012 of 12 December 2012, the recognition and enforcement of a Danish judgment rendered on 8 December 2017 in a proceedings initiated on 25 March 2015 falls in the temporal scope of application (*ratione temporis*) of the Regulation, which, pursuant to Article 3 of the 2005 Agreement between the Kingdom of Denmark and the (then) European Community, Denmark has declared it intends to implement.

The jurisdiction to decide on the request for denial of recognition and enforcement of a foreign judgment in accordance with Articles 45 and 46 of Regulation (EU) No 1215/2012 lies, *ratione loci*, with the court in district where the applicant has its seat.

The party against whom enforcement proceedings of a foreign judgment have already begun has legal standing and interest in applying for the denial of recognition and enforcement in accordance with Articles 45 and 46 of Regulation (EU) No 1215/2012.

The notion of public policy (*ordre public*) as a ground for denial of recognition and enforcement of foreign judgments within the meaning of Article 45(1)(a) of Regulation (EU) No 1215/2012 includes the principles for the protection of fundamental rights found in the Constitution, in the Charter of Fundamental Rights of the European Union (CFREU), as well as in the international treaties to which the Member States are parties and, with particular regard to the protection of human rights, in the European Convention on Human Rights (ECHR).

The principle of legality as put forth at Article 7 ECHR and Article 49 CFREU, to be interpreted – according to the consolidated jurisprudence of the European Court of Human Rights – in the sense that the legal characterization made under national law of a sanction is only one of the alternative criteria to be taken into account to establish the scope and boundary of criminal matters, falls within the meaning of public policy for the purposes of Article 45(1)(a) of Regulation (EU) No 1215/2012. Therefore, a foreign judgment that, in violation of the principle of legality, has the effect of sentencing a party to a criminal pecuniary sanction on the basis of a legislative provision that does not identify with a sufficient degree of precision and specificity the conduct that can be sanctioned, and does not establish the quantitative limits or the criteria for quantifying the sanction that can be imposed, is not eligible for recognition and enforcement.

42. Corte di Cassazione (plenary session), 13 December 2018 No 32359 578

Pursuant to Article 111 of the Constitution, in light of the legislative changes introduced with Legislative Decree 28 December 2013 No 154 and Law 10 December 2012 No 219 and of the personal nature and the constitutional rank of the interests involved, the judgments that revoke or reintegrate parental responsibility can be challenged before the Court of Cassation in accordance with Articles 330 and 332 of the Civil Code – as is the case also, pursuant to Article 337-*bis et seq*. of the Civil Code, with respect to judgments on custody of children born out of wedlock. In fact, these judgments have a decision-making nature, are endowed with stability, include the duty to hear the child, and are adversarial in nature: in this respect, it may not be argued that the *in camera* procedure precludes the formation of *res judicata*. The reformed Article 38 of the preliminary provisions of the Civil Code – which, according to consolidated jurisprudence, identifies as related the claim for sole custody based on the harmful behaviour of the other parent and the claim for a measure limiting parental responsibility of such parent – is in the same vein, with the consequence that a different appeal regime would create an incongruity within the system.

Pursuant to Article 5(2) of the Hague Convention of 19 October 1996, Italian courts do not have jurisdiction over an action for the revocation of the parental responsibility brought by the husband against his wife if the child has acquired a new habitual residence abroad as a result the mother's transfer, together with the child, to the Principality of Monaco in a manner that is consistent with a provisional measure adopted in the context of the divorce proceeding pending before an Italian court; this is also confirmed in case measure is subsequently revoked and the child is unlawfully retained abroad. The existence of a measure, however provisional and subject to revocation, makes the child's retention abroad lawful and therefore requires an assessment

of whether the child's habitual residence has changed in the period between the issuance of the measure and its revocation. In this respect, the child's retention abroad after said revocation and the subsequent failure to return the child to Italy are immaterial. If the assessment proves that the child has acquired a new habitual residence, the exceptions laid down in Article 7 of the 1996 Hague Convention on wrongful removal or retention of the child do not apply.

43. Corte di Cassazione (plenary session), 27 December 2018 No 33535 585

Pursuant to Article 6(1) of Regulation No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over an action for the compensation of the damages arising from defects in a pleasure boat brought against the seller domiciled in Italy and the manufacturer domiciled in Germany, if the action is brought before the court of a place other than that of the domicile of the seller, since the provision at hand also governs venue. Italian courts do not have jurisdiction pursuant to Article 5(3) of the same Regulation, either, since the boat was built in Germany, where the alleged damage also arose.

44. Bologna Tribunal, order of 31 December 2018 443

Pursuant to Article 3(2) of the Decree Law 17 February 2017 No 13, converted into Law 13 April 2017 No 46, the ordinary courts' specialized sections on immigration, international protection and free movement of EU citizens have jurisdiction over disputes for the ascertainment of statelessness, on the grounds of the residence of the interested party in accordance with paragraph 1 of the same provision.

Pursuant to the New York Convention of 28 September 1954 on the status of stateless persons, the status of stateless person must be granted to the individual who left the Palestinian territory when he was a child, is undocumented and, according to the laws of Palestine, is not eligible to receive identification documents (a circumstance that precludes him from acquiring the Palestinian nationality), and is not eligible to obtain the Italian nationality.

45. Rome Tribunal (company law division), 10 January 2019 625

With respect to a dispute over the copyright of television programs between a company based in Italy, owner of the economic exploitation rights of said programs and one based in New York (United States), manager of the Internet portal used to disseminate the programs online allegedly in violation of the rights of the former, Italian courts have jurisdiction over the request for both the removal of content from the server and the inhibition of its further diffusion. Such jurisdiction is based on the reference, made in Article 3(2) of Law 31 May 1995 No 218, to the Brussels Convention of 27 September 1968 and, notably, to Article 5(3) of the Convention which (similarly to what is now provided at Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012) establishes the jurisdiction of the court of the place where the a harmful event occurred, *i.e.*, in the instant case, the place, located in Italy, where the owner of the rights exercises its exploitation of such rights: in fact, the event that gave rise to the damage is embodied by the diffusion of the programs in such geographical area and occurs when data and information are viewed by third-party users through the use of the portal in question. In this context, neither the place where the contents are uploaded onto the server, nor the fact

that the judgment will have to be enforced abroad is relevant, given that this will be possibly subject to the relevant rules relating to the recognition and execution of the decisions on the merits (and Article 669-*ter*, third paragraph of the Code of Civil Procedure is not applicable in the instant case, where a judgment on the merit, and not a provisional measure, is being sought). Jurisdiction over the dispute lies, in particular, with the Rome Tribunal, court of the place where the plaintiff company has its registered office and where the damage to the plaintiff's commercial activity is likely to occur.

46. Corte di Cassazione, order of 29 January 2019 No 2331 592

Pursuant to Articles 11 and 4(2) of Law 31 May 1995 No 218, Italian courts do not have jurisdiction over a dispute between two Italian companies for the performance of a contract of carriage if the bill of lading includes a clause – effective against anyone acting under the bill, regardless of express acceptance of the clause – derogating from the jurisdiction of Italian courts in favour of the courts of the People's Republic of China.

Documents written in a foreign language do not comply with Article 366(1) No 6 of the Code of Civil Procedure, which requires that appeal in cassation contain the specific indication of, *inter alia*, the documents on which the appeal is based, whereas the foreign language preventing the full and immediate intelligibility of such documents. A concise but thorough account of the content of the documents, as well as the specific indication of the place in which the documents were drawn-up, is necessary to assess the validity of the grievance on the basis of the recourse only: such assessment is to be performed without the need to refer to external sources and it therefore entails the need for such documents to be translated into Italian.

47. Corte di Cassazione (plenary session), order of 19 February 2019 No 4884 596

Pursuant to Article 6(1) of the Brussels Convention of 27 September 1968 (as a result of the reference made to it in Article 3(2) first sentence of Law 31 May 1995 No 218), Italian courts have jurisdiction over an action for the declaration of nullity or simulation (or, in the alternative, the revocation) of a contract for the sale of the shares of a company based in Italy brought against defendants domiciled and residing in Russia, in which a claim is also brought against the same company for the purposes of ascertaining a credit of the plaintiff against such company. The claims are, in fact, closely related and it is immaterial that the joinder of the parties is not compulsory, insofar as the joinder is not purely fictitious and aimed at removing the litigation from the jurisdiction of the State to which it belongs. Pursuant to the reference made in Article 3(2) second sentence of Law No 218/1995 to the criteria on venue established by the Code of Civil Procedure – among which Article 31 *et seq.* of the Code on Civil Procedure on the changes in venue determined by the relatedness of the claims, also resulting from the joinder of parties (Articles 33 and 103(1) of the Code of Civil Procedure) – given the joinder of the parties and the relatedness of the claims, Italian courts also have jurisdiction since the claim also qualifies as being on matrimonial property regime.

48. Corte di Cassazione (plenary session), 19 February 2019 No 4885 600

Pursuant to Article 16(1) of the Brussels Convention of 27 September 1968 – which mirrors Article 22(1) of Regulation (EC) No 44/2001 of 22 December

2000 and, in proceedings over rights *in rem* in immovable property, provides the exclusive jurisdiction of the courts of the Member State in which the property is situated – Italian courts do not have jurisdiction over a dispute between two spouses – nationals of, respectively, the United States and Switzerland and residing in the Principality of Monaco – over a property located in Italy, in which the ascertainment of a joint property regime amounts to a preliminary question about the effects produced, on the spouses' respective purchases, by the couple's matrimonial property regime, which, in the instant case is governed by a foreign law. The provision mentioned above, in fact, only applies to actions that aim to determine the extension, consistency, ownership, possession of rights *in rem* in immovable property or the existence of other rights *in rem* on such assets and to assure the holders of these rights the protection of the prerogatives deriving from their title. Furthermore, given that the exclusive jurisdiction over these claims is based on the need, proper to such disputes, that assessments and expert opinions be carried out in the same place where the property is located, such provision cannot be interpreted in a broader sense than is imposed by this purpose.

49. Corte di Cassazione, 21 February 2019 No 5187 603

Pursuant to the joint reading of Articles 6(1), 18(1) and 19(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a dispute brought in Italy for the compensation of the damage arising from a work-related accident by an Italian worker against its Italian employer, the French company owner of the quarrying rights in France where the employer operated as sub-contractor, the Italian director of the latter company, the French construction manager, an employee of the same company and the driver of the vehicle that ran over the plaintiff causing the injury: in fact, the individual responsibilities are related and the same "factual and legal context" that justifies the concentration of the questions, both from a substantive and procedural and evidentiary point of view, is evident. Therefore, the summoning in Italy of all the co-defendants (including the French ones) may not be construed as preposterous given the existence of a cause of action common to all the co-defendants against whom a claim for joint and several liability is brought.

50. Corte di Cassazione (plenary session), order of 21 February 2019 No 5195 901

In a dispute over a sales contract brought by an Italian company against a company based in Germany, the motion for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) filed pursuant to Article 41 of the Code of Civil Procedure is inadmissible since, in the instant case, the claim put forth pursuant to Article 23(1) of Regulation (EC) No 44/2001 of 22 December 2000 that jurisdiction does not lie not with the Nola Tribunal (which was seized in the instant case) but with the Milan Tribunal, instead (such court being designated as the one having jurisdiction according to the contract), amounts to a question of venue.

51. Corte di Cassazione (plenary session), 4 March 2019 No 6280 903

Pursuant to Article 1(1) of Protocol No 2 annexed to the Lugano Convention of 30 October 2007, in interpreting the Convention it is necessary to take into account, among the others, the jurisprudence of the Court of Justice of the

European Union on the provisions, similar to those of the Convention, contained in Regulation (EC) No 44/2001 of 22 December 2000.

Pursuant to Article 16(1) of the 2007 Lugano Convention, Italian courts have jurisdiction over an action for the compensation of damages deriving from the unlawful conduct of a Swiss bank in the execution of checking account contracts since the natural person with whom these contracts were concluded has its domicile in Italy. Pursuant to Article 15(1) of the Convention, Article 16 is applicable since the aforementioned bank carried out and managed in Italy – through other individuals presented as agents or providing supporting via closely related companies – professional activities connected to such contracts. The circumstances that pertain to jurisdiction, such as the conduct and management of said activities, must be ascertained with respect to the moment in which the claim is filed and not to that of the conclusion of the contract.

Pursuant to Article 17 of the 2007 Lugano Convention, a prorogation clause in favour of the courts of Lugano included in the checking account contracts concluded by a consumer is void since it fails to meet the requirements laid down by the Convention for the validity of such clause and namely that the clause be entered into after the dispute has arisen, that it allow the consumer to seize a court other than those indicated under the other applicable rules of the Convention, or that, in case of a clause entered into between a consumer and its counterparty both having their domicile or habitual residence in the same State bound by the Convention at the time the contract is concluded, it assign jurisdiction to the courts of that State, provided that the law of the latter does not prohibit such agreements.

52. Corte di Cassazione (plenary session), 18 March 2019 No 7620 911

Pursuant to Article 17(3) of Presidential Decree 26 October 1972 No 633, Italian courts have jurisdiction over the action brought by an Italian company – in its capacity as tax representative in Italy of the defendant, with which it is jointly and severally liable – against a Swiss company for the refund of the penalties paid for the VAT that the Italian company itself failed to pay. Pursuant to Article 5(1) of the Lugano Convention of 16 September 1988, as reaffirmed by the Lugano Convention of 30 October 2007, the place where the obligation was or should be performed is in Italy: the tax obligation met by the representative (which finds its source in the mandate concluded between the parties) is not legal in nature but rather voluntary and, as such, it may be characterised as "contractual matter" under Article 5 of the same Convention.

53. Corte di Cassazione (plenary session), 22 March 2019 No 8228 915

Pursuant to Article IX(4) of the London Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces, Italian courts do not have jurisdiction over the dispute brought by a national of the receiving State, where she also resides, against the Ministry of Defence for the payment of differences in wage and contributions related to her role as a launderer for the contingent of the "Carabinieri" (part of the Italian military police force) operating in Bosnia as part of NATO. Pursuant to this provision, local civilian labour requirements of a force or civilian component shall be satisfied in the same way as the comparable requirements of the receiving State, and the conditions of employment and work, in particular wages, sup-

plementary payments and conditions for the protection of workers, shall be those laid down by the legislation of the receiving State.

54. Corte di Cassazione, order of 4 April 2019 No 9385 917

Pursuant to Articles 58(2) and 43(1) of the Vienna Convention of 24 April 1963 on consular relations and Article 131 of Legislative Decree 30 April 1992 No 285 (the so-called "Road Code"), in case of ascertained violation of the Road Code, if an honorary consul permanently resident in Italy claims functional immunity the competent Italian authority shall ascertain, if necessary with the support of the Ministry of Foreign Affairs, the existence of the preconditions for immunity and consequently identify the appropriate reporting and communication methods (including the facts from which the functional link between the violation and the exercise of the consular activity is inferred and the existence of the preconditions for reciprocity). Depending on the outcomes, the competent Italian authority shall proceed, on the one hand, with an immediate or deferred notification to notify of the infringement or, on the other hand, with transmitting the report to the competent office or command. Therefore, on appeal by the interested party or upon request of the competent foreign State's representative via notification of a verbal note through diplomatic channels, the document issued by the competent Italian authority for a violation claimed or notified in presence of immunity must be annulled due to impossibility or errors in the ascertainment of the preconditions for immunity.

55. Corte di Cassazione, 15 April 2019 No 10540 926

Pursuant to Article 325 of the Code of Civil Procedure, the sixty-day term for lodging an appeal in Cassation against the order of recognition and enforceability of a foreign judgment runs only after the order is served upon party's request, while it is immaterial that the order was communicated in full to the parties by the registrar. The application of Article 702-*quater* of the Code of Civil Procedure is excluded, since such provision textually refers to the appeal before the Court of Appeal: the absence of specific provisions on the appeal in Cassation entails that this latter appeal is governed by the ordinary provisions of the Code of Civil Procedure, even if the proceedings was *ex-parte*.

According to Article 64 *et seq*. of Law 31 May 1995 No 218 (as well as under the repealed Article 797 of the Civil Code), the possible defects and the lack of reasoning of a U.S. judgment do not preclude the recognition of the judgment since, once the right to defence has been ensured and the judgment has become final, it must be assumed that the obligation to provide reasoning that justifies the adoption of measures does not fall within the fundamental principles established in the Italian legal system to guarantee the right of defence: Article 111 of the Constitution (according to which all judicial decisions include reasoning) provides on jurisdiction exclusively with respect to the Italian domestic system.

Since the procedure to ascertain a statement of liabilities is not the only method permitted to ascertain the liabilities admitted to an insolvency procedure, pursuant to Article 64(g) of Law No 218 of 1995 a foreign judgment that ascertains such liabilities outside of the jurisdiction of the insolvency court does not conflict with public policy: this is true in accordance with both national laws – in accordance to which questions pertaining to the ascertain-

ment of liabilities may be decided also by other courts (*e.g.,* tax courts) – and EU law, and namely Regulation (EU) No 848/2015 of 20 May 2015. Since such Regulation does not contain any binding provision referring to the statement of liabilities and it refers to the laws of the State of origin, it does not enshrine fundamental principles which require a liabilities assessment to safeguard the equal treatment of creditors (*par condicio creditorum*) in insolvency proceedings. Article 64(g) of Law No 218 of 1995 also does not preclude recognition in Italy of a judgment on the payment of interests accrued pending the insolvency procedure: the suspension of the course of interest on unsecured credits that arose prior to the declaration of insolvency pursuant to Article 55 of the Italian bankruptcy law (Law No 267/1942 and subsequent amendments) does not relate to the ascertainment of whether a sum is due or its amount, but to the ascertainment of whether and to which extent the credit falls within the insolvency, so that any objection to the enforceability of the accessory credit arising from the payment of interest is reserved for admission to the statement of liabilities and does not constitute a ground for refusal of recognition.

56. Trieste Tribunal, decree of 8 May 2019 608

In order to guarantee the useful effect of Articles 1(2)(l), 62(3) and 69(2) of Regulation (EU) No 650/2012 of 4 July 2012, Article 32(3) of the Law 30 October 2014 No 161 – according to which Articles 3(1) and 13(1) and (3) of the Royal Decree of 28 March 1929 No 499 on the issuance of the certificate of succession and legacy continue to apply in the territories in which the land register system is in force – must be interpreted in the sense of the full substitutability between the national certificate of succession and the European Certificate of Succession. It follows that the European Certificate of Succession issued by an Italian notary with respect to the succession of an Italian national with immovable property in Italy and abroad is ground for the registration in the land registry in Italy of the transfer of succession rights and of the possibility of claiming succession rights, in the instant case with respect to the registration of the right of the surviving spouse to the family residence and of the co-ownership rights of the surviving spouse and the couple's children.

EU CASE-LAW

Access to justice: 24, 38.
Consumer protection: 6, 7, 27, 31, 33.
Contracts: 5, 10.
Criminal Proceedings: 22, 29.
EC Regulation No 1346/2000: 13, 40.
EC Regulation No 44/2001: 15, 19, 20, 26, 35, 39, 43, 46.
EC Regulation No 2201/2003: 9, 18, 28, 36, 37, 43.
EC Regulation No 1896/2006: 25.
EC Regulation No 861/2007: 42, 47.
EC Regulation No 864/2007: 45.
EC Regulation No 1393/2007: 25.
EC Regulation No 4/2009: 30.

EU law: 3, 4, 13, 23, 29.
EU Regulation No 650/2012: 16, 44.
EU Regulation No 1215/2012: 8, 34, 41, 48, 49.
Freedom of movement of persons: 12, 21.
Freedom of movement of capitals: 2.
Freedom to provide services: 1, 48.
Liability of Member States: 32.
Maintenance obligations: 14, 30.
Prohibition of discrimination: 17.
Treaties and general international rules: 3, 14, 24, 30, 38.

1. *Court of Justice, 30 January 2018 joined cases C-360/15 and C-31/16* 471

Article 4(1) of Directive 2006/123/EC of 12 December 2006 on services in the internal market must be interpreted as meaning that the activity of retail trade in goods constitutes a "service" for the purposes of that Directive.

The provisions of Chapter III of Directive 2006/123, on freedom of establishment of providers, must be interpreted as meaning that they also apply to a situation where all the relevant elements are confined to a single Member State.

2. *Court of Justice, 6 March 2018 joined cases C-52/16 and C-113/16* 954

Article 63 TFEU must be interpreted as precluding national legislation under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of that land are extinguished by operation of law and are, consequently, deleted from the property registers.

3. *Court of Justice, 6 March 2018 case C-284/16* 224

Articles 267 and 344 TFEU must be interpreted as precluding a provision in an international agreement concluded between Member States, such as Article 8 of the Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Czech and Slovak Federative Republic, under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept.

4. *Court of Justice, 20 March 2018 case C-537/16* 642

Article 50 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which permits the possibility of bringing administrative proceedings against a person in respect of unlawful conduct consisting in market manipulation for which the same person has already been finally convicted, in so far as that conviction is, given the harm caused to the company by the offence committed, such as to punish that offence in an effective, proportionate and dissuasive manner.

The *ne bis in idem* principle guaranteed by Article 50 of the Charter of Fundamental Rights of the European Union confers on individuals a right which is directly applicable in the context of a dispute.

5. *Court of Justice, 12 April 2018 case C-258/16* 224

A complaint recorded in the information system of the air carrier fulfils the requirement of being in a written form under Article 31(3) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999.

Article 31(2) and (3) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, must be interpreted as not precluding the requirement of being in a written form from being regarded as fulfilled in the case where, with the knowledge of the passenger, a representative of the air carrier records in writing the declaration of loss either on paper or electronically in the carrier's information system, provided that that passenger can check the accuracy of the text of the complaint, as taken down in writing and entered in that system, and can, where appropriate, amend or supplement it, or even replace it, before expiry of the period laid down in Article 31(2) of that convention.

6. *Court of Justice, 17 May 2018 case C-147/16* 472

Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court giving judgment in default and which has the power, under national procedural rules, to examine of its own motion whether the term upon which the claim is based is contrary to national public policy laws is required to examine of its own motion whether the contract containing that term falls within the scope of that Directive and, if so, whether that term is unfair.

Subject to verifications to be carried out by the referring court, Article 2(c) of Directive 93/13 must be interpreted as meaning that a free educational establishment, which, by contract, has agreed with one of its students to provide repayment facilities for sums due by the latter in respect of registration fees and costs connected with a study trip, must be regarded, in the context of that contract, as a "seller or supplier", within the meaning of Article 2(c) of Directive 93/13, with the result that that contract falls within the scope of application of that Directive.

7. *Court of Justice, 31 May 2018 case C-483/16* 224

Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, must be interpreted as meaning that it also applies to situations without a cross-border element.

8. *Court of Justice, 31 May 2018 case C-306/17* 222

Article 8(3) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying, not exclusively, in a situation in which the court with jurisdiction to hear and determine a claim alleging infringement of the applicant's personality rights, on the ground that photographs were taken and videos recorded without his knowledge, is seised by the defendant bringing a counterclaim for compensation on the ground that the applicant is liable in tort, delict or quasi-delict for, *inter alia*, restrictions on his intellectual creations, which are the subject of the original application, where, when examining the counterclaim, that court is required to

assess the lawfulness of the actions on which the applicant bases its own claims.

9. *Court of Justice, 31 May 2018 case C-335/17* 218

The concept of "rights of access" referred to in Article 1(2)(a) and in Article 2.7 and 2.10 of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as including rights of access of grandparents to their grandchildren.

10. *Court of Justice, 31 May 2018 case C-537/17* 225

Article 3(1)(a) of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that the Regulation applies to a passenger transport effected under a single booking and comprising, between its departure from an airport situated in the territory of a Member State and its arrival at an airport situated in the territory of a third State, a scheduled stopover outside the European Union with a change of aircraft.

11. *Court of Justice, 5 June 2018 case C-210/16* 473

Articles 4 and 28 of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that, where an undertaking established outside the European Union has several establishments in different Member States, the supervisory authority of a Member State is entitled to exercise the powers conferred on it by Article 28(3) of that Directive with respect to an establishment of that undertaking situated in the territory of that Member State even if, as a result of the division of tasks within the group, first, that establishment is responsible solely for the sale of advertising space and other marketing activities in the territory of that Member State and, second, exclusive responsibility for collecting and processing personal data belongs, for the entire territory of the European Union, to an establishment situated in another Member State.

Article 4(1)(a) and Article 28(3) and (6) of Directive 95/46 must be interpreted as meaning that, where the supervisory authority of a Member State intends to exercise with respect to an entity established in the territory of that Member State the powers of intervention referred to in Article 28(3) of that Directive, on the ground of infringements of the rules on the protection of personal data committed by a third party responsible for the processing of that data whose seat is in another Member State, that supervisory authority is competent to assess, independently of the supervisory authority of the other Member State, the lawfulness of such data processing and may exercise its powers of intervention with respect to the entity established in its territory without first calling on the supervisory authority of the other Member State to intervene.

12. *Court of Justice, 5 June 2018 case C-673/16* 223

In a situation in which a Union citizen has made use of his freedom of movement by moving to and taking up genuine residence, in accordance with the conditions laid down in Article 7(1) of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, in a Member State other than that of which he is a national, and, whilst there, has created or strengthened a family life with a third-country national of the same sex to whom he is joined by a marriage lawfully concluded in the host Member State, Article 21(1) TFEU must be interpreted as precluding the competent authorities of the Member State of which the Union citizen is a national from refusing to grant that third-country national a right of residence in the territory of that Member State on the ground that the law of that Member State does not recognise marriage between persons of the same sex.

Article 21(1) TFEU is to be interpreted as meaning that a third-country national of the same sex as a Union citizen whose marriage to that citizen was concluded in a Member State in accordance with the law of that state has the right to reside in the territory of the Member State of which the Union citizen is a national for more than three months. That derived right of residence cannot be made subject to stricter conditions than those laid down in Article 7 of Directive 2004/38.

13. *Court of Justice, 6 June 2018 case C-250/17* 216

Article 15 of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as applying to a lawsuit pending before a court of a Member State seeking an order that a debtor pay a sum of money due under a contract for the provision of services and pay monetary damages for failure to comply with that contractual obligation, in the event that: (i) the debtor was declared insolvent in insolvency proceedings opened in another Member State; and (ii) the declaration of insolvency applies to all of the debtor's assets.

14. *Court of Justice, 7 June 2018 case C-83/17* 219

Article 4(2) of The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Decision 2009/941/EC of 30 November 2009 must be interpreted as meaning that:

the fact that the State of the forum corresponds to the State of the creditor's habitual residence does not preclude the application of that provision as long as the law designated by the ancillary connecting rule in that provision does not coincide with the law designated by the main connecting rule in Article 3 of that Protocol;

in a situation in which the maintenance creditor, who has changed his habitual residence, has brought before the courts of the State of his new habitual residence a maintenance claim against the debtor in respect of a period in the past during which the creditor resided in another Member State, the law

of the forum, which is also the law of the State of the creditor's new habitual residence, can apply provided the courts of the Member State of the forum had jurisdiction to adjudicate on the disputes concerning those parties as to the maintenance relating to that period.

The phrase "is unable... to obtain maintenance" in Article 4(2) of The Hague Protocol of 23 November 2007 must be interpreted as also covering the situation in which the creditor is unable to obtain maintenance under the law of the State of his previous habitual residence on the ground that he does not meet certain conditions imposed by that law.

15. *Court of Justice, 21 June 2018 case C-1/17* 217

Article 20(2) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it gives an employer the right to bring, before the court properly seised of the original proceedings brought by an employee, a counter-claim based on a claim-assignment agreement concluded, after the introduction of the original proceedings, between the employer and the original holder of that claim.

16. *Court of Justice, 21 June 2018 case C-20/17* 221

Article 4 of Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as precluding legislation of a Member State, which provides that, although the deceased did not, at the time of death, have his habitual residence in that Member State, the courts of that Member State are to retain jurisdiction to issue national certificates of succession, in the context of a succession with cross-border implications, where the assets of the estate are located in that Member State or the deceased was a national of that Member State.

17. *Court of Justice, 26 June 2018 case C-451/16* 469

Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, in particular the first indent of Article 4(1), read in conjunction with the third indent of Article 3(1)(a) and Article 7(1)(a) thereof, must be interpreted as precluding national legislation which requires a person who has changed gender not only to fulfil physical, social and psychological criteria but also to satisfy the condition of not being married to a person of the gender that he or she has acquired as a result of that change, in order to be able to claim a State retirement pension as from the statutory pensionable age applicable to persons of his or her acquired gender.

18. *Court of Justice, 28 June 2018 case C-512/17* 219

Article 8(1) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a child's place of habitual residence for the purpose of that Regulation is the place which, in practice, is the centre of that child's life. It is for the national court to deter-

mine, on the basis of a consistent body of evidence, where that centre was located at the time the application concerning parental responsibility over the child was submitted. In that regard, having regard to the facts established by that court, the following, taken together, are decisive factors: the fact that, from its birth until its parents' separation, the child generally lived with those parents in a specific place; the fact that the parent who, in practice, has had custody of the child since the couple's separation continues to stay in that place with the child on a daily basis and is employed there under an employment contract of indefinite duration; and the fact that the child has regular contact there with its other parent, who is still resident in that place.

By contrast, the following facts cannot be regarded as decisive factors: the stays which the parent who, in practice, has custody of the child has spent in the past with that child in the territory of that parent's Member State of origin in the context of leave periods or holidays; the origins of the parent in question, the cultural ties which the child has with that Member State as a result, and the parent's relationships with family residing in that Member State; and any intention the parent has of settling in that Member State with the child in the future.

19. *Court of Justice, 5 July 2018 case C-27/17* 457

Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the context of an action seeking compensation for damage caused by anticompetitive conduct, the "place where the harmful event occurred" covers, *inter alia*, the place where the loss of income consisting in loss of sales occurred, that is to say, the place of the market which is affected by that conduct and on which the victim claims to have suffered those losses.

Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the context of an action seeking compensation for damage caused by anticompetitive conduct, the notion "place where the harmful event occurred" may be understood to mean either the place of conclusion of an anticompetitive agreement contrary to Article 101 TFEU, or the place in which the predatory prices were offered and applied in cases where such practices constituted an infringement of Article 102 TFEU.

Article 5(5) of Regulation No 44/2001 must be interpreted as meaning that the notion of a "dispute arising out of the operations of a branch" covers an action seeking compensation for damage allegedly caused by abuse of a dominant position consisting of the application of predatory pricing, where a branch of the undertaking which holds the dominant position actually and significantly participated in that abusive practice.

20. *Court of Justice, 11 July 2018 case C-88/17* 459

The second indent of Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the context of a contract for the carriage of goods between Member States in several stages, with stops, and by a number of means of transport, both, the

place of dispatch and the place of delivery of the goods constitute places where transport services are provided, for the purposes of that indent.

21. *Court of Justice, 12 July 2018 case C-89/17* 470

Article 21(1) TFEU must be interpreted as requiring the Member State of which a Union citizen is a national to facilitate the provision of a residence authorisation to the unregistered partner, a third-country national with whom that Union citizen has a durable relationship that is duly attested, where the Union citizen, having exercised his right of freedom of movement to work in a second Member State, in accordance with the conditions laid down in Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, returns with his partner to the Member State of which he is a national in order to reside there.

Article 21(1) TFEU must be interpreted as meaning that a Decision to refuse a residence authorisation to the thirdcountry national and unregistered partner of a Union citizen, where that Union citizen, having exercised his right of freedom of movement to work in a second Member State, in accordance with the conditions laid down in Directive 2004/38, returns with his partner to the Member State of which he is a national in order to reside there, must be founded on an extensive examination of the applicant's personal circumstances and be justified by reasons.

22. *Court of Justice, 25 July 2018 case C-216/18 PPU* 638

Article 1(3) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material, such as that set out in a reasoned proposal of the European Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, that authority must determine, specifically and precisely, whether, having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant, and in the light of the information provided by the issuing Member State pursuant to Article 15(2) of Framework Decision 2002/584, as amended, there are substantial grounds for believing that that person will run such a risk if he is surrendered to that State.

23. *Court of Justice, 7 August 2018 case C-122/17* 641

EU law, in particular Article 288 TFEU, must be interpreted as meaning that a national court, hearing a dispute between private persons, which finds that it

is unable to interpret the provisions of its national law that are contrary to a provision of a directive that satisfies all the conditions required for it to produce direct effect in a manner that is compatible with that provision, is not obliged, solely on the basis of EU law, to disapply those provisions of national law and a clause to be found, as a consequence of those provisions of national law, in an insurance contract.

A party adversely affected by the incompatibility of national law with EU law or a person subrogated to the rights of that party could however rely on the case-law arising from the judgment of 19 November 1991, *Francovich and Others* joined cases C-6/90 and C-9/90, in order to obtain from the Member State, if justified, compensation for any loss sustained.

24. *Court of Justice, 7 August 2018 case C-300/17* 642

European Union law, and in particular Article 1(1) and (3) of Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in the context of an action for damages, it does not preclude a national procedural rule, which restricts the judicial review of arbitral decisions issued by an arbitration committee responsible at first instance for the review of decisions taken by contracting authorities in public procurement procedures to examine only the pleas raised before that committee.

25. *Court of Justice, 6 September 2018 case C-21/17* 466

Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure and Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Regulation (EC) No 1348/2000 must be interpreted as meaning that, where a European order for payment is served on the defendant without the application for the order, annexed to the order, being written in or accompanied by a translation into a language he is deemed to understand, as required by Article 8(1) of Regulation No 1393/2007, the defendant must be duly informed, by means of the standard form in Annex II to Regulation No 1393/2007, of his right to refuse to accept the document in question.

If that formal requirement is omitted, the procedure must be regularised in accordance with the provisions of Regulation No 1393/2007, by communicating to the addressee the standard form in Annex II to that Regulation.

In that case, as a result of the procedural irregularity affecting the service of the European order for payment together with the application for the order, the order does not become enforceable and the period in which the defendant may lodge a statement of opposition cannot start to run, so that Article 20 of Regulation No 1896/2006 cannot apply.

26. *Court of Justice, 12 September 2018 case C-304/17* 460

Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and com-

mercial matters must be interpreted to the effect that in a situation, in which an investor brings, on the basis of the prospectus relating to a certificate in which he or she invested, a tort action against the bank which issued that certificate, the courts of that investor's domicile, as the courts for the place where the harmful event occurred within the meaning of that provision, have jurisdiction to hear and determine that action, where the damage the investor claims to have suffered consists in financial loss which occurred directly in that investor's bank account with a bank established within the jurisdiction of those courts and the other specific circumstances of that situation also contribute to attributing jurisdiction to those courts.

27. *Court of Justice, 19 September 2018 case C-109/17* 954

Article 11 of Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) No 2006/2004 must be interpreted as not precluding national legislation, which prohibits the court hearing mortgage enforcement proceedings from reviewing, of its own motion or at the request of the parties, the validity of the enforceable instrument in light of the existence of unfair commercial practices and, in any event, prohibits the court having jurisdiction to rule on the substance regarding the existence of those practices from adopting any interim measures, such as staying the mortgage enforcement proceedings.

28. *Court of Justice, 19 September 2018 in joined cases C-325/18 PPU and C-375/18 PPU* 463

The general provisions of Chapter III of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, where it is alleged that children have been wrongfully removed, the decision of a court of the Member State in which those children were habitually resident, directing that those children be returned and which is entailed by a decision dealing with parental responsibility, may be declared enforceable in the host Member State in accordance with those general provisions.

Article 33(1) of Regulation No 2201/2003, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding enforcement of a decision of a court of a Member State which directs that children be made wards of court and that they be returned and which is declared enforceable in the requested Member State, prior to service of the declaration of enforceability of that decision on the parents concerned. Article 33(5) of Regulation No 2201/2003 must be interpreted as meaning that the period for lodging an appeal laid down in that provision may not be extended by the court seised.

Regulation No 2201/2003 must be interpreted as not precluding a court of one Member State from adopting protective measures in the form of an injunction directed at a public body of another Member State, preventing that body from commencing or continuing, before the courts of that other Member State, proceedings for the adoption of children who are residing there.

29. *Court of Justice, 19 September 2018 case C-327/18 PPU* 640

Article 50 TEU must be interpreted as meaning that mere notification by a Member State of its intention to withdraw from the European Union in accordance with that Article does not have the consequence that, in the event that that Member State issues a European arrest warrant with respect to an individual, the executing Member State must refuse to execute that European arrest warrant or postpone its execution pending clarification of the law that will be applicable in the issuing Member State after its withdrawal from the European Union. In the absence of substantial grounds to believe that the person who is the subject of that European arrest warrant is at risk of being deprived of rights recognised by the Charter of Fundamental Rights of the European Union and Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Framework Decision 2009/299/JHA of 26 February 2009, following the withdrawal from the European Union of the issuing Member State, the executing Member State cannot refuse to execute that European arrest warrant while the issuing Member State remains a member of the European Union.

30. *Court of Justice, 20 September 2018 case C-214/17* 468

On a proper construction of Article 4(3) of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Decision 2009/941/EC of 30 November 2009, the result of a situation where the maintenance to be paid was set by a decision, which has acquired the force of *res judicata*, in response to an application by the creditor and, pursuant to Article 4(3) of that protocol, on the basis of the law of the forum designated under that provision, is not that that law governs a subsequent application for a reduction in the amount of maintenance lodged by the debtor against the creditor with the courts of the State where that debtor is habitually resident.

Article 4(3) of the Hague Protocol of 23 November 2007 must be interpreted as meaning that a creditor does not "seise", for the purposes of that article, the competent authority of the State where the debtor has his habitual residence when that creditor, in the context of proceedings initiated by the debtor before that authority, enters an appearance, for the purposes of Article 5 of Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, contending that the application should be dismissed on the merits.

31. *Court of Justice, 20 September 2018 case C-448/17* 955

Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read together with the principle of equivalence, must be interpreted as meaning that it precludes national legislation, which prevents a consumer protection organisation from intervening, in the interests of the consumer, in proceedings seeking an order for payment concerning an individual consumer and to lodge an objection in the absence of a challenge to that order by the consumer if that legislation in fact subjects intervention by consumer associations in disputes falling within the scope of Union law to less favourable

conditions than those applicable to disputes exclusively within the scope of national law, which is for the referring court to ascertain.

Directive 93/13 must be interpreted as meaning that it precludes national legislation, which, although providing, at the stage at which the order for payment is made against the consumer, for an assessment of the unfair nature of the terms in a contract concluded between a seller or supplier and a consumer, first, entrusts the power to grant that order to an administrative officer of a court who is not a magistrate and, second, provides for a period of 15 days within which to lodge a statement of opposition and requires that the latter contain reasons on the substance, where there is no provision for such an assessment by the court of its own motion at the stage of enforcement of that order, which is for the referring court to ascertain.

32. *Court of Justice, 4 October 2018 case C-571/16* 956

Article 1(3)(i) of Directive 94/19/EC of 30 May 1994 on deposit-guarantee schemes, as amended by Directive 2009/14 deposit-guarantee schemes as regards the coverage level and the payout delay, has direct effect and constitutes a rule of law intended to confer rights on individuals allowing depositors to bring an action for damages for the harm sustained by late repayment of deposits. It is for the referring court to ascertain, first, whether the failure to determine that deposits were unavailable within the time limit of five working days laid down in that provision, despite the fact that the conditions which were clearly set out in that provision were satisfied, on the facts of the case in the main proceedings, amounts to a sufficiently serious breach, within the meaning of EU law and, second, whether there is a direct causal link between that breach and the harm sustained by a depositor.

Article 4(3) TEU and the principles of equivalence and effectiveness must be interpreted as, in the absence of a specific procedure in Bulgaria holding that Member State liable for harm caused by a national authority's breach of EU law:

not precluding national legislation which provides for two different remedies falling within the jurisdiction of different courts subject to different conditions, provided that the referring court ascertains whether, in respect of national law, a national authority such as the Bulgarian Central Bank must be held liable on the basis of the *Zakon za otgovornostta na darzhavata i obshtinite za vredi* (Law on Liability of the State and of Municipalities for Damage) or the *Zakon za zadalzheniata i dogovorite* (Law on Obligations and Contracts) and that each of the two remedies complies with the principles of equivalence and effectiveness;

precluding national legislation which subjects the right of individuals to obtain damages to the additional condition that the national authority in question intended to cause the harm;

not precluding national legislation which subjects the right of individuals to obtain damages to the duty of providing proof of fault provided that, which it is for the referring court to ascertain, the concept of "fault" does not go beyond that of a "sufficiently serious breach";

not precluding national legislation which provides for the payment of a fixed-fee or fee proportional to the value in dispute provided that, which it is for the

referring court to ascertain, the payment of a fixed-fee or fee proportional to the value in dispute is not contrary to the principle of effectiveness, in the light of the amount and level of the fee, whether or not that fee might represent an insurmountable obstacle to access to the courts, whether it is mandatory and of the possibilities of exemption; and

not precluding national legislation which subjects the right of individuals to obtain damages to prior annulment of the administrative measure which caused the harm, provided that, which it is for the referring court to ascertain, that requirement may reasonably be required of the injured party.

33. *Court of Justice, 4 October 2018 case C-105/17* 472

Article 2(b) and (d) of Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) No 2006/2004 ("Unfair Commercial Practices Directive") and Article 2(2) of Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Directive 93/13/EEC and Directive 1999/44/EC and repealing Directive 85/577/EEC and Directive 97/7/EC must be interpreted as meaning that a natural person, who publishes simultaneously on a website a number of advertisements offering new and second-hand goods for sale can be classified as a "trader", and such an activity can constitute a "commercial practice", only if that person is acting for purposes relating to his trade, business, craft or profession, this being a matter for the national court to determine, in the light of all relevant circumstances of the individual case.

34. *Court of Justice, 4 October 2018 case C-337/17* 636

In an *actio pauliana*, whereby the person entitled to a debt arising under a contract requests that an act by which his debtor has transferred an asset to a third party and which is allegedly detrimental to his rights be declared ineffective in relation to the creditor, is covered by the rule of international jurisdiction provided for in Article 7(1)(a) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

35. *Court of Justice, 4 October 2018 case C-379/17* 461

Article 38 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding legislation of a Member State, which provides for the application of a time limit for the enforcement of a preventive attachment order, from being applied in the case of an order which has been adopted in another Member State and is enforceable in the Member State in which enforcement is sought.

36. *Court of Justice, 4 October 2018 case C-478/17* 466

Article 15 of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as not applying in circumstances where both courts seised (Romanian forum, first seised on the basis of prorogation) and UK (second seised, as the forum State of children's residence)

have jurisdiction as to the substance of the matter under Articles 12 and 8, respectively, of that Regulation. In fact, an opposite interpretation would run counter to the intention of the EU legislator – clearly expressed in recital 13 of the same Regulation and in the wording of the following Article 15 – to ensure that the transfer mechanism established by that provision is used only in exceptional cases. Moreover, the application of Article 15(1) would render Article 19(2) of that Regulation – which aims to resolve, in matters of parental responsibility, situations in which courts in different Member States have jurisdiction – meaningless.

37. *Court of Justice, 17 October 2018 case C-393/18 PPU* 632

Article 8(1) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that a child must have been physically present in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that provision. Circumstances such the fact that the father's coercion of the mother had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and the breach of the mother's or the child's rights, do not have any bearing in that regard.

38. *Court of Justice, 24 October 2018 case C-234/17* 957

EU law, in particular the principles of equivalence and effectiveness, must be interpreted as meaning that a national court is not required to extend to infringements of EU law, in particular to infringements of the fundamental right guaranteed by Article 50 of the Charter of Fundamental Rights of the European Union and Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990 and which entered into force on 26 March 1995, a remedy under national law permitting, only in the event of infringement of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, or one of the protocols thereto, the rehearing of criminal proceedings closed by a national decision having the force of *res judicata*.

39. *Court of Justice, 24 October 2018 case C-595/17* 630

Article 23 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the application, in the context of an action for damages brought by a distributor against its supplier on the basis of Article 102 TFEU, of a jurisdiction clause within the contract binding the parties is not excluded on the sole ground that that clause does not expressly refer to disputes relating to liability incurred as a result of an infringement of competition law.

Article 23 of Regulation No 44/2001 must be interpreted as meaning that it is not a prerequisite for the application of a jurisdiction clause, in the context of an action for damages brought by a distributor against its supplier on the basis

of Article 102 TFEU, that there be a finding of an infringement of competition law by a national or European authority.

40. *Court of Justice, 14 November 2018 case C-296/17* 629

Article 3(1) of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the jurisdiction of the courts of the Member State within the territory of which insolvency proceedings have been opened to hear and determine an action to set a transaction aside by virtue of the debtor's insolvency which has been brought against a defendant whose registered office or habitual residence is in another Member State is exclusive.

41. *Court of Justice, 15 November 2018 case C-308/17* 638

Article 1(1) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that a dispute relating to an action brought by a natural person having acquired bonds issued by a Member State, against that State and seeking to contest the exchange of those bonds with bonds of a lower value, imposed on that natural person by the effect of a law adopted in exceptional circumstances by the national legislator, according to which those terms were unilaterally and retroactively amended by the introduction of a CAC allowing a majority of holders of the relevant bonds to impose that exchange on the minority, does not fall within "civil and commercial matters" within the meaning of that article.

42. *Court of Justice, 22 November 2018 case C-627/17* 635

Article 3(1) of Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, as amended by Regulation (EU) No 517/2013 of 13 May 2013, must be interpreted as meaning that the concept of "parties" covers solely the applicant and the defendant in the main proceedings.

Articles 2(1) and 3(1) of Regulation No 861/2007, as amended by Regulation No 517/2013, must be interpreted as meaning that a dispute, in which the applicant and the defendant have their domicile or their habitual residence in the same Member State as the court or tribunal seised, does not come within the scope of that Regulation.

43. *Court of Justice, 16 January 2019 case C-386/17* 944

The rules of *lis pendens* in Article 27 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Article 19 of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 must be interpreted as meaning that where, in a dispute in matrimonial matters, parental responsibility or maintenance obligations, the court second seised, in breach of those rules, delivers a judgment which becomes final, those articles preclude the courts of the Member State in which the court first seised is situated from refusing to recognise that judgment solely for that reason. In particular, that breach cannot, in itself, justify non-recognition of a judgment

on the ground that it is manifestly contrary to public policy in that Member State.

44. *Court of Justice, 17 January 2019 case C-102/18* 949

Article 65(2) of Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession and Article 1(4) of Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation No 650/2012 must be interpreted as meaning that, for the purposes of an application for a European Certificate of Succession, within the meaning of Article 65(2) of Regulation No 650/2012, the use of Form IV in Annex 4 to Implementing Regulation No 1329/2014 is optional.

45. *Court of Justice, 31 January 2019 case C-149/18* 947

Article 16 of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that a national provision which provides that the limitation period for actions seeking compensation for damage resulting from an accident is three years, cannot be considered to be an overriding mandatory provision, within the meaning of that article, unless the court hearing the case finds, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that provision was adopted, that it is of such importance in the national legal order that it justifies a departure from the law applicable, designated pursuant to Article 4 of that Regulation.

Article 27 of Regulation No 864/2007 must be interpreted as meaning that Article 28 of Directive 2009/103/EC of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, as transposed into national law, does not constitute a provision of EU law which lays down a conflict-of-law rule relating to non-contractual obligations, within the meaning of Article 27 of that Regulation.

46. *Court of Justice, 6 February 2019 case C-535/17* 943

Articles 1(1) and (2)(b) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action concerning a claim for damages arising from liability for a wrongful act, brought by the liquidator in insolvency proceedings and the proceeds of which, if the claim succeeds, accrue to the general body of creditors, is covered by the concept of "civil and commercial matters" within the meaning of Article 1(1), and therefore falls within the material scope of that Regulation.

47. *Court of Justice, 14 February 2019 case C-554/17* 946

Article 16 of Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure must be interpreted as not precluding national legislation under which, where a party succeeds only in part, the national court may order each of the parties to the proceedings to bear its own procedural costs or may apportion those costs between those parties. In

such a situation, the national court remains, theoretically, free to apportion the amount of those costs, provided that the national procedural rules on the apportionment of procedural costs in small cross-border claims are not less favourable than the procedural rules governing similar situations subject to domestic law and that the procedural requirements relating to the apportionment of those procedural costs do not result in the persons concerned foregoing the use of that European small claims procedure by requiring an applicant, when he has been largely successful, nonetheless to bear his own procedural costs or a substantial portion of those costs.

48. *Court of Justice, 14 February 2019 case C-630/17* 949

Article 56 TFEU must be interpreted as precluding legislation of a Member State, which has the effect, *inter alia*, that credit agreements and legal acts based on those agreements concluded in that Member State between debtors and creditors established in another Member State who do not hold an authorisation, issued by the competent authorities of the first Member State, to operate in that State, are invalid from the date on which they were concluded, even if they were concluded before the entry into force of that legislation.

Article 4(1) and Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters preclude legislation of a Member State, which, in the context of disputes concerning credit agreements featuring international elements which fall within the scope of that Regulation, allows debtors to bring an action against non-authorised lenders either before the courts of the State in which they have their registered office or before the courts of the place where the debtors have their domicile or head office and restricts jurisdiction to hear actions brought by creditors against their debtors only to courts of the State on the territory of which those debtors have their domicile, whether they are consumers or professionals.

Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a debtor who has entered into a credit agreement in order to have renovation work carried out in an immovable property which is his domicile with the intention, in particular, of providing tourist accommodation services cannot be regarded as a "consumer" within the meaning of that provision, unless, in the light of the context of the transaction, regarded as a whole, for which the contract has been concluded, that contract has such a tenuous link to that professional activity that it appears clear that the contract is essentially for private purposes, which is a matter for the referring court to ascertain.

The first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 must be interpreted as meaning that an action "relating to rights *in rem* in immovable property" within the meaning of that provision, constitutes an action for the removal from the land register of the mortgage on a building, but that an action for a declaration of the invalidity of a credit agreement and of the notarised deed relating to the creation of a mortgage taken out as a guarantee for the debt arising out of that agreement does not fall within that concept.

49. *Court of Justice, 28 February 2019 case C-579/17* 952

Article 1 of Regulation (EU) No 1215/2012 of 12 December 2012 on juri-

sdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for payment of wage supplements in respect of annual leave pay brought by a body governed by public law against an employer, in connection with the posting of workers to a Member State where they do not have their habitual place of work, or in the context of the provision of labour in that Member State, or against an employer established outside of the territory of that Member State in connection with the employment of workers who have their habitual place of work in that Member State, falls within the scope of application of that Regulation, in so far as the modalities for bringing such an action do not infringe the rules of general law and, in particular, do not exclude the possibility for the court ruling on the case to verify the merits of the information on which the establishment of that claim is based, which is a matter to be determined by the referring court.

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