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1. *Corte di Cassazione, interim order of 20 June 2017 No 15183* 145

In a proceeding for legal separation, where a partial final judgment on the separation was rendered, finding the wife at fault in Italy, and for sole custody of the couple's child made by the father, considering that a final judgment on the legal separation of the spouses, on parental responsibility and on child maintenance was rendered in Romania – in the context of a proceeding initiated after, but concluded before, the one commenced in Italy – the Italian Corte di Cassazione decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling: (1) Does an infringement of the rules on *lis pendens* contained in Article 19(2) and (3) of Regulation No 2201/2003 affect only the determination of jurisdiction, with the consequent application of Article 24 [thereof] or, on the contrary, may it constitute a ground for withholding recognition, in the Member State whose court has been seised first, of a judicial ruling made in the Member State whose court has been seised at a later stage, in the light of procedural public policy, having regard to the fact that [Article 24] refers only to the rules determining jurisdiction contained in Articles 3 to 14 of that Regulation and not to the subsequent Article 19 thereof? (2) Does the interpretation of Article

19 of Regulation No 2201/2003, seen only as a test for the conferral of jurisdiction, conflict with the EUlaw concept of 'lis pendens' and with the function and purpose of that provision, which is intended to lay down a set of binding rules, reflecting procedural public policy, thereby guaranteeing the creation of a common area characterised by reciprocal procedural trust and fairness between the Member States, within which the automatic recognition and free movement of judicial decisions may operate?

2. *Trieste Tribunal, 3 October 2017** 693

Pursuant to Article 4(1) of Law No 218 of 31 May 1995, Italian courts have jurisdiction over the counterclaims brought, in the context of a proceeding for the opposition to an injunction, by the opposing Italian company seeking the payment, by the opposed Moroccan company, of services to be performed in Morocco and arising from a contract which contained a clause establishing the jurisdiction of the Pesaro Tribunal. Venue is also proper with the Trieste Tribunal, given that the defendant did not object to it and that the general identification of Pesaro as the court having jurisdiction "over any disputes" is not to be construed as assigning exclusive jurisdiction.

Pursuant to Article 5(1) of the Brussels Convention of 27 September 1968 – which, by virtue of the reference made in Article 3(2) of Law No 218/1995, is still in force and applicable in relations with defendants not domiciled in a Member State of the European Union – Italian courts also have jurisdiction over the payment claims arising from two separate contracts concluded between the same parties, given that the "obligation in question" must be understood as the one corresponding to the right on which the action is based, *i.e.*, the one on whose fulfillment the claim is based. In the instant case, pursuant to Article 1182(3) of the Civil Code the Moroccan company's obligation to pay the price of the services provided by the Italian company is enforceable in Italy, and namely at the creditor's domicile, located in Trieste; the jurisdiction clause in favour of Italian courts, which was included in the two aforementioned contracts but was not signed by one of the parties, is immaterial.

3. *Torre Annunziata Tribunal, 6 February 2018* 470

The admissibility of an action for disavowal of paternity cannot be assessed pursuant to Cuban law, notwithstanding the fact that such law applies to the question of filiation in accordance with Article 33(1) of Law 31 May 1995 No 218 by reason of the child's Cuban nationality. Having regard to the principles stated by the Constitutional Court with judgment 6 May 1985 No 134 (in which the Court declared Article 244(2) of the Italian Civil Code unconstitutional in the part where it does not provide that the term for an action for disavowal of paternity runs from the moment the husband – married to the child's mother – has become aware of his wife's adultery), the application of Articles 79 and 81 of the Cuban Family Code produces effects contrary to public policy in the part in which they provide that the (six-month) term for

* Pursuant to Articles 66(1) and 76 of Regulation (EC) No 44/2001, the Regulation applies to actions brought after 1 March 2002. According to Article 23 of the same Regulation, for the Regulation to apply it is sufficient that one of the parties be domiciled in a Member State.

an action of disavowal of paternity runs from the day on which the husband became aware of the registration of the child's birth certificate, and not from the (subsequent) moment in which he became aware of his wife's adultery.

4. *Corte di Cassazione, order of 4 April 2018 No 8174* 172

Pursuant to Article 12 of Law No 218 of 31 May 1995, the power of attorney used in proceedings held in Italy, even if issued abroad, is governed by Italian law. However, in so far as it permits the use of a public deed or a notarised private deed, Italian law refers to substantive law: it follows that, in such cases, the validity of the power of attorney must be assessed, as regards form, in accordance with the law of the place of issuance. To this end, however, it is necessary that the aforementioned institutions be at least known under the foreign law and that they be regulated in a way that does not conflict with the fundamental traits that characterize them in the Italian legal system and which consist, with regard to the notarised private deed, in the declaration of a public official that the document was signed in his or her presence and subject to the prior verification of the identity of the undersigned.

Pursuant to the Hague Convention of 5 October 1961 and the Italian-German Convention of 7 June 1969, the special power of attorney issued in Germany and submitted to an Italian court is exempt from both legalisation by the Italian consular authority and *apostille*. However, this power of attorney is null and void if it is not accompanied by a translation and by proof of the notary's certification that the signature was affixed in his or her presence by a person whose identity he or she established.

Pursuant to Article 182 of the Civil Code, the court that finds that the power of attorney is null and void, in any state and instance of the proceeding, must assign to the interested party a deadline to restore, with retroactive (*ex tunc*) effects, the compliance of the power of attorney with Italian law.

5. *Parma Tribunal, 4 April 2018* 174

In an action for custody and maintenance of a child brought by an Italian-Serbian national, habitually residing in Italy together with her child, against her Serbian husband, who relocated permanently to Germany before the dissolution of the marriage, Italian courts have jurisdiction pursuant to Article 5 of the Hague Convention of 19 October 1996 over the custody claim and pursuant to Article 3 of Regulation (EC) No 4/2009 of 18 December 2008 over the maintenance claim; in both cases, jurisdiction is based on the child's habitual residence in Italy.

Pursuant to Article 17 of The Hague Convention of 19 October 1996, Italian law governs the petition for sole custody of the child, with the related determination of the rights of access of the other parent, and the allocation of the family home; pursuant to Article 3 of The Hague Protocol of 23 November 2007, referred to in Regulation (EC) No 4/2009, Italian law also governs the maintenance claim since the child is habitually resident in Italy.

6. *Parma Tribunal, 5 April 2018* 175

Pursuant to Article 3(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the petition for divorce brought by a wife against her husband, both Romanian nationals, since both spouses were

last habitually resident in Italy and the wife was still residing there at the time the application was made.

Pursuant to Article 8(b) of Regulation (EU) No 1259/2010 of 20 December 2010, Italian law applies to the petition for divorce because the last habitual residence of the spouses is in Italy and less than one year has elapsed since the spouses ceased to have a common habitual residence there.

Pursuant to Article 28 of Law No 218 of 31 May 1995 on the formal requirements of marriage, the fact that the marriage, which was validly celebrated in Romania, was not recorded in the Italian civil registry does not constitute an obstacle to declaring the dissolution of the marriage.

7. *Genoa Tribunal, 14 May 2018* 177

Italian courts have jurisdiction over a dispute to establish the paternity of a child and the ensuing patrimonial (including maintenance) rights brought, together with her child, by a Russian mother, habitually resident in Russia, against an Italian national habitually resident in Italy. Such jurisdiction is established pursuant to Articles 3 and 37 of Law No 218 of 31 May 1995 as regards the paternity claim on the grounds that the defendant resides in Italy and pursuant to Article 3 of Regulation (EC) No 4/2009 of 18 December 2008 as regards the maintenance claim on the grounds that the defendant's habitual residence is located in Italy and that the maintenance claim is connected to a claim on personal status. On the other hand, pursuant to Regulation (EC) No 2201/2003 of 27 November 2003 Italian courts do not have jurisdiction over the claims on the rights to access, since the child does not reside in Italy and has no connections with this State. Pursuant to Article 4 of the Hague Protocol of 23 November 2007, referred to in Article 15 of Regulation (EC) No 4/2009, Italian law applies, as the *lex fori*, to the maintenance claim, since the maintenance creditor brought the action before the court of the place of the debtor's habitual residence, which is situated in Italy.

8. *Parma Tribunal, 23 May 2018* 179

Pursuant to Article 3(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the petition for the dissolution of marriage brought by a Moldovan national, habitually resident in Italy together with her daughter, against her husband, also a Moldovan national residing in Italy, since the spouses are habitually resident in Italy. Pursuant to Article 5(2) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts also have jurisdiction over the allocation of the family home and the maintenance of the couple's adult daughter on the ground that the two claimants are habitually resident in Italy.

Pursuant to Article 8(a) of Regulation (EU) No 1259/2010 of 20 December 2010, Italian law applies to the petition for the dissolution of the marriage since the spouses habitually reside in Italy. Pursuant to Article 3 of the Hague Protocol of 23 November 2007, Italian law also governs the patrimonial claims, given that the two maintenance creditors habitually reside in Italy.

Pursuant to Article 28 of Law No 218 of 31 May 1995 on the formal requirements of marriage, the fact that the marriage, which was validly celebrated in Moldova, was not recorded in the Italian civil registry does not constitute an obstacle to declaring the dissolution of the marriage.

9. *Bologna Tribunal, 6 June 2018* 182

Pursuant to Article 16 of the Rome Convention of 19 June 1980, referred to in Article 57 of Law No 218 of 31 May 1995, the application of the law of San Marino, which was chosen by the parties to settle a bank account and the surety agreements entered into between a creditor bank, the debtor company and its guarantors, does not produce effects that are incompatible with public policy. Even assuming that compliance with Legislative Decree No 385 of 1 September 1993 (Consolidated Law on Banking) was considered as a necessary pre-condition to avoid infringing public policy, in the instant case the bank account does not give rise to any unlawful compound interest on the basis of the aforesaid Legislative Decree and is in keeping with the deliberation issued by the Inter-Ministerial Committee for Credit and Savings on 9 February 2000 on the quarterly reciprocal capitalization of creditor and debtor interests. On the other hand, Articles 1956 and 1957 of the Civil Code on surety agreements do not apply.

10. *Corte di Cassazione, order of 11 June 2018 No 15073* 185

Pursuant to the Hague Convention of 5 October 1961, the power of attorney issued in a Contracting State (in the instant case, the Dominican Republic) and produced before an Italian court is exempt from the requirement of legalisation by the Italian consular authority. However, such power of attorney shall be accompanied by the so-called *apostille*, which is a form of authentication and, absent the *apostille*, it shall be null and void.

Pursuant to Article 182 of the Civil Code, the judge who finds that the power of attorney is null and void, in any state and instance of the proceeding, shall grant the party a period of time to regularise the deed with retroactive (*ex tunc*) effects. However, this does not apply when the power of attorney is issued for proceedings before the Corte di Cassazione or when its validity is challenged by the opposing party, since this exception is intended to allow the party to regularise the power of attorney on his or her own initiative by filing a document in which the defect has been remedied.

11. *Rimini Tribunal, 12 June 2018* 186

Pursuant to Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over a child custody case, which also includes rights of access and maintenance claims, brought by an Ecuadorian mother habitually resident in Italy against an Austrian father, who previously cohabited with her, since, on the date on which the court was seised, the child's habitual residence was located in Italy.

12. *Constitutional Court, 13 June 2018 No 120* 187

Pursuant to Articles 117(1) of the Constitution, 11 ECHR and 5(1), third sentence, of the European Social Charter, Article 1475(2) of the Military Code is unconstitutional in the part in which it prohibits members of the military from setting up professional trade union associations, notwithstanding the prohibition to join other trade union associations. However, the specific status and functions of military personnel require the respect of "limitations", which at present, pending the intervention of the legislator, are the same as those provided by the Military Code for representative bodies.

13. *Corte di Cassazione, 18 June 2018 No 16050* 190

The special power of attorney for cassation issued in a foreign State (in the instant case, the Principality of Monaco) and produced before an Italian court must be authenticated by a public official authorised pursuant to the *lex loci*; if, however, it is authenticated by the party's Italian attorney, whose power of authentication does not extend to the territory of foreign States, the power of attorney shall be null and void.

The remedies put forth at Article 182 of the Code of Civil Procedure against the nullity of a power of attorney are not available in proceedings before the Corte di Cassazione: pursuant to Article 125 of the Code of Civil Procedure, a power of attorney cannot be issued after the service of documents if the law mandates that the summons be signed by an attorney who was granted a special power of attorney, as is the case for the appeal in Cassation.

14. *Corte di Cassazione (plenary session), 27 June 2018 No 16957* 471

Jurisdiction to establish the legitimacy of the act by which a Prefect ordained the annulment of the recording in the civil registry of a marriage contracted abroad by persons of the same sex, on the grounds that the relationship is non-existent due to the lack of the spouses' gender diversity (such requirement being indefectible), lies with the civil court and not with the administrative court. In fact, establishing such legitimacy involves the preliminary assessment of the validity, in the Italian legal system, of a status acquired abroad: in accordance with Article 8 of the Code of Administrative Procedure, such assessment falls within the exclusive jurisdiction of the civil court.

15. *Pistoia Tribunal, decree of 5 July 2018* 475

It is unlawful for the registrar to refuse to record the birth certificate of a child, born in Italy but conceived by two women abroad by means of assisted procreation techniques, since the status of filiation is regularly constituted in respect of both women, notwithstanding the fact that it lacks the objective and subjective requirements laid down by domestic legislation for such techniques. In fact, the principle of protection of the child's best interests requires that the two mothers – who have expressed their consent to assume parental responsibility towards the child – be recognized the same status since, in the context of parental responsibility by consent, the establishment of filiation is based on consent and discriminations between children born to heterosexual or homosexual couples who have resorted to heterologous assisted procreation techniques are unacceptable.

16. *Bologna Tribunal, decree of 6 July 2018* 476

The civil registrar's rejection of the petition filed by two women – both mothers of a child born in Italy and conceived abroad through assisted procreation techniques – that the child's birth certificate not only name both parents but – by rectifying the certificate – also that the surname of the second mother be registered in addition to that of the first is illegitimate. According to a constitutionally proper and treaty-oriented reading of the Italian legal system, the full and effective realization of one's right to identity – which is granted absolute constitutional protection and finds its first and immediate expression in one's name – and the recognition of the equal importance of

both parents in the process of building this identity entail the child's right not only to be parented by both parents, as is the case with the children of heterosexual couples, but also to be identified, from birth, through the attribution of the surname of both parents.

17. *Corte di Cassazione (plenary session), 31 July 2018 No 20349* 629

When deciding a question of jurisdiction, the Corte di Cassazione has jurisdiction to also rule on the facts so as to proceed to a direct examination of the procedural documents and findings in order to acquire the necessary elements to answer the question. Pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a negative declaratory action on the discharge of a swap contract brought against two defendants, one domiciled in Italy and the other in a different Member State, if the parties entered into a jurisdiction clause in favour of a specific German court, provided that: on the one hand, the clause can be regarded as intended to confer exclusive jurisdiction on the German courts and not as referring only to venue (subject to conferring jurisdiction to the State in question), since the clause should not be interpreted solely on the basis of its wording and given that it suffices that the clause identifies the objective elements on the basis of which the parties selected the court (or courts) as having jurisdiction over their present and future disputes; on the other hand, the attribution of exclusive jurisdiction cannot be derogated from via Article 6(1) of Regulation No 44/2001, in accordance to which several defendants may be sued in the courts for the place where one of them is domiciled.

18. *Corte di Cassazione, order of 9 October 2018 No 24923* 363

Pursuant to Article 16 of the Preliminary Provisions to the Civil Code, in an action seeking the declaration that a contract by which a property located in Italy was transferred to a Swiss company is null and void, the burden of proving that the contract lacks consideration lies with the plaintiff, since consideration is a precondition to the claim. On the other hand, the burden lies on the foreign defendant to prove the existence of consideration in case consideration is challenged by the defendant. However, the judge on the merits is not precluded from availing him/herself of all the evidence acquired in the proceedings, regardless of its origin.

19. *Milan Family Court, 10 October 2018* 487

The requirement, set out at Article 44(1)(d) of Law 4 May 1983 No 184 for the purposes of adoption in special cases, that the court assesses the impossibility of placing the child in pre-adoptive custody must be interpreted in a broad and evolutionary sense so as to include any form of impossibility. In fact, this provision constitutes a safeguard aimed at protecting the child's preeminent interest, which is also pursued through the possibility that the child be adopted by the homosexual partner of his or her biological parent, who has in fact carried out parental functions, thus overcoming the preclusion referred to in Article 1(20) of Law 20 May 2016 No 76 on civil unions. Moreover, an individual's adequacy to undertake the role of parent is not *per se* excluded by the fact that the individual used medically assisted procreation techniques abroad.

20. *Trento Court of Appeal (Bolzano division), 13 October 2018* 489

With regard to an injunction for the payment of an administrative sanction issued pursuant to Article 316-*ter*, second paragraph, of the Criminal Code against a seasonal worker, a citizen of an EU Member State periodically employed at a South Tyrolean hotel, for having unduly received unemployment benefits (which, in accordance with Article 1 of the Presidential Provincial Decree 26 November 2012 No 42, is reserved to persons residing in the region of Alto Adige) by reason of the failure to provide information concerning her residence, reference should be made to the concept of habitual residence set out at Article 65 of Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems. Such concept is to be ascertained on the basis of the factual elements listed in Article 11 of Regulation (EC) No 987/2009 of 16 September 2009 implementing Regulation No 883/2004, in order to establish "the centre of interests of the person concerned, based on an overall assessment of all available information relating to relevant facts".

21. *Milan Tribunal (company law division), 16 October 2018* 101

In an action for injunctive relief and damages for infringement of an EU trade mark and unfair competition brought against a company based in The Netherlands and a company based in Italy operating in different segments of the same production and commercial chain, Italian courts have jurisdiction pursuant to Article 125(1) of Regulation (EU) No 2017/1001 of 14 June 2017 on the EU trade mark on the grounds that the defendant is domiciled in Italy and pursuant to Article 8(1) of Regulation (EU) No 1215/2012 of 12 December 2012, which allows to bring litigation in the courts for the place where any of the defendants is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. A judgment given on the basis of the above criteria shall also have effect in the other EU Member States, unless the defendant proves that the rights of the proprietor of the trade mark cannot be infringed in some of them.

22. *Corte di Cassazione, 8 November 2018 No 28509* 632

In the service of judicial documents between Member States, governed by Regulation (EC) No 1393/2007 of 13 November 2007, the burden is on the applicant for the service to prove that, in compliance with Article 8 of the Regulation, the document was drafted or accompanied by a translation into a language understood by the addressee or into the official language of the State of destination (in this case, Austria). Such proof may also be provided by means of the certificate issued by the Italian judicial officer: since it relates to a service effected abroad, which is to take place according to the law of the place of destination and under the control of the relevant receiving agency, such proof is not subject to an action for forgery (*querela di falso*) and may be rebutted by evidence to the contrary, unless the law of the State of destination provides for a category of trustworthy acts and accepts the document in question as constituting fully valid evidence. If the document served was not accompanied by a translation, a time limit for regularisation shall be prescribed, if the translation is necessary. Where, on the other hand, the document is not duly accompanied by a translation, the addressee shall be

entitled to a deadline for the regularisation or, alternatively, the peremptory time limit that runs from the reception of the document does not start to run and, until the applicant proves that the addressee received a translated copy of the document in accordance with the law of the place of destination of the service, the activity carried out by the addressee cannot be regarded as overdue.

23. *Cassino Tribunal, 15 November 2018* 699

Pursuant to Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over an action brought by an Italian company against a German company for the payment of goods sold and to be delivered in Germany, since in an international sale of goods the court for the place in a Member State where the goods were or should have been delivered in accordance with the contract has jurisdiction over disputes relating to all the obligations arising from the contract. The fact that the goods were handed over in Italy to carriers for air transport and the fact that, during the performance of the obligation, the buyer resold the goods to a third company are immaterial.

24. *Parma Tribunal, 15 November 2018* 695

In an action brought, together with her children, by a Ghanaian national habitually resident in Italy against her husband, also a Ghanaian national, seeking the dissolution of the couple's marriage celebrated in Ghana under Ghanaian law and child custody and maintenance, Italian courts have jurisdiction pursuant to, respectively, Article 3(a) and 8 of Regulation (EC) No 2201/2003 of 27 November 2003 (applicable regardless of the nationality of the parties). Notably, with regard to the application for the dissolution of the marriage, Italian courts have jurisdiction on the grounds that, at the time the application was made, the plaintiff had been habitually resident in Italy for more than a year, and, with regard to the custody claim, they have jurisdiction by reason of the children's habitual residence in Italy. Pursuant to Article 5(2) of Regulation (EC) No 44/2001 of 22 December 2000, applicable *ratione temporis* in lieu of Regulation (EC) No 4/2009 of 18 December 2008 in accordance with Article 76 of the latter, Italian courts also have jurisdiction over the child maintenance claim, since the maintenance creditors are habitually resident in Italy.

Pursuant to Article 31(1) of Law No 218 of 31 May 1995, applicable *ratione temporis* in place of Regulation (EU) No 1259/2010 of 20 December 2010, Ghanaian law, as the common national law of the spouses at the time of the application, governs the dissolution of the marriage. On the other hand, pursuant to Articles 1 and 2 of the Hague Convention of 5 October 1961, referred to in Article 42 of Law No 218/1995, Italian law governs the question of child custody of minor children, since the children have their habitual residence in Italy. Pursuant to Article 4 of the Hague Convention of 2 October 1973, made applicable in any event by Article 45 of Law No 218/1995 and applicable *ratione temporis*, Italian law also applies to the child maintenance claims since the habitual residence of the maintenance creditors is located in Italy.

25. *Milan Tribunal (company division), 27 November 2018* 701

Pursuant to Article 8(2) of Regulation (EU) No 1215/2012 of 12 December 2012, in a dispute concerning a license agreement for national, international and European trademarks brought by a company domiciled in Italy against persons domiciled in Italy, Italian courts have jurisdiction over a company, controlled by the plaintiff and domiciled in the United Kingdom, joined the defendants, since the claims made by the defendants against the plaintiff and the joint company relate exclusively to the breach of contract allegedly carried out by the former through the latter: hence, there is commonality of the original claim with the joint third party.

26. *Corte di Cassazione, order of 13 December 2018 No 32362* 702

A preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*) set forth at Article 41 of the Code of Civil Procedure is admissible even pending opposition proceedings to an injunction, because such a decree does not constitute a decision on the merits within the meaning of Article 41 of the Code of Civil Procedure.

Italian courts do not have jurisdiction over an action brought by an Italian seller company against a Venezuelan buyer company for the payment of the price of the goods, since the inclusion of the CIF Incoterm in the sale contract does not affect the identification of the place of performance of the obligation in question, which, pursuant to Article 7(1)(b), first indent of Regulation (EU) No 1215/2012 of 12 December 2012 – that, as a result of the reference made at Article 3(2) of Law No 218 of 31 May 1995 to the Brussels Convention of 27 September 1968 and subsequent amendments in force for Italy, is also applicable to defendants not domiciled in a Member State of the European Union – is to be identified as the place of final destination of the goods or, in this case, in Venezuela.

27. *Corte di Cassazione, order of 29 January 2019 No 2482* 705

According to the Hague Convention of 15 November 1965 on the service abroad of judicial documents, service by postal channels effected to a person based in the Republic of San Marino is valid provided it achieves the purpose of bringing the addressee to the knowledge of the document while respecting the right of defence and the right to be heard, since the Convention, which expressly provides for the right to use this method of service, was ratified by the Republic of San Marino with a decree dated 26 February 2002 and signed "Captains Regent"*. Conversely, the objection to service by postal channels was not established by law but only in "Annex B" of the same ratification decree, which is a purely administrative act devoid of signature and therefore unsuited to narrow the scope of application of the Convention.

28. *Corte di Cassazione, order of 21 February 2019 No 4996* 927

Pursuant to the Montreal Convention of 28 May 1999 for the Unification of Certain Rules Relating to International Air Transport, when the international

* In accordance with Article 10 of The Hague Convention of 15 November 1965, the Republic of San Marino declared its objection to the use of the means of service provided in the same provision.

air carrier is responsible for the loss of a passenger's baggage, the limitation of the carrier's liability, established in accordance with Article 22(2) of the Convention to the extent of one thousand Special Drawing Rights per passenger, operates in reference to damage of any nature suffered by the passenger, even if not monetary. If Italian law applies, pursuant to Article 2059 of the Civil Code such damage is to be compensated as a grave consequence of the serious infringement of the constitutionally protected inviolable rights of the person.

29. *Bolzano Tribunal, 26 February 2019* 930

In an action for legal separation, custody and maintenance of a minor daughter brought by the father against the mother habitually resident in Hungary with the daughter – the proceedings of which were initially stayed pursuant to Article 19 of Regulation (EC) No 2201/2003 of 27 November 2003 due to the prior pending of a proceeding having the same object in Hungary – the provisional and urgent measures adopted pursuant to Article 20 of Regulation (EC) No 2201/2003 with a decree of the President of the court which was never appealed or revoked – the content of which was expressly maintained with the stay order and subsequently with the decision which declared the non-existence of Italian jurisdiction in favour of the Hungarian judge – cease to be effective only when the judicial authority competent on the merits has adopted the measures deemed appropriate. It follows that, up to that moment, the service of the order based on the executive title constituted by the presidential decree (for the part relating to child maintenance) remains effective with regard to the persons established in Italy or the assets located therein, and the opposition to the order brought on this basis must therefore be rejected.

30. *Corte di Cassazione, 28 February 2019 No 6016* 933

In assessing the validity of a "general power of attorney to donate", in order to exclude the responsibility of a notary for having drawn up an act expressly prohibited by Italian law – in this case, an act void in accordance with Article 778 of the Civil Code –, Article 60 of Law 31 May 1995 No 218, which governs the law applicable to voluntary representation, applies only if it is clear that the principal authorized the attorney to exercise the powers conferred upon him (also) abroad by specifying the territorial scope of said powers.

31. *Bologna Tribunal, 1 March 2019* 878

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over an Irish company, which is a subsidiary of Facebook Inc., for the compensation of the damages caused by the publication, by a user, on the Facebook platform of allegedly defamatory content against a natural person and a company, since the hosting provider failed to block the illegal use of the platform. The clause prorogating jurisdiction in favour of the Californian courts, accepted by the claimant at the time of his registration onto the platform, is immaterial, since it covers disputes arising from the contractual relationship for the use of the platform, while in the present case the dispute relates to the liability for damages caused by the behaviour of a third party. Therefore, jurisdiction lies with the court of the "place where the harmful event occurred or may occur", which coincides with the place where the injured party (the claimant) had the centre of his interests

at the time the information was posted, although it cannot be excluded that, in relation to the reputation of the person, the damage may also occur elsewhere.

32. *Corte di Cassazione (plenary session), 8 March 2019 No 6884* 935

Pursuant to the customary rule codified at Article 11 of the New York Convention of 2 December 2004 on the Jurisdictional Immunities of States and Their Property, the British Council is not immune from Italian jurisdiction with respect to the claims brought by one of its employees seeking the declaration of nullity of the terms attached to the contracts concluded between the parties, resulting in the conversion of such contract into a permanent contract, and seeking the payment of the salary differences.

In fact, since in the meantime the employee was hired on a permanent basis, the question residually pending before the court is only the one concerning the monetary aspects and is, as such, unsuited to affect the functions of the foreign entity, since the declaration of the aforementioned nullity is a mere prerequisite for the reconstruction of the relationship from a financial point of view and for the assessment of the validity of the monetary claims.

33. *Corte di Cassazione, order of 12 March 2019 No 7007* 108

Pursuant to Articles 2 and 6(1) of the Brussels Convention of 27 September 1968, Italian courts have jurisdiction over the contractual claims brought in the context of an action for the compensation for damages caused by the explosion of pyrotechnical devices promoted by the injured party against both the Italian company importing such devices, produced in China, and the company based in San Marino from which the injured party purchased the devices. In fact, a person domiciled in a Member State may also be sued, where he or she is one of a number of defendants, in the courts for the place where any one of them is domiciled. This joinder of parties is to be excluded only in case a defendant is summoned for the sole purpose of establishing jurisdiction. In the present case, the precondition of such a connection between defendants is satisfied because the dispute was also brought against the alleged importer of the product, being immaterial that it was not proved, on the merits, that the Italian company had actually imported the defective products. Pursuant to Article 5(3) of the 1968 Brussels Convention, Italian courts also have jurisdiction over the non-contractual liability claims brought by the injured party since this provision is based on the existence of a particularly close connection between the dispute and the court for the place where the harmful event occurred and since, in the present case, the event giving rise to the initial damage must be identified in the firework explosion, which occurred in Italy.

34. *Corte di Cassazione, order of 14 March 2019 No 7265* 936

Pursuant to Article 37(3) of the Vienna Convention of 18 April 1961 on diplomatic relations, the income from employment of an Italian national, residing in Italy, who is part of the administrative staff of the embassy of a foreign State to the Holy See is not exempt from the payment of personal income tax ("IRPEF"): in fact, this provision, which puts forth an exception to the general principle for which non-residents have to pay taxes to the State in which they produce income, applies only to the tax relations of two States

bound by diplomatic relationships, and it does not entail a total and generalized exemption from tax obligations for staff members of diplomatic missions.

35. *Bergamo Tribunal, 15 March 2019* 937

Pursuant to Article 4(1)(b) of Regulation (EC) No 593/2008 of 17 June 2008, Italian law applies, as the law of the country in which the service provider has his habitual residence, to an action for the payment of the sums accrued under a service contract concluded between an Italian contractor company and an Austrian company for the renovation of a hotel located in Austria. In fact, the contract does not have a manifestly closer connection to Austria, in accordance with Article 4(3) of the same Regulation, for the sole fact that the hotel being renovated is located in Austria, all the more having the parties designated Bergamo as the exclusive forum and having referred in the contract to Article 1341 of the Civil Code as concerns unfair contractual terms.

36. *Corte di Cassazione (plenary session), order of 18 March 2019 No 7621* 114

In an action for annulment of a trust set up in the Cayman Islands by an Italian national and having as its beneficiary a foundation with its registered office in Italy and as trustee a company domiciled in Switzerland, brought by the trust settlor in the Cayman Islands against the aforementioned foundation and trustee, the prorogation clause in favour of the courts of the Cayman Islands (where neither the Brussels Convention of 27 September 1968, nor Regulation (EC) No 44/2001 of 22 December 2000, nor Regulation (EU) No 1215/2012 of 12 December 2012, nor the Lugano Conventions of 16 September 1988 or 30 October 2007 apply) contained in the deed of trust for disputes relating to the administration of the trust does not extend to the validity of the trust. In the absence of any allegations of rules on interpretation that differ from the law chosen by the parties to govern the trust (in the instant case, the law of the Cayman Islands), the prorogation clause is to be interpreted on the basis of the wording used in the clause and according to the intention of the parties: in common law, the term "administration" is commonly understood to refer to questions concerning the administration of the trust but not to questions concerning its validity. Moreover, a waiver of Italian jurisdiction cannot be inferred from the conduct of the plaintiff, who previously sought provisional measures in Switzerland to protect her rights: unless such judgment is final, the parties cannot be bound by their past choices of which court to seize with a dispute to the point of excluding the jurisdiction of the courts of another State, provided jurisdiction may be legitimately established in this latter State.

In the same dispute, pursuant to Article 6(1)(b) of the Lugano Convention of 30 October 2007 Italian courts have jurisdiction over the action seeking the declaration of the nullity of the trust and the action for the restitution of the assets in respect of which the beneficiary could have a legitimate claim. The act of bringing these two actions in a single proceeding cannot be defined as artificial or aimed at the sole purpose of provoking a shift in jurisdiction, since the actions for declaration of nullity and for restitution of the assets integrate a unitary title and are clearly interdependent.

37. *Monza Tribunal, 21 March 2019* 938

Pursuant to Article 3 of Regulation (EC) No 2201/2003 of 27 November

2003, Italian courts have jurisdiction over an action for legal separation, custody and maintenance of minor children brought by the mother against the father, both Senegalese nationals, on the ground that the last common habitual residence of the spouses is located in Italy, where the applicant still resided when she lodged her application.

Pursuant to Article 8(a) of Regulation (EU) No 1259/2010 of 20 December 2010, absent a choice of applicable law, Italian law applies to such questions on the ground that the habitual residence of the spouses at the time the application was lodged was located in Italy.

38. *Rome Court of Appeal, 26 March 2019* 126

Pursuant to Article 3 of the Rome Convention of 19 June 1980, the merits of an action for the payment of differences in remuneration brought against the Embassy of the Republic of Korea to the Holy See by a representative of the Republic of Korea is governed – with regard to two of the three contracts concluded between the parties, which do not include an express choice of applicable law – by Italian law: a tacit choice of this law can be inferred from the provisions of the contracts, given that the monthly salary was determined in Italian Liras, in the first contract, and in Euros, in the second; a thirteenth month's salary was provided for and a position was opened for the employee before the Italian pension fund. In these circumstances, it is for the court on the merits to identify the parameters for the determination of a constitutionally adequate remuneration, which may also be found in a collective bargaining agreement that does not apply between the parties, *i.e.*, in the instant case, the so-called national collective bargaining agreement (*contratto collettivo nazionale di lavoro – c.c.n.l.*) for employees of embassies, consulates and international bodies. With respect to the third contract, which contains an express choice of Korean law, Italian law must also be regarded as applicable. On the one hand, the application of Korean law, which gives the employee an overall lower remuneration than that to which he would be entitled pursuant to Italian law, would deprive the employee of the protection afforded by the mandatory rules of the law which would govern the contract in the absence of choice and, namely, Italian law. On the other hand, foreign law cannot be applied in Italy if its effects are contrary to public policy. Also with respect to this relationship, pursuant to Article 16(1) of Law No 218 of 31 May 1995 (*rectius*: of the Rome Convention of 1980), it is for the court on the merits to adjust the remuneration provided under the contract, even in case the employer does not adhere to one of the signatory trade unions. In performing this activity, the court shall take as a parameter the sector collective agreement, which represents the most appropriate instrument for determining the content of the right to remuneration, albeit limitedly to the contractual titles which, by their nature, constitute the expression of the just remuneration (hence, to the exclusion of additional remunerations and supplementary salary – apart from the thirteenth month's salary) and to the non-automatic seniority allowances.

39. *Catania Tribunal, 29 March 2019* 939

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over an action brought by a company operating in the hotel industry with a trademark registered in Rome against two companies – one based in Amsterdam and the other, a related company,

in Rome – for the trademark infringement and unfair competition, since the alleged offence was perpetrated via the Internet and the place of diffusion and where the offence was suffered coincides with the headquarters of the injured party. With regard to venue, pursuant to Article 19 of the Code of Civil Procedure and Article 120 paragraphs 3 and 6 of the Industrial Property Code, the Tribunal of Rome is competent as the place, respectively, of the defendant's headquarters, of the domicile elected by the plaintiff company at the time of registration of the trademark, and of the facts that allegedly violated the plaintiff's rights. The fact that the plaintiff dealt – also with reference to the events surrounding the trademark infringement – with a branch of the Italian defendant operating in Catania is irrelevant, since the latter carried out an activity of mere support and lacked any powers of attorney.

40. *Corte di Cassazione, 17 April 2019 No 10784* 365

Pursuant to Article 13(2) of the Hague Convention of 25 October 1980 on International Child Abduction, hearing the child and taking into account his or her views in proceedings on the child's return abroad are a necessary precondition for the legitimacy of the return order in accordance with Article 315-*bis* Civil Code and Articles 3 and 6 of the Strasbourg Convention of 25 January 1996: such precondition is not only formal in nature but also pursues the substantive aim of assigning dignity and legal relevance to the child's determinations and choices when expressed with discernment, unless there are particular reasons – which the court deciding on the merit shall specifically indicate – which would prevent the child from being heard, if this could be detrimental to the child, also taking into account his or her maturity. This is all the more true in case the child objects to being returned – and an alternative assessment based on other factual elements may not be put forth against the child's objection, in which case the court shall proceed to perform "a precise and autonomous prognosis that starts from the reasons for the refusal": it follows that the omission to hear the child – in light of the procedural consequences that may ensue therefrom since on such omission is premised the rejection of the return petition or the need for further investigation – cannot be justified by the fact that the child was heard elsewhere. The fact that the hearing of the child would have been pointless as a result of the child being conflicted as to his or her loyalty to one parent or the other is immaterial: the onus lies on the court to ensure minimum conditions for the hearing, in terms of providing a context in which the child is at ease, thus promoting the spontaneity and clarity of his or her statements.

41. *Corte di Cassazione (plenary session), 8 May 2019 No 12193* 369

Pursuant to Article 67 of Law 31 May 1995 No 218, a Mayor's appeal is admissible against the judgment of the Court of Appeal recognizing the effectiveness in Italy of a decree of the Superior Court of Justice of Ontario (Canada) which ascertained the parentage between two children born through surrogacy abroad and the spouse, an Italian citizen with no biological link with those children, and ordered the registration of such relationship in the birth records. The expression "whoever has an interest in them", which identifies the person who has legal standing to appeal to the Court of Appeal pursuant to such provision, does not refer exclusively to the parties to the proceeding

that gave rise to the judgment to be enforced: against this background, the Mayor's rejection of the petition for registration integrates the "objection" that Article 67 of Law No 218/1995 requires for the purposes of the onset of the dispute.

The refusal to proceed with the registration of the above mentioned foreign decree in the Italian civil status registry, unless grounded on formal flaws, gives rise to a dispute on status to be decided, in accordance with Article 67 of Law No 218/1995, in an adversarial proceeding with the Mayor, in his capacity as civil status officer, and, if necessary, with the Ministry of the Interior who has legal standing to intervene in the proceedings and to challenge the decree, in his capacity as the individual in charge in matters of keeping the civil status registry. On the other hand, the procedure of rectification of the civil status records laid down at Article 95 of the Presidential Decree of 3 November 2000 No 396 does not apply in the instant case.

Pursuant to Article 70(1) No 3 of the Code of Civil Procedure, which assigns to the Public Prosecutor the quality of indispensable party in cases concerning the status and capacity of a person, prescribing their intervention under penalty of nullity which can be raised by the court *sua sponte*, the body in question has legal standing to intervene in the proceedings for the recognition of the effectiveness of a foreign decree granting a status, since the claim qualifies as a dispute on status. On the other hand, the same body does not have legal standing to challenge the decision issued by the Court of Appeal, since the dispute cannot be counted either among the disputes for which the law recognizes legal standing to the Public Prosecutor or among the disputes on matrimonial matters. Therefore, neither Article 72(1) of the Code of Civil Procedure (which, with regard to the first category of disputes, attributes to the aforementioned body, in the event of intervention, the same powers as those of the parties) nor paragraphs (3) and (4) of the same Article (which, with regard to the second category of disputes, attribute to the Public Prosecutor the power to appeal) apply.

In the aforementioned procedure, the non-biological parent does not have legal standing to act also as legal representative of the children: irrespective of the conflict of interest with the representatives – which might be established in relation to the object of the request – in the instant case the existence of the power of representation is subordinate to the recognition of the effectiveness of the foreign decree, on which the possibility of attributing importance to the parentage also in the context of the Italian system is premised.

With regard to the recognition of the effectiveness of the foreign decree, the decree's compatibility with public policy, mandated by Articles 64 *et seq* of Law No 218/1995, must be assessed in light of not only the fundamental principles of the Constitution and the principles established in accordance with international and supranational law, but also of the manner in which the same principles have been enshrined in the regulation of the single institutes, as well as of the interpretation supplied by the constitutional and judicial jurisprudence, whose efforts towards synthesis and reconstruction give form to the living rights which cannot be disregarded in the determination of the notion of public policy as the fundamental values of a legal system in a given historical moment.

The recognition in Italy of the effects of a foreign decree which ascertains the

parentage between a child born abroad through surrogacy and the Italian intended parent conflicts with the prohibition of surrogacy provided at Article 12(6) of Law 19 February 2004 No 40. The protection of those values, which are reasonably considered to take precedence over the child's interests, in the context of a balancing act carried out directly by the legislature (for which the court cannot substitute its own assessment) does not exclude the possibility of giving relevance to the parental relationship by making recourse to other legal instruments such as adoption in special cases, regulated at Article 44(1)(d) of Law 4 May 1983 No 184.

42. *Corte di Cassazione (plenary session), order of 10 May 2019 No 12585* 132

In an action for the compensation of damages caused by the acts of the defendants, which have been identified as constituting unfair competition, and for the payment of a severance indemnity for the subsequent non-renewal of a long-standing port agency agreement with some of the defendants, brought by an Italian company against a Greek shipping company, a Greek ship management company and the Italian company which took over the port agency business, pursuant to Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012 Italian courts do not have jurisdiction over the claims relating to contractual liability for non-renewal of the port agency agreement and failure to give notice as a result of the prorogation clause in favour of a Greek court included in that agreement. It is immaterial that the dispute concerns indisposable rights, such as the agent's right to compensation in lieu of notice, since the provisions of Regulation (EU) No 1215/2012 must be regarded as taking precedence over Article 4 of Law No 218 of 31 May 1995. Conversely, pursuant to Articles 7 No 2 and 8 of the same Regulation, Italian courts have jurisdiction over the non-contractual liability claim brought against all the defendants.

43. *Corte di Cassazione (plenary session), order of 13 May 2019 No 12638* 138

In an action for contractual and non-contractual liability brought against a French bank in relation to a financial consultancy contract, followed by a loan agreement, containing a clause prorogating jurisdiction in favour of the Turin Tribunal, as well as in relation to a hedging contract concluded by the same parties in execution of the loan agreement and containing a clause prorogating jurisdiction, this time, in favour of the English courts, Article 31(2) of Regulation (EU) No 1215/2012 of 12 December 2012 (which, in case of *lis pendens* and related actions, exempts the court to which the parties have attributed exclusive jurisdiction from the obligation to stay the proceedings before it, in so far as it is subsequently seised) does not apply if, at the time the proceedings were instituted in Turin, the defendant company had already brought before the English High Court a negative declaratory action seeking to establish the absence of its liability for the above-mentioned securities. On the other hand, the ordinary "court first seised" rule set forth in Article 29 of the same Regulation applies, so that the court first seised shall proceed to verify its own jurisdiction, while the court subsequently seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Against this background, the request for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*) is inadmissible, since the decision on

the stay of proceedings is taken by the court on the merits and not by the Court of Cassation, the former being responsible for assessing whether the conditions are met for a compulsory stay (because the case amounts to *lis pendens* pursuant to the Regulation No 1215/2012) or for a discretionary stay (because the actions are related), or, again, the conditions for a stay of proceedings are not met because the parallel and simultaneous conduct of separate proceedings before different national courts does not entail the risk of conflicting judgments. The interim and provisional nature of the decision on the stay of proceedings is irreconcilable with the preliminary ruling on jurisdiction, the purpose of which is to prompt a preemptive and final decision on jurisdiction. A decision on jurisdiction would, in fact, frustrate the "court first seised" principle and, in any case, it would not be enforceable by the foreign court before which parallel proceedings are pending.

44. *Corte di Cassazione, 17 May 2019 No 13412* 145

In a proceeding for legal separation, in spite of the fact that a partial final judgment on the separation was rendered finding the wife at fault, the petition for sole custody of the couple's child made by the father is inadmissible on the grounds that a final judgment on the legal separation of the spouses, on parental responsibility and on child maintenance was rendered in Romania – in the context of a proceeding initiated after, but concluded before, the one commenced in Italy. On the one hand – in its judgment of 16 January 2019, in case C-386/17, delivered in connection with the proceedings at hand – the Court of Justice of the European Union has ruled out that the infringement by a court of a Member State of the rules on *lis pendens* laid down in Article 19 of Regulation (EC) No 2201/2003 of 27 November 2003 and Article 27 of Regulation (EC) No 44/2001 of 22 December 2000 precludes recognition of the judgment in another Member State on the ground that such judgment is manifestly contrary to public policy within the meaning of Articles 22(a) and 23(a) of Regulation No 2201/2003 and Article 34(a) of Regulation No 44/2001.

On the other hand, (i) with regard to the judgment on legal separation, the relevance of the ground for non-recognition set out in Article 22(c) of Regulation No 2201/2003 must be excluded, since a judgment which decides with finality on the legal separation of the spouses does not result in the dissolution of the matrimonial relationship but only amounts to the necessary – but not sufficient – condition for filing a petition for divorce: consequently, it cannot be regarded as identical to a judgment on divorce; (ii) with regard to the judgment on parental responsibility, the relevance of the ground of objection in Article 22(c) of Regulation (EC) No 2201/2003 must be excluded, since the precondition of irreconcilability with another judgment of the Member State addressed or of a third State relates exclusively to judgments rendered after the judgment for which recognition is sought; and (iii) with regard to the judgment on child maintenance, the irreconcilability with an earlier judgment given between the same parties on the same subject-matter and cause of action within the meaning of Article 34(3) and (4) of Regulation No 44/2001 must be excluded on the ground that, in the instant case, no earlier final decision was rendered on this issue.

45. *Corte di Cassazione, order of 4 June 2019 No 15254* 393

Pursuant to Article 13(2) of the Hague Convention of 25 October 1980 on international child abduction, the hearing of the child and the consideration of his or her views in a return procedure is a necessary pre-condition for the legitimacy of the return order pursuant to Article 315-*bis* of the Civil Code and Articles 3 and 6 of the Strasbourg Convention of 25 January 1996: such precondition is not only formal in nature but also pursues the substantive aim of assigning dignity and legal relevance to the child's determinations and choices when expressed with discernment. In particular, where the child has objected – outside the court of law – to being returned (such objection being an obstacle to the acceptance of the request for return, pursuant to Article 12(2) of the 1980 Hague Convention, provided a period of less than one year has elapsed from the date of the wrongful removal or retention) and the child's age and maturity are such that it is appropriate to take account of his or her views, the court may not refuse to proceed with the hearing absent a specific reason on this point and on the basis of the risk of a generic damage for the child.

46. *Corte di Cassazione, order of 11 June 2019 No 15714* 396

In international child abduction proceedings seeking the return of the children to the State of their habitual residence within the meaning of Article 3 of the Hague Convention of 25 October 1980, the burden lies on the person who opposes the return to prove that the preconditions listed in Article 13 of the Convention are met. However, the Family Court has the power to order inquiries *sua sponte* pursuant to Article 738(3) of the Code of Civil Procedure, without being bound by the decisions of the court of the State of the child's habitual residence: in this context, the Family Court is not bound by any constraints on proof and it can – as is the case with any other in chambers proceedings – base its decision on mere "information". However, the Family Court is precluded from making any assessments on custody.

47. *Corte di Cassazione (plenary session), 12 June 2019 No 15748* 400

Pursuant to Article 5(1) of the Brussels Convention of 27 September 1968 – which, as provided in the first part of Article 3(2) of Law 31 May 1995 No 218, applies in Italy also in case the defendant is not domiciled in a Contracting State –, Italian courts do not have jurisdiction over the action for payment of the services rendered in Italy by the plaintiff, residing in Rome, in performance of the mandate given to her by the defendant, having its seat in Guernsey. In fact, given that the obligation in question must be understood as the obligation under the contract law on which the action is based and which constitutes the subject-matter of the proceedings between the parties, and given that the place of performance of that obligation must be determined in accordance with the conflict-of-law rules of the court before which the action is brought – that is to say, pursuant to Article 4 of the Rome Convention of 19 June 1980, in accordance with Italian law as the law of the country which has the closest connection with the contract by virtue of the presumption which identifies Italy as the country of the habitual residence of the service provider, *i.e.*, the agent, at the time of the contract –, the place of performance of the payment obligation must be identified, in accordance with Article 1182(4) of the Civil Code, with that of the habitual residence, located abroad, of the service provider at the time of the contract.

Pursuant to Article 5(3) of the 1968 Brussels Convention, – which, as provided in first part of Article 3(2) of Law 31 May 1995 No 218, applies in Italy also in case the defendant is not domiciled in a Contracting State –, Italian courts do not have jurisdiction over the action for the declaration of the defendant's pre-contractual liability arising from the unjustified breach of the negotiations for the construction of a building complex in the Russian Federation (where the plaintiff conducted the negotiations), given that the place where the harmful event occurred does not encompass the place, situated in Italy, where the injured party claims to have suffered a monetary loss as a result of a damage which actually occurred and was suffered abroad, *i.e.*, in the Russian Federation.

48. *Corte di Cassazione (plenary session), 28 June 2019 No 17566* 412

In the context of a dispute concerning the international sale of goods, in light of the principles set out in the case-law of the Court of Justice of the European Union (CJEU) and of the national case law which has developed in accordance with it, it is not necessary to refer to the CJEU questions arising from the reference, made in a contract, to the FCA Incoterms 2010 ("Free Carrier... named place") in relation to the interpretation of Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000 in the part where it gives jurisdiction to the court for "the place in a Member State where, under the contract, the goods were delivered or should have been delivered" and of Article 23 of the same Regulation as concerns the relevance of the customs of international trade for the purposes of the prorogation of jurisdiction: in fact, the CJEU has already ruled on those provisions, specifying that the national court must take account of all the relevant terms and clauses of the contract, including those generally recognised and enshrined in the customs of international trade, such as Incoterms, provided they are suitable for identifying, with clarity, the place of delivery of the goods. As clarified by the CJEU, the clauses that regulate solely the transfer of risks lack such suitability. As also stated by the CJEU, the obligation provided at Article 267 TFEU pursuant to which the national court of last instance shall bring the matter before the CJEU ceases to apply where the question raised is materially identical to another question already referred to the CJEU in a similar case, *i.e.*, where an established case-law has already formed on the legal issue under consideration.

Pursuant to Article 5(1)(b) of Regulation No 44/2001 (which is mirrored at Article 7(1)(b) of Regulation (EU) No 1215/2012 of 12 December 2012) – which assigns jurisdiction to the court for the place of final delivery of the goods, where the goods enter into the material and not only legal possession of the buyer, and applies to all disputes arising from the contract, including that relating to the payment of the goods – Italian courts have jurisdiction over an action seeking the restitution of the price of the goods from a French seller company and the compensation for damages arising from the non-conformity of the products delivered by the latter: the reference, made in the proposal drafted by the seller company and in the orders of the buyer company, to the FCA Incoterms 2010 ("Free Carrier... named place") – and intended to regulate the transfer of risks and costs of subsequent transport to the second – fails to convey the clear and unambiguous will of the parties to derogate from the factual criterion of the final place of delivery, which – in the general terms and

conditions of the contract attached to the aforementioned proposal – is identified in the selling party's plants in Italy.

49. *Corte di Cassazione (plenary session), 5 July 2019 No 18081* 419

Pursuant to Article 21(1)(b)(ii) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over the claims made against an English company by an employee who, despite having carried out his activity in various countries, operated mainly through telework from his domicile in Italy, where he spent most of his working hours and organized his activities for the defendant. According to the above-mentioned provision, if the employee does not or did not habitually carry out his work in any one country, the employer domiciled in a Member State may be sued in the courts for the place where the business which engaged the employee is or was situated. The term "place of business" should be understood not as the place where the formal seat of the employer company is situated but as the place chosen by the latter to organise its business activity, which may differ both from the place of conclusion of the contract (in particular in contracts which, as in the present case, are concluded by exchange of correspondence) and from the territorial scope of the services.

50. *Corte di Cassazione (plenary session), order 8 July 2019 No 18257* 885

Pursuant to Article 33(1) of the Montreal Convention of 28 May 1999 for the Unification of Certain Rules Relating to International Carriage by Air, Italian courts have jurisdiction over the claim for damages for failure to provide services brought by two passengers, Italian nationals domiciled in Italy, in relation to a contract for passenger international air carriage, when the purchase of tickets has taken place entirely online, against an air carrier with its registered office in Moscow. In fact, in the case at hand the carrier's "place of business through which the contract has been made" is located in Italy, where the passengers are domiciled, since that is the place where the passengers became aware of the carrier's acceptance of the contractual proposal formulated by them via their online reservation and payment of the price.

51. *Corte di Cassazione (plenary session), order of 11 July 2019 No 18661* 422

Under the customary rule on restricted immunity, as codified at Article 11 of the New York Convention of 2 December 2004 on Jurisdictional Immunities of States and Their Property, Italian courts have jurisdiction over a dispute brought by a driver against the embassy of a foreign State in Italy seeking to establish the nullity or unlawfulness of his dismissal notified orally by that embassy, where the plaintiff, after the action was brought and in the course of the proceedings, opted for compensation in lieu of reinstatement in accordance with Article 18(3) of Law No 300 of 20 May 1970: the functions performed by the plaintiff are merely auxiliary, and the finding as to whether or not the dismissal is lawful is wholly incidental to the attainment of monetary compensation and is not capable of interfering with acts and conducts of the foreign State which amount to an expression of the State's self-organisation powers.

52. *Corte di Cassazione, order of 18 July 2019 No 19453* 891

Pursuant to Article 41 of Regulation (EC) No 44/2001 of 22 December 2000 (applicable *ratione temporis*), a German judgment of 22 June 2005 ordering

the payment of maintenance is eligible for enforcement in Italy on the ground that service performed in Italy, pursuant to Article 19(b) of Regulation (EC) No 1348/2000 of 29 May 2000, of the document instituting the proceedings in Germany does not constitute a ground for refusal under Article 34(2) of Regulation No 44/2001, since this provision does not require compliance with the formalities laid down in the State of service, unlike the different case governed by Article 19(a) of Regulation No 1348/2000. Therefore, in case of "direct" postal service within the meaning of Article 14(1) of Regulation No 1348/2000, service may also be performed by delivering the document to a person authorised by the addressee at his habitual residence, since Article 19(b) of the same Regulation provides that the document must be "actually delivered to the defendant or to his residence".

Although the certification issued by the foreign court (in accordance with Regulation (EC) No 4/2009 of 18 December 2008 (Annex I) or with Regulation No 44/2001 (Annex V)) on the regularity of service of the document instituting the proceedings on the defendant in default of appearance does not preclude an independent assessment by the court of the Member State in which enforcement is sought of the rituality of service of such document, with a view to a declaration of enforceability it is sufficient for the Corte di Cassazione to find that the court of origin has issued a certification that meets the purpose of facilitating the adoption, at an initial stage of the proceedings, of the declaration of enforceability of the judgment, as positively assessed by the enforcement court, irrespective of whether such certification may be traced back to the forms provided in Regulation No 44/2001 (Annex V) or Regulation No 4/2009 (Annex I).

53. *Corte di Cassazione (plenary session), 30 July 2019 No 20503* 159

The action brought by the heir of a principal, an Italian national, against the mandatary, a company with its registered office in Switzerland, for the compensation of the damage caused by the failure to comply with the reporting obligation incumbent on the latter is based on the mandate agreement: the fact that the agreement is extinguished as a result of the death of the principal does entail that the mandatary's obligations towards the principal's heirs are also terminated. Hence, the instant action does not qualify as an action in succession matters, since only disputes arising between actual or alleged universal or particular heirs and which have as their main object the establishment of property or rights that are or are deemed to form part of the estate qualify as "succession matters". Consequently, the criteria laid down at Article 50 of Law No 218 of 31 May 1995 on succession matters do not apply in the instant case. The Consular Convention signed on 22 July 1868 between Italy and Switzerland does not apply to this dispute, either, since pursuant to Articles 6, 7 and 17 of the Consular Convention the rules on jurisdiction provided therein apply only to "disputes relating to the succession of an Italian citizen who died in Switzerland, arising between the heirs, legatees or other parties involved in the succession".

Pursuant to Articles 2 and 5(1)(b) of the Lugano Convention of 30 October 2007, Italian courts do not have jurisdiction over the dispute, since the defendant company is domiciled in Switzerland and the mandate, concerning the holding of shares in companies located outside Europe, can only be executed by the mandatary (in Switzerland) or by the companies; Italian courts do not

have jurisdiction pursuant to Article 23 of the same Convention, either, since the contract provides that the place of performance be Switzerland.

The exclusion of arbitration from the scope of application *ratione materiae* of the 2007 Lugano Convention is irrelevant for the purposes of establishing the lack of jurisdiction of the Italian courts when the question whether the subject matter of the claim is included in the scope of the arbitration clause is not part of the question referred to the court with the request for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*).

54. *Belluno Tribunal, decree of 1 August 2019* 637

Pursuant to Article 44(1) of Law 31 May 1995 No 218, Italian courts have jurisdiction over the appointment of a temporary guardian in favour of an adult Macedonian national when the latter is present, or *a fortiori* resident, in Italy. In accordance with Article 43, second sentence, of Law No 218/1995, this measure shall be governed by Italian law.

Pursuant to both Articles 9 and 3 of Law No 218/1995, Italian courts have jurisdiction over the adoption of non-temporary or urgent measures aimed at the protection of an adult of Macedonian nationality residing in Italy, since the residence in Italy of the person to be protected is a ground of jurisdiction within the meaning of both provisions, so that it is not necessary to establish whether the question is a matter of voluntary or adjudicative jurisdiction.

Pursuant to Articles 43, first sentence and 13(1)(b) of Law No 218/1995, the protection of a Macedonian national residing in Italy is regulated by Italian law since, while according to the first sentence of Article 43 Macedonian law applies as the national law of the person concerned, pursuant to Article 13(1)(b) the reference made by Macedonian private international law to Italian law shall be taken into consideration. In this respect, Article 17 of the 2007 Macedonian Private International Law Act, which makes the protection of adults subject to the national law of the person concerned, is subject to the general exception clause in Article 3 of that Law, which – also in the light of the material interests underlying the case – must be interpreted in this case as referring to Italian law, since the person concerned resides in Italy, where she also receives from her son, who also resides in Italy, the care she needs.

55. *Corte di Cassazione, order of 13 September 2019 No 22932* 427

Pursuant to Articles 3 and 16 of the Rome Convention of 19 June 1980, in a dispute over the nullity of the term of employment in an employment contract, notwithstanding the designation by the parties of English law as the *lex contractus*, Italian law applies. In fact, at the time of the conclusion of the contract in question, the protection accorded to the employee amounted to a public policy limit thus precluding the introduction in the Italian legal system of English law, according to which the term of employment was regulated less favourably than pursuant to Law 18 April 1962 No 230. As a result of the support expressed by Law No 230/1962 for permanent contracts, also in the light of the limits put forth by the EU legislation on temporary employment, the conclusion of contracts such as the ones concluded between the parties is not permitted. Consequently, such contracts are null and void and the employment relationship shall be converted into a permanent one.

56. *Corte di Cassazione, order of 16 September 2019 No 22984* 431

Notwithstanding the fact that the petition for review filed in accordance with Article 112-*bis* of the European Patent Convention is an extraordinary means of appeal and does not have suspensive effect, in an action for the invalidity of an Italian patent and of the national portion of the corresponding European patent, in case the Board of Appeal issued a decision revoking the European patent, the fact that a petition is pending for review of such decision by the Enlarged Board of Appeal does not entail the termination of all grounds of conflict between the parties so as to justify a decision to dismiss the subject matter of the dispute, with regard to either the corresponding Italian patent or the national portion of the European patent.

According to Article 59 of the Industrial Property Code, the revocation of a European patent – even if it were final – does not produce effects with regard to the Italian patent. In fact, the provision sanctions the loss of effectiveness of the Italian title corresponding to the European patent only in the opposite case, *i.e.*, when it is certain that the European patent has not been and can no longer be revoked in opposition.

57. *Corte di Cassazione (plenary session), 17 September 2019 No 23100* 163

Pursuant to Article 8(a) of Regulation (EU) No 1259/2010 of 20 December 2010, which takes precedence over subparagraph (c) of the same article, Swiss law governs the dissolution of a marriage when both spouses are habitually resident in Switzerland, being immaterial that they both be Italian nationals.

In an action for parental responsibility over a child habitually resident in Switzerland, Italian courts have jurisdiction neither on Article 8 of Regulation (EC) No 2201/2003 of 22 November 2003, because the child does not reside in a EU Member State, nor on Article 12 (prorogation of jurisdiction) of the same Regulation when the jurisdiction of Italian courts has been contested by the mother. Moreover, Article 37 of Law No 218 of 31 May 1995 – pursuant to which Italian courts have jurisdiction in matters of parentage and relationships between parents and children (in addition to the instances referred to in Articles 3 and 9 of that Law) where one of the parents or the child is an Italian national or resides in Italy – is not applicable, since Article 42 of Law No 218/1995 (which is without prejudice to the applicability of the Hague Convention of 5 October 1961, now replaced by the Hague Convention of 19 October 1996) takes precedence over Article 37 of the same Law.

Pursuant to the 1996 Hague Convention, Italian courts do not have jurisdiction over that action, since Article 5 of the Convention provides that jurisdiction is to lie with the judicial authorities of the Contracting State of the child's habitual residence, in this case the Swiss court, and because, having regard to the mother's objection to Italian jurisdiction, the condition laid down in Article 10 of the Convention – namely that the parents and any other person having parental responsibility for the child accept jurisdiction – must be deemed as not having been met.

Pursuant to Article 5(2)(c) of the Lugano Convention of 30 October 2007, a person domiciled in a Contracting State may be sued for maintenance in another Contracting State whose courts, pursuant to national law, have jurisdiction over parental responsibility, provided the maintenance claim is ancillary to that on parental responsibility. Consequently, in the case at hand Italian

courts also lack jurisdiction over the child maintenance claim, since jurisdiction over such claim lies with the Swiss court, which has jurisdiction over the principal question of parental responsibility.

58. *Corte di Cassazione, order of 15 November 2019 No 29716* 170

Pursuant to Article 19(1) of Regulation (EC) No 1393/2007 of 13 November 2007, service of a writ of summons on a company which is established in the United Kingdom and did not file an appearance in court shall be deemed perfected if the standard form in Annex I, provided for by Article 10 of the Regulation to attest to the completion of the service, was filled in by a representative of the recipient, bears the representative's stamp, and was initialled – albeit in an illegible manner – by the representative since failure to sign the form in full cannot be regarded as a reason for invalidating service. This finds confirmation in the fact that, among the information requested at the bottom of the form – which has to be regarded as having regulatory value for the purposes of verifying the conformity of the certificate with the provisions of the Regulation –, is the indication "Signature and/or stamp" of the representative "and/or" of the office of the representative to which service is made.

59. *Corte di Cassazione, 21 November 2019 No 30416* 434

Article 6 of the Rome Convention of 19 June 1980 lays down special conflict-of-law rules for individual contracts of employment derogating from the general rules laid down in Articles 3 and 4 of that Convention. In accordance with the established case-law of the Court of Justice of the European Union, in case the parties have not chosen the law that governs the contract, in determining the applicable law the national court must not confine its assessment to the specific connecting factors referred to in Article 6(2)(a) and (b) – which provide for the application of the law, respectively, of the country in which the employee habitually carries out his or her work in performance of the contract and of the country in which the place of business through which he or she was engaged is situated. Rather, pursuant to the final rule of Article 6(2), last paragraph, the national court must also take into account the other elements of the employment relationship which could lead to the conclusion that the contract is more closely connected with a country other than the one identified in accordance with the criteria mentioned above, in which case the contract shall be governed by the law of that country.

60. *Corte di Cassazione (plenary session), 27 December 2019 No 34474* 438

Pursuant to Article 8 of the New York Convention of 2 December 2004 on Jurisdictional Immunities of States and Their Property, the mere participation of a consulate in both the administrative and judicial phases of an action brought against it by a former employee seeking the declaration that her termination was unlawful and, consequently, asking to be reinstated in her job, in which the consulate never invoked immunity from jurisdiction, shall not be interpreted as a waiver to that immunity by consent to the exercise of jurisdiction by the court.

Under the customary rule on restricted immunity, as codified by Article 11 of the 2004 New York Convention, Italian courts do not have jurisdiction over the instant dispute, since the assessment of the lawfulness of the termination with a view to the reinstatement of the employee is apt to interfere with acts

and conducts of the foreign State which are an expression of the State's sovereign powers of self-determination.

61. *Corte di Cassazione (plenary session), 9 January 2020 No 156* 898

Pursuant to Article 5 No 1(b) of Regulation (EC) No 44/2001 of 22 December 2000, as interpreted by the Court of Justice in the *Car Trim Gmbh* ruling and therefore in the light of Article 1 No 4 of Directive (EC) No 44/1999 of 25 May 1999, of Article 3 of the United Nations Convention on Contracts for the International Sale of Movable Property, signed in Vienna on 11 April 1980 and Article 6 of the United Nations Convention on the prescription of the international sale of goods, signed in New York on June 14, 1974, to distinguish between "the sale of goods" and "provision of services", the characteristic obligation of the contract in question is identified; for this purpose: a) the fact that the supply relates to goods to be manufactured or produced is irrelevant, even when the manufacturing or production activity has been carried out according to the needs of a specific customer; b) the circumstance that whoever manufactures or produces the goods does so by using, for an essential part, the material supplied by the purchaser, can lead to the qualification of the relationship as a provision of services; c) the fact that the seller is responsible for the quality and conformity with the contract of the goods produced by him argues in favor of the qualification of the relationship as a "sale of goods", while if the seller is only responsible for the correctness of the execution according to the buyer, this argues rather in favor of a classification as a 'supply of services'; the criterion indicated last is not only always relevant, but possibly also relevant on its own to justify one or the other qualification. These principles are relevant for the sole purpose of identifying the jurisdiction and not the regulatory qualification of the relationship referred to in court, which postulates the identification, according to the applicable national law, of the relevant material law regime. In the light of the criteria indicated, the one with which an Italian company has undertaken to continuously produce for a German company products intended to be used, within the framework of the latters's economic activity, in accordance with technical specifications, models and prototypes provided by the German company itself, which also indicated the suppliers from which to purchase the raw materials to be used (by the Italian company..) must be classified as a "service provision" contract, thus establishing the Italian jurisdiction.

Article 386 Code of Civil Procedure – who provides that the decision on jurisdiction is determined by the subject matter of the request and, when the judgment continues, does not prejudice the questions on the relevance of the law and on the admissibility of the request – assuming the subject matter of the request as a determining criterion of jurisdiction, that the regulatory rules of the Italian jurisdiction are applied with reference to the judicial request, that is to the constitutive facts of it (*causa petendi*) and to its object (so-called substantial *petitum*). It follows that, with reference to a dispute in which the qualification of a contract is discussed for the purposes of Article 5 No 1(b) of Regulation (EC) No 44/2001 of 22 December 2000, the European notions of "sale" and "provision of services" must be applied with reference to the content of the application and, therefore, verifying whether the *causa petendi* and the substantive *petitum* highlight a specific case *in thesi* attributable to one or the other abstract case in point. As part of the scrutiny of the

grounds for jurisdiction, as a complainant of a violation of a procedural rule and, therefore, inherent in the "procedural fact" relevant to identify jurisdiction, the Court of Cassation in Plenary Session is entitled to examine the factual emergencies evoked by the appellant indicated in the deed with which the application is proposed, or in those through which the so-called clarification of the application pursuant to Article 183(6) No 1 or Article 420(6) Code of Civil Procedure, also through documentary productions and the request for oral witnesses articulated into different chapters.

62. *Corte di Cassazione (plenary session), order of 24 January 2020 No 1605* 641

In a preliminary reference on jurisdiction (*regolamento preventivo di giurisdizione*), a claim for forgery pursuant to Article 221 of the Code of Civil Procedure brought in the course of proceedings is inadmissible, when the document pursuing this purpose is filed, at the same time as the party's request to be heard on the basis of such a claim, on the same day as the meeting of the court convened in closed chambers pursuant to Article 375 of the Code of Civil Procedure.

The motion alleging the invalidity of a special power of attorney, which lacks any indication as to the place of signature, authenticated by an Italian attorney authorised to do so, based on the failure to alledge and prove the presence in Italy of the undersigned, who is a resident of the United Kingdom and domiciled abroad, at the time of signature, cannot be granted. The burden of providing evidence to the contrary, which is necessary to overcome the presumption that such power of attorney has been issued in Italy, is borne by the party opposing the power of attorney in question. Furthermore, in the instant case the records show, in a duly documented manner, the undersigned's entry in Italy at the same time as the act to which the power of attorney is annexed.

The order of referral for the clarification of the conclusions ruling on the question of jurisdiction "as the proceeding currently stands" is not preclusive of a preliminary reference on jurisdiction (*regolamento preventivo di giurisdizione*), since, as the quotation underscores, it does not constitute a final decision on jurisdiction and, therefore, it does not amount to the case where the court issues a measure on jurisdiction which is not subject to revocation or amendments.

Pursuant to Article 50 of Law 31 May 1995 No 218, on the grounds of the Italian nationality of the deceased and the opening of the succession in Italy, Italian courts have jurisdiction over an action on succession matters brought against a defendant who is a national of the United Kingdom, resident and domiciled abroad, in the context of which a petition for inheritance and multiple related claims (for accounting, reduction of dispositions, and assessment of false will and donation) – so closely connected that it is expedient to hear and determine them together – are brought against various defendants, both Italian and foreign. The burdens faced by the foreign defendant in carrying out his/her defence are immaterial; in the instant case such burdens, that arise in relation to the several connected claims that justify the accumulation of defendants, are inherent to the entity and heterogeneity of the estate and to the complex activity, carried out by the *de cuius* during his lifetime, to relocate part of the assets abroad to various countries. It follows that the allegation of a fiction created by the plaintiff aimed at taking the dispute away

from the proper court does not find support, and that jurisdiction must be grounded on the basis of the plaintiff's claim.

63. *Corte di Cassazione (plenary session), order of 27 January 2020 No 1717* 646

The power of attorney, the underlying mandate of which was conferred via a deed certified by an Austrian notary public but devoid of the apostille provided pursuant to the 1961 Hague Convention on the Abolition of the Legalization of Foreign Public Acts, is valid. In fact, as between Italy and Austria Article 14 of the Agreement supplementing the Hague Convention on Civil Procedure of 1 March 1954, signed in Vienna on 30 June 1975, applies: such provision excludes the need for an apostille and provides that authentic instruments drawn up in one of the two States by a court, an administrative authority, or a notary public and bearing the seal of office, and those private instruments the authenticity of which was established by a court, administrative authority or notary public shall have the same value as those established or drawn up in the other State, without any legalisation or other similar formality being required.

Pursuant to Articles 65 and 66 of Regulation (EC) No 44/2001 of 22 December 2000, in an action brought in Austria by means of a writ of summons, the service of which was requested on 13 February 2002 and which was served on 11 March 2002 (*i.e.*, after 1 March 2002, the date on which said Regulation became applicable in its entirety), Regulation No 44/2001 applies, since the effects of Article 30(2) of the Regulation – according to which, if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court – are expressly limited to the matters governed by the section to which the said rule belongs, *i.e.* lis pendens and related actions. For any other purposes, in the absence of different provisions, the national law of the court before which the proceedings take place (*i.e.*, the *lex fori*) applies. In the instant case, such law is found in Code of Civil Procedure, which, with reference to the actions introduced by a writ of summons, identifies the initiation of litigation with the delivery of the writ to the addressee. Therefore, pursuant to Article 23 of Regulation No 44/2001, in the presence of a clause prorogating jurisdiction in favour of an Austrian court, contained in the contract concluded in 1991 between an Italian and an Austrian company, Italian courts do not have jurisdiction over the dispute.

Article 4(3) of Law 31 May 1995 No 218, in establishing that the derogation of the Italian jurisdiction is ineffective if the judge or arbitrators invested by the forum selection clause decline their jurisdiction, posits that the proceedings before the selected forum and those before the court subsequently seised have the same parties and the same cause of action. Consequently, the effectiveness in Italy of a judgment rendered in a previous proceeding held in Austria between the same parties is to be excluded, if, notwithstanding the fact that it concerns the same relationship, its ruling involves different effects compared to those claimed in the subsequent action. On the basis of the aforementioned judgment, it is not possible to affirm or decline jurisdiction *a priori*: in fact, jurisdiction is established on the basis of criteria that may change over time and, since the relevant criterion must exist at the time the proceeding is

instituted, such criterion may behave differently with reference to different judgments.

In the event the existence of an agreement prorogating jurisdiction on the grounds that the forum selection clause, included in a document between the parties, is the result of the document having been filled out outside of any agreement between the parties, is contested, the alleged interpolation affects the objectivity of the document, so as to amount to material falsehood, which entails that the document did not originate from the person who signed it. Against such forgery, an action can be brought in accordance with Articles 221 *et seq.* of the Code of Civil Procedure. The mere objection against the correspondence between what has been declared and what was intended to be declared is, on the other hand, sufficient when the undersigned merely objects that the document was filled out in a manner which is different from what was agreed: this hypothesis amounts to a breach of the mandate to fill out (*ad scribendum* mandate) since, through the agreement to fill out the document, the undersigned endorses in advance the result that arises from the formula that will be adopted by the filler.

64. *Rome Tribunal, 11 February 2020* 447

To contest the existence of parentage between two children born from surrogacy and the intended parents, only one of whom has a genetic link with the children, the children's curator shall file against the individuals identified as parents in the children's birth certificate, formed abroad and recorded in the Italian civil registry, an objection to the recognition of the legal parentage for lack of truthfulness, in accordance with Article 263 of the Italian Civil Code. In fact, the consent given by the intended mother to the medically assisted procreation performed abroad, as a result of which she became the mother of the children, may be construed as an expression of will which is similar to a declaration of recognition. Without prejudice to the fact that the prohibition of surrogacy, sanctioned at Article 12 of Law No 12 of 19 February 2004, is considered to embody a public policy principle and although the Italian legal system is clearly in favour of the overlying of legal status and genetic origin, the ascertainment of an individual's biological and genetic origin does not constitute a constitutionally protected interest such as to escape any balancing exercise: to the contrary, the *favor veritatis* must be balanced against the right of the child to a stable relationship, even if such relationship was constituted in the absence of a genetic link with the parents. Such assessment is to be made on a case-by-case basis. An assessment based on general and abstract categories is possible in the recognition of a parentage that has yet to be formally recognized; however, in a case such as the instant, where an action is brought seeking to overrule a parentage which (as a result of the fact that the birth certificate was recorded in Italy) has already been recognized, the decision on the recognition of the status shall necessarily be taken on the basis of a concrete assessment that is not based on general and abstract categories (unlike what occurs with regard to public policy), since such decision will affect the children's identity (such identity relying, *inter alia*, on the recognition, that has already taken place, of the foreign certificate in Italy). One's right to know their origins is predicated on the manner by which the law of the State where the birth certificate was formed gives access to such information: since the Italian legal system does not grant the individuals born from

heterologous medically assisted procreation practices the right to know the name of the donors of the (male or female) genetic material that led to their birth, one's right to know their origins cannot be construed as an unconditional right in the Italian legal system.

65. *Corte di Cassazione, order of 24 February 2020 No 4792* 654

Pursuant to Article 13(2) of the 1980 Hague Convention on international child abduction and Article 11 of Regulation (EC) No 2201/2003 of 27 November 2003, in return proceedings the hearing of the child and the due consideration of his or her views are necessary pre-conditions for a lawful return decree pursuant to Article 315-*bis* of the Civil Code and Articles 3 and 6 of the Strasbourg Convention of 25 January 1996 on the exercise of children's rights, in order to ascertain whether there is any opposition to the return of the child. The hearing of the child may also be carried out by persons other than the judge, in accordance with the modalities established by the court (in particular, by a consultant appointed by the court). However, given the urgency and the provisional nature of the proceedings in question, it is not necessary to supplement the adversarial procedure against the child, provided a special administrator is appointed.

In light of the rules on international abduction, as set out in the 1980 Hague Convention on International Child Abduction and in Regulation (EC) No 2201/2003, the place from which the child must not be arbitrarily removed and to which, if removed, he or she must be immediately returned is the place of the child's habitual residence. Such place is to be understood as the place where the child, by virtue of a durable and stable (including *de facto*) stay, has the centre of his or her emotional (not only parental, but also *i.a.* educational and social) ties which result from the unfolding of his or her daily life in the relationship. It entails that the child's physical presence in the State is not, by any means, temporary or fortuitous, and his or her residence denotes a certain degree of integration in the social and family environment. However, for the purposes of ascertaining the child's habitual residence, the child's presumed cultural background, the depth and significance of his/her emotional bond with the adult who unlawfully removed him/her or the child's placement in a school in the city of residence of the adult who unlawfully removed him/her are immaterial.

66. *Corte di Cassazione, order of 24 February 2020 No 4819* 660

Absent any elements pointing to the fictitious nature of a marriage and to the lack of spousal affection, the factual separation of the spouses does not preclude the acquisition of the Italian nationality by marriage with an Italian national: in fact, according to the clear and unambiguous wording of Article 5(1) of Law 5 February 1992 No 91, the acquisition of the Italian nationality by marriage by a foreign spouse is precluded only by the legal separation of the spouses, to the exclusion of the merely factual separation.

67. *Corte di Cassazione (plenary session), order of 2 March 2020 No 5682* 662

In an action brought by an Italian bank against, respectively, two individuals (natural persons, and debtors of the bank) who reside in Italy, a Luxembourg company wholly owned by the two debtors, and a Luxembourg company wholly owned by the latter company, seeking, pursuant to Article 1418 of

the Civil Code, the declaration of nullity by reason of simulation or, in the alternative, the revocation pursuant to Article 2901 of the Civil Code, of the minutes of the extraordinary shareholders' meeting of the first company concerning a capital increase subscribed by the aforementioned individuals through the contribution of real estate owned by them, as well as of the minutes of the extraordinary shareholders' meeting of the second company concerning a capital increase subscribed by the first company through the contribution of the same real estate, the jurisdiction of Italian courts is not excluded from the exclusive jurisdiction of the Luxembourg courts in company matters pursuant to Article 24(2) of Regulation (EU) No 1215/2012 of 12 December 2012. In fact, although it relates to acts documented in the minutes of the extraordinary shareholders' meetings of the two Luxembourg companies, the main claim for invalidity for fraud does not require the ascertainment of the validity of such acts in the light of the applicable company law or the bylaw provisions on the functioning of the organs of such companies. In fact, such claim only requires the ascertainment of the conformity of the collective and individual will, as expressed in the contested minutes, with the actual will of the individuals who have carried out the acts documented in those minutes. With regard to this action, pursuant to Article 4 of Regulation No 1215/2012, Italian courts have jurisdiction over natural persons residing in Italy and, pursuant to Article 8(1) of the same Regulation, over the two Luxembourg companies in consideration of the close connection with the claims brought against the aforementioned natural persons.

68. *Corte di Cassazione (plenary session), 6 March 2020 No 6456* 916

In an action brought by an investor domiciled in Italy for the negative ascertainment of the non-fulfillment of the obligations arising from an online trading account contract for the performance of financial investment activities, the stipulation of which was preceded and determined by "activity marketing" and product promotion carried out by the Italian branch of the defendant Danish company, Italian jurisdiction exists pursuant to Article 18(1) of Regulation (EU) No 1215/2012 of 12 December 2012, since, on the one hand, pursuant to Article 17(1) of the same Regulation, as interpreted by the Court of Justice with the judgment of 3 October 2019, in case C-208/18, the connecting criteria referred to in section four are applicable, even if the plaintiff has specific professional skills in the field of financial investments as general manager of a cooperative credit bank, since the contract does not fall within the scope of the professional activity of that person and was concluded as a consumer, and for the other, the clause of extension of jurisdiction in favor of a Danish court included in the contract in question is ineffective pursuant to Article 19 of the Regulation, since in the matter in question the derogation from jurisdiction can only occur with an agreement "after the dispute has arisen".

For the purposes of Article 18 of the aforementioned Regulation, the indication of the judge of the "place where the consumer is domiciled" must be understood as capable of establishing the jurisdiction of the Member State, as a whole or without distinction, in which the criterion in question is perfected, operating the relevant rules in the division of jurisdiction exclusively between Member States, while within the legal system of each of these the different rules governing the attribution of territorial jurisdiction operate. Therefore,

once the relevant place for the purposes of attributing jurisdiction to the judge of one of the Member States has been identified by the European law, the division of territorial jurisdiction and, with it, the discipline of proposition and the detection of the defect of the latter; so that any resolution on a (possible) issue of territorial jurisdiction, which (in its broadest terms, starting from its actual proposition) can be examined in the continuation of the merit judgment, is outside the scope of the jurisdiction regulation.

69. *Corte di Cassazione (plenary session), 11 March 2020 No 7012* 666

Pursuant to Articles 107 and 108 TFEU and Article 133(1), letter z-*sexies* of the Administrative Code, the administrative court which is asked to rule on the violation of Article 107(1) TFEU of a State aid not notified in accordance with Article 108(3) TFEU, before a declaration of compatibility/incompatibility has been issued by the European Commission, has every power to preserve the effectiveness of the Commission's forthcoming decision on the incompatibility of the State aid with the common market. In this way, the assessment made by the national court – while pursuing as its objective the immediate protection of the interested parties and not aiming at taking over the Commission's area of competence – includes the identification of a situation that qualifies as State aid in theory and subsequently extends to whether an actual obligation of prior notification to the Commission has remained unfulfilled.

Against the decision of the Council of State in this procedure, pursuant to Article 111, last paragraph of the Constitution appeal for cassation is admissible on jurisdiction grounds when it is claimed that the Council of State has exercised exclusive jurisdiction powers in cases where the law does not allow for such exercise, thus invading the powers that fall within the exclusive jurisdiction of the European Commission in accordance with Article 108(1) TFEU.

70. *Terni Tribunal, 18 March 2020* 675

In a dispute for the dissolution of marriage between two spouses, one habitually resident in the United Arab Emirates and the other in Spain, previously separated by the same Italian court, Italian courts have jurisdiction pursuant to Article 5 of Regulation (EC) No 2201/2003 of 22 November 2003, according to which a court of a Member State that has given a judgment on legal separation "shall also have jurisdiction for converting that judgment into a divorce". The rationale of the provision is to create a unitary jurisdiction over matters falling within the scope of the Regulation in the event that the national systems provide for legal separation as a necessary precondition for divorce, as is the case with Italian law.

As concerns the applicable law, Regulation (EU) No 1259/2010 of 20 December 2010 applies, given the universal nature of the legislation contained therein in accordance with Article 4. Pursuant to Article 9 of Regulation No 1259/2010 – according to which, where legal separation is converted into divorce, the law applicable to divorce shall be the law applied to the legal separation – Italian law applies. Such law is identified pursuant to Article 8(b) on the basis of the last habitual residence of the spouses and the applicant's residence at the time the court is seized and, in any event, pursuant to Article 8(d) as the law of the State where the court is seised.

71. *Corte di Cassazione (criminal division), 2 April 2020 No 11269* 677

Article 174(3) of Legislative Decree 22 January 2004 No 42 – according to which, in the event of the unlawful removal or export of objects of artistic, historical, archaeological, ethno-anthropological, bibliographical, documentary, or archival interest, such objects are subject to confiscation by the court, unless they belong to a person who is not involved in the offence – places on the third party who intends to avoid confiscation the burden of proving that he/she relied in good faith on a situation that made ignorance or lack of diligence excusable. With reference to a sacramentary which was stolen in Italy in 1926, transferred to Switzerland, first, and subsequently to the United States, in the absence of elements that are objectively indicative of a legitimate previous acquisition, this burden of proof is not satisfied by the simple allegation made by the current U.S. museum owner – that initially received the sacramentary on deposit and, subsequently, as a donation from a U.S. collector – of its alleged good faith based on the good reputation enjoyed by the collector in the United States.

72. *Corte di Cassazione, 3 April 2020 No 7668* 466

Since the procedure laid down in Presidential Decree 3 November 2000 No 396 to rectify civil status records is aimed at removing the discrepancies between a situation, as it is or should be according to the law, and the situation as it results in the records by reason of a flaw in the civil status records themselves, the court has full assessment powers (as opposed to the power to conduct summary proceedings) to ascertain the equivalence of what the parent requested to appear in the child's birth certificate as regards the circumstances that led to the birth and the genetic and biological parentage and, as in the instant case, as regards the fact that the intended mother gave her consent to the medically assisted procreation procedure performed abroad.

The rectification of the birth certificate of a child, born in Italy from heterologous medically assisted procreation performed abroad, to identify both the biological and the intended mother cannot take place because it is in contrast with the prohibition for homosexual couples to access to medically assisted procreation. Such prohibition is inferred from Articles 5 and 12(2) of Law 19 February 2004 No 4, which postulate that only one person has the right to be identified as the mother in a birth certificate: such right presupposes a biological and/or genetic link with the child and is applicable to birth certificates formed or to be formed in Italy, regardless of the place where the medical procedure took place. Therefore, the rationale which justifies the recognition in Italy of acts validly formed abroad declaring the parentage between a child and two women – in respect of which, pursuant to Articles 16 and 64(1)(g) of Law 31 May 1995 No 218, applies the principle of public policy on the protection of the right to continuity of the status acquired abroad, together with the value of the circulation of legal acts, as an expression of the openness of the Italian legal system to cross-border instances of which the system of private international law can also be said to be an expression – may not be extended to the instant case. This is not the case with respect to male homosexual couples, for whom artificial parenthood necessarily goes through the different practice of surrogacy (or gestation for others) which is prohibited pursuant to Article 12(6) of Law No 40/2004: such provision is considered to

embody a principle of public policy, intended to protect fundamental values, such as the dignity of the surrogate and the institution of adoption, considered by the legislator to take precedence over the interest of the child, without prejudice to the possibility of giving relevance to the parentage by means of other legal instruments, such as adoption.

73. *Corte di Cassazione, 7 April 2020 No 11626* 681

Pursuant to Article 36 of Legislative Decree 8 June 2001 No 231, Italian courts have jurisdiction over a foreign company, operating in Italy without a registered office in Italy, for an administrative offence deriving from a predicate offence, for which Italian courts have jurisdiction, perpetrated by the legal representatives of the company itself or by persons subject to the direction or supervision of others when the other criteria for imputation of liability pursuant to Article 5 *et seq.* of that Legislative Decree are met. In fact, pursuant to Article 3(1) of the Criminal Code, a company is subject to the obligation to comply with Italian law and, in particular, criminal law, regardless of its nationality or of the place where it has its registered office, and regardless of the existence – or lack thereof – in the company's country of origin of rules that regulate the same matter in a similar manner, being immaterial that the fault in the organisation, and therefore the preparation of inappropriate measures, took place abroad. There is no reason to believe that legal (as opposed to natural) persons are subject to a special policy in relation to this, so as to escape the principles of compulsoriness and territoriality of criminal law that are codified in Articles 3 and 6(1) of the Criminal Code. Furthermore, in defining the scope of application of Legislative Decree No 231/2001, Article 1(2) thereof does not provide for any distinction between bodies having their registered office in Italy and those having their registered office abroad.

It should also be noted that, pursuant to Article 25 of Law 31 May 1995 No 218, companies, associations, foundations and any other public or private body, even if devoid of associative nature, are governed by the law of the State in the territory of which they were incorporated and by Italian law, if the seat of the administration is located in Italy or if the main object of such bodies is located in Italy, since this provision clearly regards aspects of private law (of regulation of constitutive, statutory, organisational, operational aspects etc.) and it does not, in any way, exempt legal persons who "are in the territory of the State" from observing the criminal laws in force in Italy (as is also the case with natural persons). Moreover, subjecting a foreign entity to the administrative offence in question does not amount to discriminatory treatment between legal (including EU) entities, in contrast with the freedom of establishment enshrined in Articles 49 and 55 TFEU (*ex* Articles 43 and 48 EC).

74. *Milan Tribunal, decree of 7 May 2020* 920

Pursuant to Article 6 of Regulation (EC) No 805/2004 of 21 April 2004, an injunction ordering the delivery of goods, provisionally enforceable and duly notified, for which the deadline for filing opposition has not yet elapsed, is not eligible to be certified as a European enforcement order if the debtor has expressly acknowledged its debt outside a judicial proceeding. In fact, Article 3(a) of Regulation No 805/2004 (according to which the credit is considered uncontested when "the debtor has expressly agreed to it by admission or by

means of a settlement which has been approved by a court or concluded before a court in the course of proceedings") cannot be construed as meaning to give importance to the declaration of express recognition made by the debtor outside a judicial proceeding, since, although the wording of the Italian version of the provision can in principle allow an interpretation such that only the settlement (and not the declaration) must be approved by the judge or concluded before the judge in the course of a judicial proceeding, such a conclusion, denied by the German version of the provision and by recital No 5 of the Regulation, is not sustainable for reasons of internal coherence of the law, as it would be tantamount to equating profoundly different situations, such as a declaration removed from judicial control and a settlement approved by the judge or concluded before it. Moreover, the same injunction cannot be certified as a European enforceable order pursuant to Article 3(b) of Regulation No 805/2004, since the deadline for filing opposition against the decree has not yet elapsed, so that the absence of opposition referred to in this provision cannot be considered to have been perfected. The decree in question could in any case circulate in the European judicial area pursuant to Article 2(a) of Regulation (EU) No 1215/2012 of 12 December 2012, which requires that the order for payment has been served but (regardless of the absence of an objection) not also that the term to file the opposition has expired, and which also allows the circulation of decisions other than monetary judgments.

75. *Corte di Cassazione (plenary session), order of 26 June 2020 No 12865* 922

The preventive regulation of jurisdiction is admissible when the relative application sets out the details of the dispute necessary for the definition of the question of jurisdiction, indicating the parties, the subject and the title of the application and specifying the procedure to which the application refers and the phase in which it is found, thus satisfying the requirement of summary presentation of the facts of the case, established by Article 366(1) No 3 Code of Civil Procedure, in order to allow verification of compliance with the conditions for the availability of the vehicle, imposed by Article 41 Code of Civil Procedure. This tool can also be used by the same person who has chosen the judge of whose jurisdiction he then had reason to doubt following the objections of the other party, or of his own spontaneous rethinking, in the presence of reasonable doubts about the external limits of the judge's jurisdiction, which are based on the concrete and immediate interest in a resolution of the question by the joint sections, definitively and unchangeable, in harmony with the constitutional principle of the reasonable duration of the process.

Pursuant to Article 27 of the Lugano Convention of 30 October 2007 in an action brought by a Swiss company against three Italian companies for the negative declaration of the breach by the former of a settlement agreement, there is *lis pendens* with respect to a proceeding previously instituted before the Lugano Tribunal by one of the three Italian companies in question against the same Swiss company for the performance of the same settlement agreement, since between the two proceedings there is identity of claim and object, which also open to the possibility of incompatible judgments. This is the case even when the first action was brought only against some of the parties necessary joinders and the subsequent one against all and the settlement

agreement in question contains a prorogation clause in favour of the Lugano Tribunal, in particular, previously seised, since it is for the court previously seized to verify the existence of the clause and determine whether the parties have actually agreed on its exclusive jurisdiction. Since the nature of the clause is subject to an assessment on the merits by the court previously seised – which arises downstream, and not upstream – of the determination of jurisdiction, the decision on jurisdiction by the Italian court subsequently seized would nullify the effectiveness of the principle of prevention: hence, the inadmissibility of the preventive regulation of jurisdiction.

EU CASE-LAW

Competition: 6, 9.
Consumer protection: 5, 7, 10, 35, 45.
Contracts: 3, 35.
EC Regulation No 1346/2000: 32, 41, 42.
EC Regulation No 44/2001: 19, 44.
EC Regulation No 2201/2003: 23, 36.
EC Regulation No 805/2004: 21.
EC Regulation No 1896/2006: 45.
EC Regulation No 593/2008: 16, 35, 37.
EC Regulation No 4/2009: 30, 36.
EU Citizenship: 4, 8, 31, 33.
EU Law: 20, 26.
EU Regulation No 650/2012: 18.
EU Regulation No 1215/2012: 12, 16, 22, 27, 28, 32, 34, 38, 40, 43, 46.
EU Regulation No 655/2014: 39.
External relations: 14.
Freedom of movement of workers: 24.
Freedom to provide services: 1, 2.
Industrial property: 29.
Jurisdiction: 11, 15, 17.
Liability of Member States: 25.
Preliminary ruling: 13.
Treaties and general international rules: 11, 15, 17, 35, 38.

1. *Court of Justice, 13 November 2018 case C-33/17* 204

Article 56 TFEU must be interpreted as precluding legislation of a Member State, under which the competent authorities can order a commissioning party established in that Member State to suspend payments to his contractor established in another Member State, or even to pay a security in an amount equivalent to the price still owed for the works in order to guarantee payment of the fine which might be imposed on that contractor in the event of a proven infringement of the labour law of the first Member State.

2. *Court of Justice, 14 November 2018 case C-18/17* 205

Articles 56 and 57 TFEU, together with Chapter 2, paragraph 2 of Annex V to the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European

Atomic Energy Community must be interpreted as meaning that a Member State is entitled to restrict, by the requirement of a work permit, the posting of Croatian workers who are employed by an undertaking which has its registered office in Croatia, when the posting of those workers involves their hiring-out, within the meaning of Article 1(3)(c) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, to an undertaking established in another Member State, with a view to that latter undertaking providing services in the first of those Member States.

Articles 56 and 57 TFEU must be interpreted as meaning that a Member State is not entitled to require that third-country nationals, who are hired out by an undertaking established in another Member State to an undertaking also established in that Member State with a view to the provision of services in the first Member State, have work permits.

3. *Court of Justice, 15 November 2018 case C-330/17* 206

Article 23(1) in conjunction with Article 2(18) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community must be interpreted as meaning that, when indicating air fares for intra-Community air services, air carriers who do not express those fares in euros are required to choose a local currency that is objectively linked to the service offered. That is the case in particular of the currency which is legal tender in the Member State in which the place of departure or arrival of the flight is located.

Thus, in a situation in which an air carrier established in a Member State in which the euro is legal tender offers on the internet an air service for which the place of departure of the flight is located in another Member State in which a currency other than the euro is legal tender, the air fares may, if they are not expressed in euros, be indicated in the currency which is legal tender in that other Member State.

4. *Court of Justice, 12 March 2019 case C-221/17* 204

Article 20 TFEU, read in the light of Articles 7 and 24 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State, which provides under certain conditions for the loss, by operation of law, of the nationality of that Member State, which entails, in the case of persons who are not also nationals of another Member State, the loss of their citizenship of the Union and the rights attaching thereto, in so far as the competent national authorities, including national courts where appropriate, are in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the persons concerned recover their nationality *ex tunc* in the context of an application by those persons for a travel document or any other document showing their nationality. In the context of that examination, the authorities and the courts must determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of each person concerned and, if relevant, for that of the members of their family, from the point of view of EU law.

5. *Court of Justice, 14 March 2019 case C-118/17* 720

Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that:

– it does not preclude national legislation which prevents the court seised of the case from granting an application for the cancellation of a loan contract on the basis of the unfair nature of a term relating to the exchange difference, provided that a finding that terms in such an agreement were unfair would restore the legal and factual situation that the consumer would have been in had that unfair term not existed; and

– it precludes national legislation which prevents the court seised of the case from granting an application for the cancellation of a loan contract on the basis of the unfair nature of a term relating to exchange rate risk where it is found that that term is unfair and that the contract cannot continue to exist without that term.

Directive 93/13, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, does not preclude a supreme court of a Member State from adopting, in the interest of ensuring uniform interpretation of the law, binding decisions concerning the modalities for implementing that directive, in so far as those decisions do not prevent the competent court from ensuring the full effect of the norms laid down in that Directive and from offering consumers an effective remedy for the protection of the rights that they can derive therefrom, or from referring a question for a preliminary ruling to the Court in that regard, which it is for the referring court to determine.

6. *Court of Justice, 14 March 2019 case C-724/17* 718

Article 101 TFEU must be interpreted as meaning that, in a case in which all the shares in the companies which participated in a cartel prohibited by that article were acquired by other companies which have dissolved the former companies and continued their commercial activities, the acquiring companies may be held liable for the damage caused by the cartel in question.

7. *Court of Justice, 21 March 2019 case C-590/17* 720

Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the employee of an undertaking and his spouse, who conclude a loan contract with that undertaking, reserved, principally, to members of staff of that undertaking, with a view to financing the purchase of real estate for private purposes, must be regarded as 'consumers', within the meaning of that provision;

Article 2(c) of Directive 93/13 must be interpreted as meaning that that undertaking must be regarded as a 'seller or supplier', within the meaning of that provision, where it concludes such a loan contract in the context of its professional activity, even if granting loans does not constitute its main activity.

8. *Court of Justice, 26 March 2019 case C-129/18* 502

The concept of a 'direct descendant' of a citizen of the Union referred to in Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their

family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as not including a child who has been placed in the permanent legal guardianship of a citizen of the Union under the Algerian kafala system, because that placement does not create any parent-child relationship between them.

However, it is for the competent national authorities to facilitate the entry and residence of such a child as one of the other family members of a citizen of the Union pursuant to Article 3(2)(a) of that Directive, read in the light of Article 7 and Article 24(2) of the Charter of Fundamental Rights of the European Union, by carrying out a balanced and reasonable assessment of all the current and relevant circumstances of the case which takes account of the various interests in play and, in particular, of the best interests of the child concerned. In the event that it is established, following that assessment, that the child and its guardian, who is a citizen of the Union, are called to lead a genuine family life and that that child is dependent on its guardian, the requirements relating to the fundamental right to respect for family life, combined with the obligation to take account of the best interests of the child, demand, in principle, that that child be granted a right of entry and residence in order to enable it to live with its guardian in his or her host Member State.

9. *Court of Justice, 28 March 2019 case C-637/17* 719

Article 22 of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union must be interpreted as meaning that that Directive is not applicable to a case of restrictive practices in the market of premium sports TV channels, in particular, a discriminatory pricing policy, constituting an abuse of a dominant position.

Article 102 TFEU and the principle of effectiveness must be interpreted as precluding national legislation which, first, provides that the limitation period in respect of actions for damages is three years and starts to run from the date on which the injured party was aware of its right to compensation, even if unaware of the identity of the person liable and, secondly, does not include any possibility of suspending or interrupting that period during proceedings before the national competition authority.

10. *Court of Justice, 3 April 2019 case C-266/18* 721

Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a contractual term which refers to the national law applicable so far as concerns the determination of jurisdiction to hear disputes between the parties to the contract, does not fall outside the scope of that Directive.

Article 7(1) of Directive 93/13 must be interpreted as not precluding procedural rules, to which a contractual term refers, which allow the seller or supplier to choose, in the event of an action for alleged non-performance of a contract by the consumer, between the court which has jurisdiction in the place where the defendant is domiciled and that which has jurisdiction in the

place of performance of the contract, unless the choice of place of performance of the contract gives rise, for the consumer, to procedural conditions which are such as to restrict excessively the right to an effective remedy conferred on him by the European Union legal order, which is a matter for the national court to determine.

11. *Court of Justice, 11 April 2019 case C-603/17* 192

The provisions of Section 5 of Title II (Articles 18 to 21) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that a contract between a company and a natural person performing the duties of director of that company does not create a relationship of subordination between them and cannot, therefore, be treated as an 'individual contract of employment', within the meaning of those provisions, where, even if the shareholder(s) of that company have the power to procure the termination of that contract, that person is able to determine or does determine the terms of that contract and has control and autonomy over the day-to-day operation of that company's business and the performance of his own duties.

12. *Court of Justice, 11 April 2019 case C-464/18* 200

Article 7(5) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a court of a Member State does not have jurisdiction to hear a dispute concerning a claim for compensation brought under Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, and directed against an airline, established in the territory of another Member State, on the ground that that company has a branch within the territorial jurisdiction of the court seised, without that branch having been involved in the legal relationship between the airline and the passenger concerned.

Article 26(1) of Regulation No 1215/2012 must be interpreted as not applying whenever the defendant has not submitted observations or entered an appearance.

13. *Court of Justice, order of 11 April 2019 case C-657/18* 719

Article 18 TFEU prohibits any discrimination exercised on grounds of nationality, in the field of application of treaties. However, in absence of a link to European Union law, purely hypothetical prospects linked to the free movement of judicial decisions are not sufficient to establish the jurisdiction of the Court to examine a request for a preliminary ruling under Article 18 TFEU. If, in an alleged situation of reverse discrimination, the Court interpreted an instrument of EU law in a purely internal situation, that interpretation was subject to the condition that national law requires the referring court to grant nationals the same rights as those that a national of another Member State would derive from Union law in the same situation.

The certification as a European enforcement order of an enforcement order issued by a notary is not carried out automatically under Regulation No 805/ 2004, but is subject to certain requirements, with which it is up to each Member State, under its own legal order, to ensure that they are satisfied. Likewise, such an order does not *per se* fall within the scope of Regulation No 1215/2012. Therefore, nationals of other Member States do not derive from these two Regulations a right to be certified, as a European enforcement order, of an enforcement order issued by a notary under Croatian law or to benefit from free movement of such an order as a judicial decision. Since there is no link to European Union law, the Court of Justice of the European Union clearly lacks jurisdiction to answer the questions posed by the Municipal Court of Novi Zagreb, Croatia.

14. *Court of Justice, opinion of 30 April 2019 No 1/17* 503

An international agreement entered into by the Union, such as the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part (CETA), signed in Brussels on 30 October 2016, may affect the powers of the EU institutions, provided that the indispensable conditions for safeguarding the essential character of those powers are satisfied and, consequently, there is no adverse effect on the autonomy of the EU legal order.

Because of the reciprocal nature of international agreements and the need to maintain the powers of the Union in international relations, it is open to the Union to enter into an agreement that confers on an international court or tribunal the jurisdiction to interpret that agreement without that court or tribunal being subject to the interpretations of that agreement given by the courts or tribunal of the Parties. EU law thus does not preclude Section F of Chapter Eight of the CETA either from providing for the creation of a Tribunal, an Appellate Tribunal and, subsequently, a multilateral investment Tribunal or from conferring on those Tribunals the jurisdiction to interpret and apply the provisions of the agreement having regard to the rules and principles of international law applicable between the Parties. On the other hand, since those Tribunals stand outside the EU judicial system, they cannot have the power to interpret or apply provisions of EU law other than those of the CETA or to make awards that might have the effect of preventing the EU institutions from operating in accordance with the EU constitutional framework.

Article 8.31.2 of the CETA, which provides that 'in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact' and further states that, 'in doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party', adding that 'any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party', serves no other purpose than to reflect the fact that the CETA Tribunal, when it is called upon to examine the compliance with the CETA of the measure that is challenged by an investor and that has been adopted by the investment host State or by the Union, will inevitably have to undertake, on the basis of the information and arguments presented to it by that investor and by that State or by the Union, an examination of the effect of that measure. That examination may, on occasion,

require that the domestic law of the respondent Party be taken into account. However, that examination cannot be classified as equivalent to an interpretation, by the CETA Tribunal, of that domestic law, but consists, on the contrary, of that domestic law being taken into account as a matter of fact, while that Tribunal is, in that regard, obliged to follow the prevailing interpretation given to that domestic law by the courts or authorities of that Party, and those courts and those authorities are not bound by the meaning given to their domestic law by that Tribunal.

The characteristics of the jurisdiction of the CETA Tribunal and Appellate Tribunal are admittedly consistent with the protection of foreign investors that is the object of that agreement. However, without prejudice to a situation where the Parties have agreed, within the framework of the CETA, to harmonise their legislation, the jurisdiction of those tribunals would adversely affect the autonomy of the EU legal order if it were structured in such a way that those tribunals might, in the course of making findings on restrictions on the freedom to conduct business challenged within a claim, call into question the level of protection of a public interest that led to the introduction of such restrictions by the Union with respect to all operators who invest in the commercial or industrial sector at issue of the internal market, rather than confine itself to determining whether the treatment of an investor or a covered investment is vitiated by a defect mentioned in Section C or D of Chapter Eight of the CETA. If the CETA Tribunal and Appellate Tribunal were to have jurisdiction to issue awards finding that the treatment of a Canadian investor is incompatible with the CETA because of the level of protection of a public interest established by the EU institutions, this could create a situation where, in order to avoid being repeatedly compelled by the CETA Tribunal to pay damages to the claimant investor, the achievement of that level of protection needs to be abandoned by the Union. If the Union were to enter into an international agreement capable of having the consequence that the Union – or a Member State in the course of implementing EU law – has to amend or withdraw legislation because of an assessment made by a tribunal standing outside the EU judicial system of the level of protection of a public interest established, in accordance with the EU constitutional framework, by the EU institutions, it would have to be concluded that such an agreement undermines the capacity of the Union to operate autonomously within its unique constitutional framework. It must be emphasised, in that regard, that EU legislation is adopted by the EU legislature following the democratic process defined in the EU and FEU Treaties, and that that legislation is deemed, by virtue of the principles of conferral of powers, subsidiarity and proportionality laid down in Article 5 TEU, to be both appropriate and necessary to achieve a legitimate objective of the Union. In accordance with Article 19 TEU, it is the task of the Courts of the European Union to ensure review of the compatibility of the level of protection of public interests established by such legislation with, *inter alia*, the EU and FEU Treaties, the Charter and the general principles of EU law.

With respect to the jurisdiction of the envisaged Tribunals to declare infringements of the obligations contained in Section C of Chapter Eight of the CETA, Article 28.3.2 of that agreement states that the provisions of Section C cannot be interpreted in such a way as to prevent a Party from adopting and applying measures necessary to protect public security or public morals or to

maintain public order or to protect human, animal or plant life or health, subject only to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade between the Parties. It follows that, in those circumstances, the CETA Tribunal has no jurisdiction to declare incompatible with the CETA the level of protection of a public interest established by the EU measures and, on that basis, to order the Union to pay damages.

Section F of Chapter Eight of the CETA is compatible with EU primary law.

15. *Court of Justice, 2 May 2019 case C-694/17* 193

Article 15 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that, for the purposes of ascertaining whether a credit agreement is a credit agreement concluded by a 'consumer' within the meaning of Article 15, it must not be determined whether the agreement falls within the scope of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, in the sense that the total cost of credit in question does not exceed the ceiling set out in Article 2(2)(c) of that Directive, and that it is irrelevant, in that regard, that the national law transposing that Directive does not provide for a higher ceiling.

16. *Court of Justice, 8 May 2019 case C-25/18* 202

Article 7(1)(a) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a dispute concerning a payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain rights, – where that decision has been taken by a majority of members, but binds all members – must be regarded as falling within the concept of 'matters relating to a contract' within the meaning of that provision.

Article 4(1)(b) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that a dispute concerning a payment obligation resulting from a decision of a general meeting of the owners of property in an apartment building, relating to the costs of maintaining the communal areas of that property, must be regarded as relating to a contract for the provision of services, within the meaning of that provision.

17. *Court of Justice, order of 15 May 2019 case C-827/18* 194

Article 22(1), first subparagraph, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that it does not constitute an action "*in rem* in immovable property

or tenancies of immovable property", within the meaning of this provision, an action initiated by the purchaser of an immovable property aimed at the payment of a sum received by the seller in respect of the rent paid by a third party, when this purchaser, although in possession of said property at the time of payment of this sum, was not yet the legal owner according to the applicable national legislation.

18. *Court of Justice, 23 May 2019 case C-658/17* 197

The second subparagraph of Article 3(2) of Regulation (EU) No 650/2012 of the European Parliament and of the Council 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 meaning that failure by a Member State to notify the Commission of the exercise of judicial functions by notaries, as required under that provision, is not decisive for their classification as a 'court'.

The first subparagraph of Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that a notary who draws up a deed of certificate of succession at the unanimous request of all the parties to the procedure conducted by the notary does not constitute a 'court' within the meaning of that provision and, consequently, Article 3(1)(g) of that Regulation must be interpreted as meaning that such a deed does not constitute a 'decision' within the meaning of that provision.

Article 3(1)(i) of Regulation No 650/2012 is to be interpreted as meaning that a deed of certification of succession, drawn up by a notary at the unanimous request of all the parties to the procedure conducted by the notary, constitutes an 'authentic instrument' within the meaning of that provision, which may be issued at the same time as the form referred to in the second subparagraph of Article 59(1) of that Regulation, which corresponds to the form set out in Annex 2 to Implementing Regulation No 1329/2014.

19. *Court of Justice, 6 June 2019 case C-361/18* 195

Article 54 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a Member State's court hearing an application for a certificate certifying that a judgment given by the court of origin is enforceable must, where the court which gave the judgment to be enforced did not adjudicate, when giving that judgment, on whether that regulation was applicable, ascertain whether the dispute falls within the scope of that Regulation.

Article 1(1) and (2)(a) of Regulation No 44/2001 must be interpreted as meaning that an action, such as that at issue in the main proceedings, concerning an application for dissolution of the property relationships arising out a *de facto* (unregistered) partnership, comes within the concept of 'civil and commercial matters' within the meaning of Article 1(1) of that regulation and falls, therefore, within the material scope of that regulation.

20. *Court of Justice, 24 June 2019 case C-573/17* 955

Article 28(2) of Council Framework Decision 2008/909/JHA of 27 November

2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union must be interpreted as meaning that a declaration made pursuant to that provision by a Member State, after that framework decision was adopted, is not capable of producing legal effects.

The principle of the primacy of EU law must be interpreted as meaning that it does not require a national court to disapply a provision of national law which is incompatible with the provisions of a framework decision, the legal effects of which are preserved in accordance with Article 9 of Protocol (No 36) on transitional provisions, annexed to the treaties, since those provisions do not have direct effect. The authorities of the Member States, including the courts, are nevertheless required to interpret their national law, to the greatest extent possible, in conformity with EU law, which enables them to ensure an outcome that is compatible with the objective pursued by the framework decision concerned.

21. *Court of Justice, 27 June 2019 case C-518/18* 494

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that, where a court is unable to obtain the defendant's address, it does not allow a judicial decision relating to a debt, made following a hearing attended by neither the defendant nor the guardian *ad litem* appointed for the purpose of the proceedings, to be certified as a European Enforcement Order.

22. *Court of Justice, 10 July 2019 case C-722/17* 498

Article 24(1) and (5) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the opposition proceedings brought by a creditor regarding the proceeds from a judicially ordered auction of an immovable property and seeking, first, a declaration that a competing claim no longer exists due to a counter-claim, and, secondly, the invalidity of the pledge guaranteeing the enforcement of the claim do not fall within the exclusive jurisdiction of the courts of the Member State where the property is located or the courts of the place of enforcement.

23. *Court of Justice, order of 10 July 2019 case C-530/18* 491

Article 15(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that it establishes an exception to the general rule of jurisdiction laid down in Article 8 of Regulation No 2201/2003, according to which the jurisdiction of the courts of the Member States is determined by the place where the child is habitually resident at the time the courts are seised.

Article 15 of Regulation No 2201/2003 must be interpreted to the effect that, if one or more of the five alternative criteria which it lays down exhaustively in

order to assess whether the child has a particular connection to another Member State, other than the State of her habitual residence, are satisfied, the court having jurisdiction by virtue of Article 8(1) of that Regulation has the option to transfer the case to a court which it considers to be better placed to deal with the dispute before it, but is not obliged to do so. If the court having jurisdiction reaches the conclusion that the relations which link the child concerned to the Member State of her habitual residence are stronger than those which link her to another Member State, that conclusion is sufficient to rule out the application of Article 15 of that Regulation.

Article 15 of Regulation No 2201/2003 must be interpreted to the effect that the existence of differences between the rules of law, in particular the rules of procedure, of a Member State having jurisdiction as to the substance of a case and those of another Member State with which the child concerned has a particular connection, such as the examination of cases in camera by specialist judges, does not constitute, in a general and abstract way, a relevant criterion, in light of the best interests of the child, when assessing whether the courts of that Member State are better placed to hear that case. The court having jurisdiction may take those differences into consideration only if they are such as to provide genuine and specific added value with respect to the decision to be taken in relation to that child, as compared with the possibility of the case remaining before that court.

24. *Court of Justice, 11 July 2019 case C-716/17* 507

Article 45 TFEU must be interpreted as precluding the application of a jurisdictional rule set forth in the legislation of a Member State which makes the granting of a debt cancellation order subject to the requirement that the debtor has his residence or stays in that Member State.

Article 45 TFEU must be interpreted as requiring the national court to set aside the residence requirement provided for by a national jurisdictional rule, regardless of whether the debt cancellation procedure, which is also provided for by national legislation, possibly entails the consequence of prejudicing the credits claimed by private individuals under national legislation.

25. *Court of Justice, 20 July 2019 case C-620/17* 955

The liability of a Member State for damage caused by a decision of a national court or tribunal adjudicating at final instance which breaches a rule of European Union law is governed by the conditions laid down by the Court, in particular in paragraph 51 of the judgment of 30 September 2003, *Köbler* (C-224/01, EU:C:2003:513), without excluding the possibility that that State may incur liability under less strict conditions on the basis of national law. That liability is not precluded by the fact that that decision has acquired the force of *res judicata*. In the context of the enforcement of that liability, it is for the national court or tribunal before which the action for damages has been brought to determine, taking into account all the factors which characterise the situation in question, whether the national court or tribunal adjudicating at final instance committed a sufficiently serious infringement of European Union law by manifestly disregarding the relevant European Union law, including the relevant case-law of the Court. By contrast, European Union law precludes a rule of national law which, in such a case, generally excludes the

costs incurred by a party as a result of the harmful decision of the national court or tribunal from damage which may be the subject of compensation.

European Union law, in particular Council 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 2007/66/EC of the European Parliament and of the Council of 11 December 2007, and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66, as well as the principles of equivalence and effectiveness, must be interpreted as not precluding legislation of a Member State which does not allow review of a judgment, which has acquired the force of *res judicata*, of a court or tribunal of that Member State which has ruled on an action for annulment against an act of a contracting authority without addressing a question the examination of which was envisaged in an earlier judgment of the Court in response to a request for a preliminary ruling made in the course of the proceedings relating to that action for annulment. However, if the applicable domestic rules of procedure include the possibility for national courts to reverse a judgment which has acquired the force of *res judicata*, for the purposes of rendering the situation arising from that judgment compatible with an earlier national judicial decision which has become final – where both the court which delivered that judgment and the parties to the case leading to that judgment were already aware of that earlier decision – that possibility must, in accordance with the principles of equivalence and effectiveness, in the same circumstances, prevail in order to render the situation compatible with European Union law, as interpreted by an earlier judgment of the Court of Justice.

26. *Court of Justice, 29 July 2019 case C-40/17* 956

Article 2(h) and Article 7(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that, in a situation in which the operator of a website embeds on that website a social plugin causing the browser of a visitor to that website to request content from the provider of that plugin and, to that end, to transmit to that provider personal data of the visitor, the consent referred to in those provisions must be obtained by that operator only with regard to the operation or set of operations involving the processing of personal data in respect of which that operator determines the purposes and means. In addition, Article 10 of that Directive must be interpreted as meaning that, in such a situation, the duty to inform laid down in that provision is incumbent also on that operator, but the information that the latter must provide to the data subject need relate only to the operation or set of operations involving the processing of personal data in respect of which that operator actually determines the purposes and means.

27. *Court of Justice, 29 July 2019 case C-451/18* 499

Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament

and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that, in an action for compensation for damage caused by an infringement of Article 101 TFEU, consisting, *inter alia*, of collusive arrangements on pricing and gross price increases for trucks, 'the place where the harmful event occurred' covers the place where the market which is affected by that infringement is located, that is to say, the place where the market prices were distorted and in which the victim claims to have suffered that damage, even where the action is directed against a participant in the cartel at issue with whom that victim had not established contractual relations.

28. *Court of Justice, 4 September 2019 case C-347/18* 500

Article 53 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended by Commission Delegated Regulation (EU) 2015/281 of 26 November 2014 read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding the court of origin which has been requested to issue the certificate provided for in Article 53 of that regulation in respect of a judgment which has acquired the force of *res judicata* from being able to ascertain of its own motion whether there has been a breach of the rules set out in Chapter II, Section 4 of that Regulation, so that it may inform the consumer of any breach that is established and enable him to assess, in full knowledge of the facts, the possibility of availing himself of the remedy provided for in Article 45 of that Regulation.

29. *Court of Justice, 5 September 2019 case C-172/18* 507

Article 97(5) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark must be interpreted as meaning that the proprietor of a European Union trade mark who considers that his rights have been infringed by the use without his consent, by a third party, of a sign identical to that mark in advertising and offers for sale displayed electronically in relation to products that are identical or similar to the goods for which that mark is registered, may bring an infringement action against that third party before a European Union trade mark court of the Member State within which the consumers or traders to whom that advertising and those offers for sale are directed are located, notwithstanding that that third party took decisions and steps in another Member State to bring about that electronic display.

30. *Court of Justice, 5 September 2019 case C-468/18* 495

Article 3(a) and (d) and Article 5 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations must be interpreted as meaning that where there is an action before a court of a Member State which includes three claims concerning, respectively, the divorce of the parents of a minor child, parental responsibility in respect of that child and the maintenance obligation with regard to that child, the court ruling on the divorce, which has declared that it has no jurisdiction to rule on the claim concerning parental responsibility, nevertheless has jurisdiction to rule on the claim concerning the maintenance obligation with regard to that

child where it is also the court for the place where the defendant is habitually resident or the court before which the defendant has entered an appearance, without contesting the jurisdiction of that court.

31. *Court of Justice, 10 September 2019 case C-94/18* 954

Article 15 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, is to be interpreted as being applicable to a decision to expel a third-country national on the ground that that person no longer has a right of residence under the Directive in a situation where the third-country national concerned married a Union citizen at a time when that citizen was exercising his right to freedom of movement by moving to and residing with that third-country national in the host Member State and, subsequently, the Union citizen returned to the Member State of which he is a national. It follows that the relevant safeguards laid down in Articles 30 and 31 of Directive 2004/38 are applicable when such an expulsion decision is adopted and it is not possible, under any circumstances, for such a decision to impose a ban on entry into the territory.

32. *Court of Justice, 18 September 2019 case C-47/18* 711

Article 1(2)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for a declaration of the existence of claims for the purposes of their registration in the context of insolvency proceedings is excluded from the scope of that Regulation.

Article 29(1) of Regulation No 1215/2012 must be interpreted as not applying, even by analogy, to an action for a declaration of the existence of claims for the purposes of their registration in the context of insolvency proceedings, which is excluded from the scope of that Regulation but falls within the scope of Regulation No 1346/2000.

Article 41 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on the law applicable to contractual obligations must be interpreted as meaning that a creditor may, in the context of insolvency proceedings, lodge a claim without formally indicating the date on which it arose, where the law of the Member State within the territory of which those proceedings were opened does not impose an obligation to state that date and where that date may, without particular difficulty, be inferred from the supporting documents referred to in Article 41 of that Regulation, which it is for the competent authority responsible for the verification of claims to determine.

33. *Court of Justice, 3 October 2019 case C-93/18* 954

Article 7(1)(b) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/

221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that a Union citizen minor has sufficient resources not to become an unreasonable burden on the social assistance system of the host Member State during his period of residence, despite his resources being derived from income obtained from the unlawful employment of his father, a third-country national without a residence card and work permit.

34. *Court of Justice, 3 October 2019 case C-208/18* 713

Article 17(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a natural person who, under a contract such as a CfD concluded with a brokerage company, carries out transactions on the international FOREX (foreign exchange) market through that company, must be classified as a 'consumer' within the meaning of that provision if the conclusion of that contract does not fall within the scope of that person's professional activity, which it is for the national court to ascertain. For the purpose of that classification, on the one hand, factors such as the value of transactions carried out under contracts such as financial contracts for differences, the extent of the risks of financial loss associated with the conclusion of such contracts, any knowledge or expertise that person has in the field of financial instruments or his or her active conduct in the context of such transactions are, as such, in principle irrelevant, and, on the other, the fact that the financial instruments do not fall within the scope of Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) or that that person is a 'retail client' within the meaning of Article 4(1)(12) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC is, as such, in principle irrelevant.

35. *Court of Justice, 3 October 2019 case C-272/18* 708

Article 1(2)(e) of the Convention on the law applicable to contractual relations of 19 June 1980 and Article 1(2)(f) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as not excluding from the scope of that Convention or of that Regulation contractual obligations which are based on a trust agreement for the purposes of administering shares in a limited partnership.

Article 5(4)(b) of the Convention on the law applicable to contractual relations and Article 6(4)(a) of Regulation No 593/2008 must be interpreted as meaning that a trust agreement pursuant to which the services owed to a consumer must be provided in the country of the consumer's habitual residence at a distance, from another country, do not fall within the scope of the exclusion in those provisions.

Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a term in a trust

agreement concluded between a professional and a consumer for the management of shares in a limited partnership, which has not been individually negotiated and according to which the applicable law is the law of the Member State of the partnership's seat, is unfair, within the meaning of that provision, where it leads the consumer into error by giving him the impression that only the law of that Member State applies to the contract, without informing him that under Article 5(2) of the Convention on the law applicable to contractual relations and Article 6(2) of Regulation No 593/2008 he also enjoys the protection of the mandatory provisions of the national law that would be applicable in the absence of that term.

36. *Court of Justice, order of 3 October 2019 case C-759/18* 493

Article 3(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in the case of an application for divorce, where the applicant brings proceedings before a court of the Member State of the spouses' common nationality, although their habitual residence is in another Member State, that court has jurisdiction to rule on that application pursuant to point (b) of that provision. As the defendant is not required to give consent, it is not necessary to examine whether a failure on the part of the defendant to raise an objection that that court lacks jurisdiction constitutes tacit consent to the court seised having jurisdiction.

Article 3(1) and Article 17 of Regulation No 2201/2003 must be interpreted as meaning that, in a proceeding for divorce, where there is no express agreement between the parties as to the choice of the court having jurisdiction, the fact that the couple seeking dissolution of their marriage has a minor child is irrelevant for the purposes of determining the court having jurisdiction to rule on the application for divorce. Since the court of the Member State of the spouses' common nationality, seised by the applicant, has jurisdiction to rule on that application under Article 3(1)(b) of that Regulation, that court cannot, even where there is no agreement between the parties on the matter, raise an objection that it lacks international jurisdiction.

Article 12(1)(b) of Regulation No 2201/2003 must be interpreted as meaning that, where a court of the Member State of the spouses' common nationality, seised by the applicant, has jurisdiction to rule on divorce proceedings pursuant to Article 3(1)(b) of Regulation No 2201/2003, the condition relating to the acceptance of jurisdiction laid down in Article 12(1)(b) of that Regulation cannot be regarded as satisfied where parental responsibility is not the subject of the proceedings and the defendant has not entered an appearance. In that situation, the court seised, which has jurisdiction to rule on the divorce of the spouses, does not have jurisdiction under Article 12(1)(b) of Regulation No 2201/2003 and Article 3(d) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations to rule on issues relating to parental responsibility and maintenance obligations, respectively, in respect of the child concerned.

The concept of 'parental responsibility', as defined in Regulation No 2201/2003, must be interpreted as covering decisions relating to, in particular,

custody of the child and the child's place of habitual residence, but it does not include parental contributions towards the costs of the child's care and upbringing, which is covered by the concept of 'maintenance obligations' and comes within the scope of Regulation No 4/2009.

37. *Court of Justice, 9 October 2019 case C-548/18* 710

Article 14 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as not designating, directly or by analogy, the applicable law concerning the third-party effects of the assignment of a claim in the event of multiple assignments of the claim by the same creditor to successive assignees.

38. *Court of Justice, 7 November 2019 case C-213/18* 947

Article 7(1), Article 67 and Article 71(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and Article 33 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999 and approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that the court of a Member State hearing an action to obtain both compliance with the flat-rate and standardised rights provided for in Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, and compensation for further damage falling within the scope of that Convention, must assess its jurisdiction, for the first head of claim, in the light of Article 7(1) of Regulation No 1215/2012, and, for the second head of claim, in the light of Article 33 of that Convention.

Article 33(1) 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 regards actions for damages falling within the scope of that Convention, as governing not only the allocation of jurisdiction as between the States Parties to the Convention, but also the allocation of territorial jurisdiction as between the courts of each of those States.

39. *Court of Justice, 7 November 2019 case C-555/18* 716

Article 4(10) of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters must be interpreted as meaning that an order for payment which is not enforceable, does not constitute an 'authentic instrument' within the meaning of that provision.

Article 5(a) of Regulation No 655/2014 must be interpreted as meaning that ongoing proceedings for an order for payment may be regarded as proceedings 'on the substance of the matter' within the meaning of that provision.

Article 45 of Regulation No 655/2014 must be interpreted as meaning that judicial vacations are not covered by the concept of 'exceptional circumstances' within the meaning of that provision.

40. *Court of Justice, order of 19 November 2019 case C-200/19* 949

Article 7 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted in the sense that a dispute relating to the non-performance of the financial obligations imposed by national law on the co-owners of a building must be regarded as falling within the concept of "matters related to a contract", within the meaning of Article 7(1)(a) of that Regulation.

Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that a dispute relating to an obligation resulting from the possession, by a company, of business premises in which it is established and operates, does not constitute a "dispute arising out of the operations of a branch, agency or other establishment", within the meaning of this provision.

41. *Court of Justice, 21 November 2019 case C-198/18* 707

Article 4 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as amended by Council Regulation (EC) No 788/2008 of 24 July 2008, must be interpreted as not applying to an action brought by the liquidator of an insolvent company established in one Member State for the payment of goods delivered under a contract concluded before the insolvency proceedings were opened in respect of that company, against the other contracting company, which is established in another Member State.

42. *Court of Justice, 4 December 2019 case C-493/18* 942

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that an action brought by the trustee in bankruptcy appointed by a court of the Member State within the territory of which the insolvency proceedings were opened seeking a declaration that the sale of immovable property situated in another Member State and the mortgage granted over it are ineffective as against the general body of creditors falls within the exclusive jurisdiction of the courts of the first Member State.

Article 25(1) of Regulation No 1346/2000 must be interpreted as meaning that a judgment by which a court of the Member State in which the insolvency proceedings were opened authorises the trustee in bankruptcy to bring an action in another Member State, even if that action falls within the exclusive jurisdiction of that court, cannot have the effect of conferring international jurisdiction on the courts of that other Member State.

43. *Court of Justice, 5 December 2019 case C-421/18* 951

Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a dispute concerning a lawyer's obligation to pay annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of that Regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain.

Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning

that an action by which a bar association seeks an order that one of its members pay the annual professional fees for which he or she is liable and which are essentially intended to finance services, such as insurance services, must be regarded as constituting an action in 'matters relating to a contract', within the meaning of that provision, provided that those fees constitute consideration for services provided by that bar association to its members and those services are freely consented to by the member concerned, which it is for the referring court to ascertain.

44. *Court of Justice, 12 December 2019 case C-433/18* 943

Article 43(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding a procedure granting leave for further consideration of an appeal in which, first, a court of appeal rules on the grant of that leave on the basis of the judgment delivered at first instance, the appeal brought before it, any observations of the respondent and, if necessary, other information in the file and, second, leave for further consideration must be granted, in particular, if there are doubts as to the correctness of the judgment in question, if it is not possible to assess the correctness of that judgment without granting leave for further consideration or if there is another significant reason to grant leave for further consideration of the appeal.

Article 43(3) of Regulation No 44/2001 must be interpreted as not precluding a procedure examining an appeal against a judgment on the application for a declaration of enforceability which does not require the respondent to be heard in advance when a decision in the respondent's favour is made.

45. *Court of Justice, 19 December 2019 joined cases C-453/18 and C-494/18* 946

Article 7(2)(d) and (e) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as interpreted by the Court and read in the light of Article 38 of the Charter of Fundamental Rights of the European Union, must be interpreted as allowing a 'court', within the meaning of that Regulation, seised in the context of a European order for payment procedure, to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms and, consequently, that they preclude national legislation which declares the additional documents provided for that purpose to be inadmissible.

46. *Court of Justice, order of 13 February 2020 case C-606/19* 952

The second indent of Article 7(1)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the 'place of performance', within the meaning of that provision, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into several legs, can be the place of departure of the first leg of the journey where transport on those legs of the journey is performed by two separate air carriers and the claim for compensation brought on the basis of Regulation (EC) No 261/2004 of the

European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, arises from the cancellation of the final leg of the journey and is brought against the air carrier in charge of that last leg.

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