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1. *Corte di Cassazione, 25 January 2018 No 1867* 141

Since substantive uniform law prevails over the rules of private international law by reason of specialty – in that it directly regulates the case avoiding the double step of first identifying the applicable law and then applying it – the Vienna Convention of 11 April 1980 on contracts for the international sale of goods is applicable to a contract for the supply of goods concluded between a German buyer and an Italian seller. In fact, from an objective point of view, even in the absence of an express definition in the Convention of the relevant type of contract, the contract in question may be characterised as a contract for the sale of goods in accordance with the combined provisions of Articles 30 and 53. In fact, the contract in question commits one party to deliver tangible movable property, to transfer its ownership and, where appropriate, to issue the relevant documents, and obliges the other party to pay the price and take delivery of the property. Furthermore, it is concluded between persons having their place of business in different Contracting States to the Convention at the time of the conclusion of the contract in accordance with Article 1(1)(a) of the Convention. The fact that the parties have designated German law as the law applicable to the contract does not exclude the application of the Convention, in accordance with Article 6 thereof, in the absence of further evidence that the parties intended to refer only to domestic law, since the Convention is binding on Germany and has been implemented in German law.

2. *Milan Judge of the Peace, 16 July 2018* 143

Pursuant to the second indent of Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000 – as interpreted by the CJEU in the *Air Baltic* judgment, which identifies both the place of departure of a flight and the place of arrival as the place where the services arising from a contract of carriage are provided – Italian courts have jurisdiction over an action brought against an airline having its registered office in Germany for the compensation of damages arising from the delay in the delivery of baggage embarked on a flight from Milan to Reykjavík, since the place of departure of the flight is in Italy.

In relation to the same dispute, although under Article 19 of the Montreal Convention of 28 May 1999 for the unification of certain rules for international carriage by air, the carrier's liability is presumed, albeit limited in amount under Article 22(2) of that Convention, the payment of compensation is subject to the actual damages suffered, which must be proved by the passenger.

3. *Ivrea Tribunal, 20 April 2019* 428

In the case of an application for a declaration of acquisition of *bona fide* purchase of a motor vehicle brought by the current owner, who purchased the vehicle in Germany from an authorised dealer, against a person domiciled in Italy, who claims to be the owner of the vehicle on the basis of an earlier title and alleges that the vehicle was stolen in Italy at a time prior to its purchase in Germany by the plaintiff, Italian courts have jurisdiction pursuant to Article 4 of Regulation (EU) No 1215/2012, since the defendant is domiciled in Italy. Pursuant to Article 51 of Law 31 May 1995 No 218, the

application should be decided on the merits on the basis of German law since the property at issue was located in Germany at the time of purchase.

4. *Milan Court of Appeal, 24 April 2019* 145

Pursuant to Article 72(1) of Law 31 May 1995 No 218, an action brought in 2014 for the annulment of a marriage concluded in 1983 on the grounds of the lack of the requirement of freedom of state is governed by Law No 218/1995 since the action was initiated after the Law entered into force (being immaterial that the marriage was concluded before the Law entered into force). Pursuant to Article 27 of Law No 218/1995, Italian law is applicable to this case as the national law of the husband, since he is simultaneously an Italian citizen *iure sanguinis* and a US citizen *iure soli*: in fact, according to Article 19 of Law No 218/1995, priority must be given to the Italian nationality, and the fact that the man's father lost the Italian nationality through naturalisation abroad at a later date is not relevant for the purposes of the man's Italian nationality. It follows that, according to Article 86 of the Civil Code, the pre-existing marriage concluded by the man determines the nullity of the marriage subsequently concluded by the same man with a different spouse, since no application in Italy has been submitted for recognition of a US judgment dissolving the previous conjugal bond, rendered prior to the celebration of the contested marriage. The principle of automatic recognition of foreign judgments that have become final, as laid down by Article 64 of Law No 218/1995, is not applicable *ratione temporis*.

5. *Milan Tribunal (company division), 17 June 2019* 429

Pursuant to Article 51 of Law 31 May 1995 No 218, Italian law applies to an action brought by two individuals, holders of judicial mortgages on immovable property situated in Italy, against two natural persons, the sole shareholders of a company incorporated under English law, in order to establish that the same immovable property owned by the company (as conferred on it by the plaintiffs' debtor) has, following the dissolution of the company, become the undivided property of the defendants, since the ownership of immovable property is governed by the law of the State in which it is situated. Therefore, Section 1012 of the English Companies Act 2006, in accordance to which, when a company is compulsorily dissolved – and in the absence of winding-up proceedings – its assets become unclaimed goods (*bona vacantia*) and the Crown becomes the owner, does not apply.

6. *Genoa Court of Appeal, 26 July 2019* 151

Italian courts have jurisdiction over an action brought by a seafarer domiciled in Italy for the declaration of unlawful termination by the defendant company based in the United States of America. On the one hand, pursuant to Article 3(2) of Law 31 May 1995 No 218 (as interpreted in light of the Constitution), for the purposes of establishing jurisdiction it is necessary to take into account not only the connecting factors established by Sections 2, 3 and 4 of Title II of the Brussels Convention of 27 September 1968, but also those inferable from the Italian rules on jurisdiction in respect of other matters and, in particular, from Article 603 of the Code of Navigation: in fact, in case of a permanent employment contract, the place of termination within the meaning of the latter provision must be identified in the seafarer's domicile where, after a period of

rest ashore, the seafarer awaits a new call to embark, failure to call being equivalent to dismissal. On the other hand, in the absence of an agreement in this regard in collective employment agreements, pursuant to Article 4(2) of Law No 218/1995 the arbitration clause contained in the enlistment contract is not valid, since such disputes concern non-negotiable rights.

7. *Corte di Cassazione, 12 September 2019 No 22828* * 92

Pursuant to Article 64(1)(a) of Law 31 May 1995 No 218, the decision of a Ukrainian court ordering the transfer to Ukraine of a Ukrainian child habitually resident in Italy is not eligible for recognition in Italy since the court that issued the decision did not have jurisdiction in accordance with Italian law and, in particular, in accordance with the Hague Convention of 5 October 1961, enacted in Italy with Law of 24 October 1980 No 742 – referred to in Article 42 of Law No 218/1995 and applicable *ratione temporis*. Under Article 1 of the 1961 Hague Convention, jurisdiction is generally vested in the State of the child's habitual residence, while the criterion of nationality is relevant in accordance with Article 4 of the Convention only on a residual and subsidiary basis when the State of habitual residence is unable to adopt measures or remains inactive in this regard, and a formal preliminary dialogue has been initiated between the two States.

8. *Corte di Cassazione, order of 30 September 2019 No 24384* 150

Article 136 of the Manual for Determining Refugee Status under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 cannot be construed as an imperative norm: the Manual is a mere a collection of indications on the procedures and criteria for determining refugee status, based on the experience of the United Nations High Commissioner for Refugees. Moreover, the reference to the above-mentioned provision is relevant only when it comes to assessing the current risk of acts of persecution for the purposes of granting refugee status pursuant to Article 7 of Legislative Decree No 251 of 19 November 2007.

9. *Corte di Cassazione (plenary session), order of 5 November 2019 No 2832* 96

In a dispute over the custody of a minor in the context of a legal separation between two spouses, one an Italian citizen and the other an Iranian and Swedish citizen, who are habitually resident in Spain, a preliminary ruling on jurisdiction is admissible with reference to the measures concerning the child when only the provisional and urgent measures under Article 708 of the Code of Civil Procedure have been adopted. In fact, these measures have a merely provisional and interim function – therefore, they are not final – and their adoption does not constitute a decision "on the merits in the first in-

* Pursuant to Article 13 of The Hague Convention of 5 October 1961, the Convention applies to all minors who have their habitual residence in one of the Contracting States. Italy has not availed itself of the right, provided at Article 13(3), to limit the application of the Convention to minors who are nationals of one of the Contracting States: hence, whilst Ukraine is not a Contracting Party to the Convention, the Convention is applicable in the instant case (regardless of the reference to the Convention made at Article 42 of Law No 218/1995).

stance" which, in accordance with Article 41 of the Code of Civil Procedure, precludes the application for such a ruling.

In the instant case, pursuant to Article 10 of Regulation (EC) No 2201/2003 of 22 November 2003, Italian courts do not have jurisdiction to issue measures over the child. On the one hand, the child was habitually resident in Spain immediately prior to her non-return from Italy, where she was taken by her mother in breach of her father's custody rights; on the other hand, none of the preconditions which permit, in accordance with Article 10, the transfer of jurisdiction from the Member State where the child was habitually resident immediately before his or her return to the Member State where the child has established his or her habitual residence after the non-return are satisfied in this case. In particular, there is no evidence that, in accordance with sub-paragraph (a), the child's father accepted the child's non-return to Spain, and the legal steps taken by the father against his wife actually suggest the contrary; nor is there any evidence of the situation referred to in sub-paragraph (b), since at the time the separation proceedings were instituted the child had been in Italy for less than a year. With specific reference to the case under sub-paragraph (b), the period of the child's stay in Italy after the application for custody made in the legal separation proceedings cannot be taken into account because of the principle of *perpetuatio jurisdictionis* (which establishes the perpetuity of jurisdiction once a court having jurisdiction starts hearing a case) laid down – in addition to Article 5 of the Code of Civil Procedure – in Article 8(1) of the Regulation, which establishes jurisdiction for claims on parental responsibility in the courts of the Member State of the child's habitual residence "at the time the court is seised", subject to the exceptions expressly provided for by the Regulation, including the exception laid down in Article 10 of the Regulation, which provides that, in case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention, namely Spain, shall retain their jurisdiction until the child has acquired a habitual residence in another Member State. In the present case, one may not even invoke Article 8 of Law 31 May 1995 No 218, which, by derogating from Article 5 of the Code of Civil Procedure, provides that Italian jurisdiction exists if the facts and rules which support it occur during the proceedings, since the national rules give way to those laid down in Regulation No 2201/2003. This is clear from the exclusive reference to "this Regulation" in Article 17 of the Regulation, which provides that "Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction".

10. *Parma Tribunal, 26 November 2019* 153

Pursuant to Article 2 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and their Recognition – which mandates, as a prerequisite for the recognition of a trust, that the trustee be bestowed with an independent power to manage, employ or dispose of the assets in accordance with the terms of the trust, so as to avoid any interference by the settlor – and to English law (designated by the settlor as the applicable law), a trust in which the settlor is both trustee and primary beneficiary, the trustee has full disposal

of the trust's assets (being able to carry out all acts of ordinary and extraordinary administration), and the guardian has limited powers since the trust may be revoked by the settlors even without cause, is void. On the one hand, the interest actually pursued through the trust's constitution is not worthy of protection under national law, since its function is to avoid third party claims; on the other hand, the trust qualifies as a "sham trust" under English law.

11. *Belluno Tribunal, 11 December 2019* 102

Pursuant to Article 17 of Regulation (EC) No 1346/2000 of 29 May 2000, a judgment opening insolvency proceedings rendered, pursuant to Article 3(1) of that Regulation, in the Member State in which the centre of the debtor's main interests is situated (in this case, Germany) has, in every other Member State and without any other formality, the effects provided for by the law of the State in which the proceedings were opened, and pursuant to Section 81 of the German Insolvency Law (*Insolvenzordnung*), the contract of sale by which the debtor, subsequent to that judgment, arranged the transfer of ownership of two immovable properties located in Italy in favour of his spouse is ineffective: under both Article 44 of the Italian Insolvency Law (*legge fallimentare*) and Section 80 of the German Insolvency Law, all the assets owned by the debtor before the declaration of insolvency become part of the insolvency estate, depriving the debtor of the administration and availability of those assets. Such contract is ineffective irrespective of its aptitude to damage the creditors or the insolvency estate, and irrespective of the awareness or bad faith of the recipient.

12. *Corte di Cassazione, 13 December 2019 No 32778* 155

Carriage by air carried out in the performance of an obligation assumed free of charge by a person who is not an entrepreneur does not fall within the scope of the Montreal Convention of 28 May 1999 within the meaning of Article 1 thereof: it follows that the two-year limitation period laid down in Article 35 of the Convention for the exercise of rights arising out of the relationships governed by it does not apply to the case at hand.

13. *Bari Court of Appeal, decree of 29 January 2020* 1014

Pursuant to Articles 4 and 11 of Law 31 May 1995 No 218, Italian courts have jurisdiction in proceedings concerning the loss of parental responsibility over a foreign child: the parent's appearance before the Family Court, with the request that she be allowed to participate actively in the proceedings and be given the opportunity to prepare her defence after reading all the documents contained in the case-file, constitutes tacit acceptance of the Italian jurisdiction, thus precluding the possibility of finding lack of jurisdiction at any stage and level of the proceedings. Pursuant to Article 36-*bis* of Law No 218/1995, in such proceedings the Italian provisions conferring on the court the power to adopt measures limiting or revoking parental responsibility in the presence of conduct that is detrimental to the child apply. In fact, those provisions express mandatory principles, which must necessarily be applied even when the case is subject to foreign law: consequently, to protect those principles the Italian legislature opted to broaden the scope of application of the *lex fori*, thus reducing the effectiveness of the private international law rules in such matters.

14. *Milan Court of Appeal (family division), order of 29 January 2020* 156

Pursuant to Article 64(1)(g) of Law 31 May 1995 No 218, public policy, as a limitation on the recognition of foreign judgments in Italy, is a means to protect fundamental rights which can be inferred from the Constitution, the EU Treaties, the Charter of Fundamental Rights of the European Union, and the European Convention on Human Rights. The recognition in Italy of the judgment of an Israeli Rabbinical Court which ascertains the celebration of a marriage according to Mosaic law between two persons, one of whom is an Italian citizen, does not conflict with public policy even when the procedures provided by Law 8 March 1989 No 101 establishing the provisions for the regulation of relations between Italy and the Union of Italian Jewish Communities have been violated, and in particular when the prescribed publication in the municipal archives has not taken place. In fact, such provisions do not rank as constitutional norms.

15. *Trani Tribunal, 31 January 2020* 430

Article 83-*bis* of Law Decree 25 June 2008 No 112, converted into Law 6 August 2008 No 133 – which, in the version applicable *ratione temporis*, provided that, in order to ensure the protection of road safety and the lawfulness of the third-party road haulage market, the amount payable to the carrier in the transport contract must be such as to cover at least the minimum operating costs, established by order of the Ministry of Infrastructure and Transport after consultation with the trade associations – is incompatible with Article 101 TFEU and must be disapplied by the national court, in so far as the fixing of minimum rates linked to operating costs is not justified by a legitimate objective or because of the eccentricity of the measure (resulting, on the one hand from the impossibility for the carrier to prove that, despite the application of prices lower than the minimum fares, it complied with the safety provisions in force and, on the one hand, because of the existence of rules of EU law on road safety which constitute more effective and less restrictive measures, such as those relating to maximum weekly working time, breaks, rest periods, night work and roadworthiness tests).

16. *Corte di Cassazione (plenary session), order of 13 February 2020 No 3561* 720

Pursuant to Article 71 of Regulation (EU) No 1215/2012 of 12 December 2012, the question of jurisdiction to hear a claim for compensation brought by passengers domiciled in Italy against a foreign air carrier for a delay caused by the cancellation of a flight, purchased entirely online, with a destination in Italy is governed by the Montreal Convention of 28 May 1999 for the unification of certain rules for international carriage by air, the criteria for jurisdiction of which take precedence, by virtue of the principle of specialty, over those of Regulation No 1215/2012. With regard to this dispute, pursuant to Article 33(1) of the Montreal Convention, Italian courts have jurisdiction in accordance with both the criterion of the place of destination of the journey and the criterion of the place where the establishment of the carrier concluding the contract is located, to be identified in the domicile of the purchasing passengers as the place where they became aware of the acceptance of the proposal formulated by sending the order electronically and of the payment.

17. *Busto Arsizio Tribunal, 13 February 2020* 724

Italian courts have jurisdiction over a claim for compensation within the meaning of Regulation (EC) No 261/2004 and for compensation for further damage within the meaning of the Montreal Convention of 28 May 1999 brought by a passenger domiciled in Italy against a foreign airline in respect of the cancellation of his flight on the basis of the criterion, laid down in Article 33(1) of the Convention, of the domicile of the carrier which concluded the contract, to be identified in the State of the domicile from which the passenger made the online purchase of the airplane ticket.

18. *Corte di Cassazione (criminal division, plenary session), 3 March 2020 No 8544* 726

Pursuant to Article 630 of the Code of Criminal Procedure, it is not possible to proceed with the so-called "European revision" of a judgment convicting for external collusion in mafia-type criminal collusion on the basis of the principles set out in the decision of the European Court of Human Rights (ECtHR) in the case of *Contrada v. Italy*. Such judgment is not a pilot judgment in accordance with Article 46 ECHR, which would be suitable to serve as a precondition for granting the application. Notably, it is not of general application: it does not contain an express acknowledgement of a structural or systematic violation and, rather, it limits itself to declaring a violation of Article 7 ECHR in strictly individual terms, it is not accompanied by any indication as to the remedies that can be adopted and, finally, it cannot be considered as expressing a consolidated orientation of the ECtHR's jurisprudence on the foreseeability of the crime.

19. *Corte di Cassazione (plenary session), 7 April 2020 No 7736* 671

In an action for the recovery of a debt arising from several contracts for the distribution of vehicles, technical assistance and the resale of spare parts brought by an Italian company, acting in its own name and as special agent for another Italian company (assignee without recourse), against the debtor Finnish company, Italian courts have jurisdiction: the contracts provide for the exclusive jurisdiction of the Turin Tribunal and, pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, the jurisdiction clause is also effective against the assignees, who have succeeded in the position of the assignor *vis-à-vis* the assigned debtor. In fact, also with regards to the jurisdiction clause, the position of the debtor *vis-à-vis* the assignee (who, at the time the obligation arose was a third party, and as such, extraneous to the jurisdiction clause) cannot be different than the position that the debtor had *vis-à-vis* the assignor, in accordance with the principle of protection of the assigned debtor's trust in the contract originally signed with the assignor. In fact, the jurisdiction clause, once concluded in the form provided for by the law, remains unchanged, except in the case where the assigned debtor and the assignee reach a different and alternative agreement: the inoperability of the (original) jurisdiction clause may be invoked only by the assignee and not by the assigned debtor, who may object to it only in respect of the exceptions opposable to the assignor.

20. *Padua Tribunal, 1 July 2020* 964

Pursuant to Article 24 of Law 31 May 1995 No 218, the application for authorisation of medical and surgical treatment for the adjustment of gender

characters and the related rectification of the attribution of name and gender made by a Romanian national resident in Italy is governed by Romanian law, as the applicant's national law. Although Romanian law does not require a judicial decision authorising medical and surgical treatment to change the applicant's primary sexual characters and requires the intervention of the court only after the surgery, *i.e.*, at the time of the application to change her personal data in the civil-status registers, the request for rectification in Italy cannot be granted at the same time as the authorisation for the surgery. In fact, Article 3 of Law 14 April 1982 No 3 on the protection of personal data in the civil-status registers must be regarded as an overriding mandatory provision in so far as it makes that surgery conditional on the obtaining of a decree authorising it from the competent court.

21. *Corte di Cassazione, order of 5 August 2020 No 16701* 105

Pursuant to Article 4 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958, and Article 839 (2) of the Code of Civil Procedure, in relation to the application for recognition of the effectiveness of two arbitral awards rendered by the Commercial Arbitration Chamber of the Republic of Korea, the production of the arbitration agreement, in the original or in a certified copy, at the same time as the application is lodged, is not a precondition for the action but, rather, a necessary procedural requirement for the valid introduction of the proceedings. The existence of the arbitration agreement must be verified by the court, also of its own motion, as a formal requirement for the admissibility of the application seeking recognition, taking into account the time when the proceedings were instituted, regardless of the objections or deductions made by the other party. Therefore, failure to produce the original or a certified copy of the arbitration agreement renders the application inadmissible, even if the application filed pursuant to Article 839 of the Code of Civil Procedure acknowledges the production of a certified copy of the sale contracts concluded between the parties and the arbitration awards confirm that the contracts contained the arbitration clause. The fact that the failure to produce the arbitration agreement was alleged by the opposing party only in its statement of defence filed pursuant to Article 190 of the Code of Civil Procedure is not relevant since this such production is a burden whose fulfilment must be verified *sua sponte* by the Court of Appeal.

22. *Corte di Cassazione, 7 August 2020 No 16804* 107

Pursuant to Articles 64 and 65 of Law 218 of 31 May 1995, a decision of repudiation issued abroad by a religious authority (in the instant case, a Palestinian *Sharia* court) is not eligible for recognition in the Italian legal system, and must therefore be cancelled from the registers of Italian civil status, even though it is equivalent, under the law of the State from which it emanates, to a judgment of a State court, by reason of the function performed by that court in the legal system of that State. Notably, such decision is contrary to public policy in accordance with Article 64(g) of Law No 218/1995. Such conflict is to be assessed not only in light of the fundamental principles of the Constitution and those enshrined in international and supranational sources (in particular, Articles 2, 3 and 29 of the Italian Constitution, Article 14 of the ECHR, and Article 14 of the CFREU), but also in light of the

provisions of the Convention on the Rights of the Child, Article 14 ECHR, Article 5 of the seventh additional protocol to the same Convention, Article 16 of the UN Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women and, from a procedural point of view, Article 111 of the Constitution and Article 6 ECHR), as well as in light of the way in which these principles have been enshrined in the provisions that regulate the individual institutions. This incompatibility exists, on the one hand, from the point of view of substantive public policy (violation of the principle of non-discrimination between men and women): in fact, the institution of repudiation under the applicable Jordanian law discriminates against women, since only the husband may rely on the *talaq* formula to be released from the marriage, without essentially giving any reason, and the marriage's termination is therefore linked to a unilateral and coercive decision of the husband alone. On the other hand, from the point of view of procedural public policy (lack of equality of defence and lack of an effective procedure carried out in an adversarial manner), since the wife was notified that the measure – which was still revocable (within the legal time-limit) – by which her husband had repudiated her had been registered without her having been able to take part in the procedure leading to that registration. Furthermore, she does not appear to have been notified of the commencement of the second stage of the proceedings to establish that the repudiation was irrevocable, which took place without her being present. Finally, there is no evidence that the religious authority ascertained whether the emotional and cohabitation relationship between the spouses had actually ceased, or whether it could be settled or continued.

23. *Corte di Cassazione, order of 14 August 2020 No 17170* 352

With respect to the request for cancellation of the transcription of an Iraqi divorce decree, the deciding court must verify compliance with the fundamental principles of Italian law, including those relating to the procedure for the formation of the decision and, although not every procedural infringement is an obstacle, that court cannot disregard the need to consider, inter alia, in the light of the criterion laid down by Article 64(1)(b) of Law 31 May 1995 No 218, whether the essential rights of defence were respected in the proceedings before the foreign court. In order to assess, then, whether the decision is contrary to public policy within the meaning of Article 64(1)(g) of Law No 218/1995, it is necessary to examine whether the proceedings before the foreign court respected the essential rights of defence. In order to assess, then, it is necessary to examine the compatibility of the decision not only with the fundamental principles of the domestic legal system, but also with the legal values shared by the international community and the protection of fundamental rights. In this regard, the court must have exclusive regard to the effects that the provisions of the foreign decree may produce in the domestic legal system, while the possibility of a review of content or merit or of the correctness of the solution adopted in accordance with the foreign or Italian legal system must be excluded, since the fact that the foreign decree gives application to provisions that are in conformity with or different from the domestic rules, even if they are mandatory, cannot in principle constitute an obstacle to the recognition of the foreign decree.

24. *Corte di Cassazione, 7 September 2020 No 18610* 121

Since the procedure for acquiring the Italian nationality by virtue of legal residency in the Italian territory is of a complex nature with progressive formation, divided into distinct phases, such procedure is not concluded until the oath of allegiance in accordance with Article 10 of Law 5 February 1992 No 91, since this oath, in addition to satisfying a procedural prerequisite for the purposes of granting the foreigner the status of Italian citizen, also determines the moment when the constitutive effect of the decree granting the Italian nationality is produced with immediate effect for the future (*ex nunc*).

Since, according to Article 4(7) of Presidential Decree 12 October 1993 No 572, the conditions provided for the petition to acquire the Italian citizenship by legal residency in the Italian territory, prescribed by Article 9 of Law No 91/1992, must remain current until the taking of the oath under Article 10 of the above mentioned law, the civil registrar is obliged to carry out a specific and binding control of the applicant's continued fulfilment of the requirement of legal residency in Italian territory until the moment of taking the oath and, if at that moment residency has ceased to exist following the revocation of the residency permit, in accordance with Article 7 of Presidential Decree 3 November 2000 No 396, the civil registrar shall refuse to take the oath on the grounds that it is contrary to the law.

25. *Corte di Cassazione (plenary session), order of 21 September 2020 No 19665* 356

In the case of proceedings for separation of spouses brought before an Italian court after divorce proceedings between the same parties were brought and are pending in Madrid, an application for a preliminary ruling on jurisdiction is inadmissible in accordance with the rules governing *lis pendens* laid down in Article 19 of Regulation (EC) No 2201/2003 of 27 November 2003, paragraph 1 of which provides that the court second seised (in this case, the Italian court) must continue to hear the case until such time as the jurisdiction of the court first seised is established, so that that court is not obliged to hear the case before it. 1 of which states that the court second seised (in this case, the Italian court) is required to continue proceedings until the jurisdiction of the court first seised has been established: it follows that the Italian court is temporarily deprived of the power to take a decision on jurisdiction, since it must await the conclusion of the proceedings first seised in order to exercise its adjudicative power. The pendency of the first proceedings therefore prevents the Italian court seised on the merits from contesting the jurisdiction of the court first seised and it precludes the Plenary Session of the Court of Cassation from carrying out the the review required by the preliminary ruling, which can be resumed only if the court first seised (in the instant case, the court in Madrid) definitively declines jurisdiction (thus making the Italian court the court first seised).

26. *Corte di Cassazione (plenary session), 28 September 2020 No 20442* 127

Pursuant to Article 10 of the Constitution, as interpreted by the Constitutional Court in its judgment of 22 October 2014 No 238, Italian jurisdiction cannot be held to be excluded on the ground of the immunity of the defendant State in the case of an action seeking compensation for pecuniary and non-pecuniary damages brought, on a personal and hereditary basis (*iure proprio* and *iure hereditatis*), against the Federal Republic of Germany by the son of an

Italian internee soldier, arrested in Italy during World War II, interned in a concentration camp located in Germany, forced to work and, ultimately, killed by SS troops. The entry into Italian law of the customary rule on sovereign immunity from civil jurisdiction, as interpreted in the judgment of the International Court of Justice of 3 February 2012, is to be construed as conflicting with Articles 2 and 24 of the Constitution, insofar as such judgment recognises sovereign immunity even when the State in question is accused of committing State crimes (*delicta imperii*).

27. *Belluno Tribunal, decree of 29 September 2020* 134

Following the issuance in Spain of a European account preservation order pursuant to Regulation (EU) No 655/2014 of 15 May 2014 to be enforced in Italy, where a request for information on bank accounts has been lodged pursuant to Article 14(1) of the Regulation, the bailiff shall proceed to search electronically for the bank accounts to be seized, giving application to Article 492-*bis* of the Code of Civil Procedure and Article 155-*quinquies* of the preliminary provisions of the Civil Code. At the end of this search, the bailiff shall enforce the preservation order pursuant to Article 23 of the Regulation and the bank shall proceed with the implementation of the order pursuant to Article 24 of the same Regulation.

28. *Corte di Cassazione (plenary session), order of 30 October 2020 No 24107* 734

The decision of the Council of State rejecting the motion for a preliminary reference to the Court of Justice of the European Union pursuant to Article 267 TFEU is not flawed by excess of jurisdictional power, and is therefore unobjectionable from the point of view of the external limits of jurisdiction, vis-à-vis with the law of the European Union: in fact, the review by the Court of Cassation of the hermeneutical choices of the administrative judge falls outside the scope of Article 111(8) of the Constitution.

29. *Corte di Cassazione (plenary session), order of 30 October 2020 No 24110* 135

The reference for a preliminary ruling on jurisdiction is admissible even when the court on the merits has already made an initial finding of lack of jurisdiction of all the plaintiff's claims, thus raising the question of jurisdiction, but within the framework of a preliminary measure (the postponement of the hearing for a more correct organisation of the cross-examination) which has not become final. The effective preclusion of the reference for a preliminary ruling on jurisdiction arises only if the court has issued a decision on jurisdiction that cannot be amended or withdrawn, which is not the case of a decision on jurisdiction which can still be amended.

Pursuant to Article 8(1) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over a claim for damages brought cumulatively (i) against a natural person domiciled in Italy who, presenting himself as a financial expert and using trickery and deception, placed, with the declared purpose of investment, a large sum of money belonging to the claimants in trusts managed by the English-registered company which he wholly owned and administered and which was appointed as trustee, and that sum was subsequently used for discretionary expenditures, most of which made by that natural person in casinos in Italy, and (ii) against the English trustee company and the bank, established in the United Kingdom, with

which the current accounts in the name of the English company had been set up and into which the payments were made. On the one hand, the liability ascribed to the defendants, although based on the infringement of different rules, is in all cases non-contractual in nature, with the natural person and the English company being held jointly and severally liable for an unlawful act which is substantially connected with conduct under criminal law (fraud) and the bank for conduct by omission, in breach of the English rules of the Money Laundering Act 2007 which implements Directive 60/2005/EC of 26 October 2005. On the other hand, the fact was alleged to be a unitary act, given that the exercise of the complex action of liability, for the compensatory effects claimed, implies the ascertainment of the conduct as a whole which, even if only objectively and even without subjective concurrence between the respective authors, determined the definitive loss of the sums received by the applicants.

In relation to the same dispute, Italian courts have jurisdiction also pursuant to Article 7(2) of Regulation (EU) No 1215/2012, given that: (i) the concept of "harmful event" refers both to the place where the damage occurred and to the place of the event giving rise to that damage, so that the defendant may be sued, at the plaintiff's choice, before the courts of either of those places; (ii) the place where the harmful event occurred is the place where the damage occurred provided that damage consists exclusively of an economic loss which is the direct consequence of an unlawful act committed in another Member State; and (iii) that both the negotiation between the defendant and the investors, including the placing of the sums in trusts, and the dissipation of those sums, which constitutes a harmful event, were carried out in Italy.

The assessment of territorial jurisdiction (venue) does not fall within the scope of the preliminary ruling on jurisdiction and may be examined in the subsequent proceedings on the merits. While the question of venue is governed (as concerns both the motion and the treatment) exclusively by the lex fori, for the purposes of the reference for a preliminary ruling on jurisdiction the infringement of the rules of jurisdiction is relevant only if it results in the defendant being sued before the court of a Member State other than the proper one.

30. *Milan Tribunal, 3 November 2020* 676

Pursuant to Article 79 of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, Italian courts do not have jurisdiction over a dispute brought by a Dutch national against a Luxembourgish company and an Italian company belonging to the same group, through which the former allegedly operates in Italy, for having collected, processed and transferred to third parties, in return for payment of a fee, the plaintiff's personal data, without his consent and, actually, in spite of his repeated objections. In fact, neither the data subject's habitual residence, which is to be understood as the place where he actually and continuously pursues his personal and, where appropriate, professional life, nor an establishment of the data controller or processor are located in Italy. In this latter regard, in order to identify such establishment it is necessary to assess both the degree of stability of the organisation and the actual pursuit of its activities in the national territory, taking into account the specific nature of

the services in question (in particular as regards undertakings which offer services exclusively via the internet).

Pursuant to recital 147 of Regulation 2016/679 and Articles 6 and 13 ECHR and 47 of the Charter of Fundamental Rights of the European Union, Article 79 of Regulation 2016/679 must be interpreted in a manner which is consistent with the principles laid out in Regulation (EU) No 1215/2012 of 12 December 2012, unless the application of the latter would undermine the specific provisions of the former. This is not the case where such application would ensure effective judicial protection of the data subject's right to privacy, as in the instant case. Accordingly, the facts in the instant case do not support the need for an extensive interpretation of the concept of 'establishment' in Regulation 2016/679, since the place where the actual damage to the protected good occurred – *i.e.*, the place where the injured party became aware of the unlawful processing of his data – is not in Italy: notably, neither the residence of the person concerned, nor the place where the unlawful event was discovered, nor the place where that processing took place are in Italy.

31. *Corte di Cassazione, 11 November 2020 No 25441* 359

In application of the principle of the *erga omnes* validity of judgments on status, the measure by which the public administration – having taken note of the finality of the judgment declaring the nullity, from the outset (*ex tunc*), of a marriage celebrated between a Russian and an Italian citizen, by virtue of which the foreigner had been granted Italian nationality – deletes the measure granting nationality to the foreign spouse: the retroactive effect of the judgment on status determines the non-existence, at the time the measure granting nationality was issued, of the prerequisite for the attribution of nationality, which is the marriage tie with the Italian national. Such a power of the public administration is not precluded by the expiry of the time-limit laid down in Article 8(2) of Law 5 February 1992 No 91, in its version applicable *ratione temporis*, since the expiry of that time-limit terminates the discretionary power to determine, by means of a ministerial decree of refusal, the existence of the reasons preventing the granting of nationality, but not the power to verify the absence of the requirements for its attribution.

32. *Corte di Cassazione, 24 November 2020 No 26757* 739

The right to compensation for damage caused by the failure or delay on the part of the Italian legislature to transpose a non self-executing EU Directive must be categorised in the context of contractual liability for breach of the State's legal obligation (which is meant as an indemnity) since it arises from the breach of a pre-existing obligation.

The scope of application of Article 12(2) of Directive 2004/80/EC of the European Parliament and of the Council of 29 April 2004 relating to compensation to crime victims is that of a rule which not only obliges the Member States to provide, in cross-border situations, a general system for compensating victims for every violent intentional crime committed on their territory where it is impossible to obtain full compensation from the individuals directly responsible, but also of a rule that allows persons residing in the Member State to be compensated, since they, too, are entitled to the right conferred, in this case, by secondary EU law.

33. *Corte di Cassazione, order of 26 November 2020 n. 26882* 363

The Court of Appeal – and not the Family Court (which, in the instant case, initiated sua sponte the proceedings for a preliminary ruling on jurisdiction) – has jurisdiction over the recognition in Italy of a judgment on the adoption of children born in Brazil, issued in that State in favour of adoptive parents of Brazilian nationality, one of whom also acquired the Italian citizenship and residency after the judgment: the rules on intercountry adoption set out in Article 29 *et seq.* of Law 4 May 1983 No 184 do not apply to the instant case but, rather, those in Article 41(1) of Law 31 May 1995 No 218, which in turn refers to Articles 64 *et seq.* of the same law.

34. *Corte di Cassazione (plenary session), 26 November 2020 n. 26984* 365

Pursuant to Article 2 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over proceedings brought by an Italian shareholder of a Polish company against the other shareholder of that company, who is also domiciled in Italy, seeking a declaration that the defendant is liable for having breached, in his capacity as the sole director of that company, certain management obligations entered into under a shareholders' agreement, as well as his own obligations as director. Moreover, Italian jurisdiction is not precluded by the exclusive jurisdiction over disputes in company matters conferred on the Polish court under Article 22(2) of that Regulation. On the one hand, the shareholders' agreement in question, in so far as its binding effects are limited to the legal sphere of the parties to it, is not capable of affecting the validity of the decisions of the organs of the company, which are a third party to the agreement. On the other hand, a dispute concerning the liability of a shareholder-manager of a company vis-à-vis another shareholder does not concern the agreement constituting that company, nor the acts of its organs: rather, it concerns only the relations between the two shareholders and is aimed at enforcing the defendant's liability of a personal nature, even if it is linked to a conduct allegedly involving abuse of the shareholder or director position.

35. *Corte di Cassazione (plenary session), 26 November 2020 No 26986* 369

Italian courts do not have jurisdiction over an action for the compensation of damages suffered by the heirs of a victim of medical treatment, brought against a German clinic and its insurance company on a personal and hereditary basis (*iure proprio* and *iure hereditatis*), either under Article 2 of Regulation (EC) No 44/2001 of 22 December 2000, since the defendants are established in Germany, or under Article 5(1)(b) second indent of that Regulation, since Italy is not the place where the services constituting the medical treatment were or should have been provided under the contract, or under Article 5(3) of that Regulation, since for the purposes of that provision, the relevant factor is the place where the harmful event occurred or is likely to occur (in the instant case, the place where the diagnostic error ascribed to the clinic occurred), whereas the place where the subsequent consequences of the event occurred or are likely to occur cannot be taken into account. Moreover, Italian courts do not have jurisdiction pursuant to Article 15(1) of the same Regulation (which regulates jurisdiction over consumer contracts), since the defendants did not carry out their commercial or professional activities in Italy

(the country in which the patient was domiciled), nor did they direct those activities to Italy.

36. *Corte di Cassazione, order of 30 November 2020 No 27322* 374

Pursuant to Articles 839 and 840 of the Code of Civil Procedure, adopted in execution of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958, when opposing the decree of the President of the Court of Appeal, among the objections against recognition that may be raised by the interested party are: the incapacity of the parties according to the law applicable to them; the invalidity of the agreement according to the law previously chosen by the parties or the law of the State in which the award was made; as well as the failure to inform the party against whom recognition and enforcement of the award is sought of the appointment of the arbitrator or of the arbitration proceedings; or, in any case, the impossibility for such party of asserting its defence in those proceedings. An objection to the recognition of an arbitral award rendered in the Sultanate of Oman against an Italian company is unfounded on the grounds that the notice of access to arbitration was communicated, by email, to a person allegedly lacking the power to represent the defendant company and that the arbitration clause was signed by a person allegedly lacking the power of attorney, if it is proven that the company had the opportunity to defend itself in the arbitration proceedings and that the activity of the representative was verified by conclusive facts. The refusal to recognise and enforce a foreign award due to the violation of one's right to defence in the arbitration proceedings, as provided at Article 840(3) No 2 of the Code of Civil Procedure, may not merely be based on the fact that a particular procedural provision in force in the foreign legal system and applicable in the case in question was violated: to the contrary, refusal of recognition and enforcement of an arbitration award demands that the aforementioned impossibility of asserting one's own defence actually occurred. Conversely, the case where a particular procedural provision in force in the foreign legal system and applicable in the case in question was violated amounts only to a defect in the arbitration proceedings, to be asserted, if at all, in the foreign legal system and in accordance with the means of appeal provided for therein.

Pursuant to Articles 4 and 5 of the New York Convention, the party requesting a review of the award has the burden only of producing, either in the original version or in a certified copy, the original of the award and the written agreement containing the arbitration clause. On the other hand, the party against whom recognition and enforcement of the award is sought bears the burden of proving, *inter alia*, the possible invalidity of the appointment of the arbitrators or the impossibility of having it own defence heard: in particular, if they allege the unsuitability of the means of communication used, they bear the burden of showing that this, either by its very nature or by reason of the specific manner in which it was used, did not enable them to have timely knowledge of the arbitral proceedings or of the essential steps of the proceedings' development. However, the relevant investigations carried out by the requested court constitute findings of fact that are not susceptible of review by the court of last instance (Court of Cassation), provided they are properly motivated.

37. *Corte di Cassazione (plenary session), 10 December 2020 No 28180* 377

Immunity from jurisdiction may be waived only by the person actually entitled to it and not by the person who actually carried out the activity in question. Such a waiver, however, cannot be implied from the submission of secondary claims subject to the non-acceptance of the preliminary claim of immunity.

According to the theory of strict immunity, applied in light of Articles 24 of the Constitution, 6 ECHR and 47 of the CFREU, functional immunity from jurisdiction, which is premised on the substance of the activity underlying the dispute, irrespective of the public nature of the party involved in the litigation, cannot be recognised in the presence of mere activities generically attributable to a State – ordinarily falling under the responsibility of the State even though they are carried out, by designation, by private companies; on the contrary, it is necessary that the dispute concerns activities *iure imperii*.

Pursuant to Article 94 of the Montego Bay Convention of 10 December 1982 on the Law of the Sea and Rules 3-1 of Part A-1 of Chapter II-1 and 6 of Part A of Chapter I of the Annex to the London Convention for the Safety of Life at Sea of 1 January 1974, the flag State is obliged to take such measures as are necessary to safeguard safety at sea, including measures relating to the construction, equipment and seaworthiness of ships, compliance with which is a precondition for the effective exercise of its jurisdiction (and control) in relation to administrative matters. The flag State shall issue a ship's safety certificate on the basis of a classification carried out by a company chosen by the shipowner, certifying that the ship is designed and built in accordance with the class rules established in accordance with the principles laid down by the International Maritime Organisation. Consequently, classification and certification are distinct activities, even though they are often carried out by the same company, in the first case without any public delegation and in the second case by delegation of the flag State.

According to Recital 16 of Directive 2009/15/EC of 23 April 2009 – which, while not applicable to the present case which does not concern a ship flying the flag of a Member State, is nevertheless relevant since it clarifies the EU approach to functional immunity in this matter – when a recognised organisation, its surveyors or its technical staff issue statutory certificates for the ship on behalf of the administration, Member States should consider allowing them, in respect of such delegated activities, to be subject to appropriate legal safeguards and judicial protection, including the exercise of appropriate rights of defence, except for immunity, a prerogative which may only be invoked by Member States as an inseparable right of supernaturalisation which, as such, cannot be delegated.

Pursuant to Articles 5 and 386 of the Code of Civil Procedure, for the purposes of determining Italian jurisdiction, the Plenary Session of the Court of Cassation is the judge of fact: hence, the Court shall examine the acts whose assessment affects the determination of jurisdiction, taking into account, however, that the findings must be considered, as they emerge from the legal claim and its possible clarification, with regard to the cause of action (*causa petendi*) and the relief sought (substantive *petitum*).

Pursuant to Article 94 of the Montego Bay Convention and Rules 3-1 and 6 of the Annex to the London Convention, Italian courts have jurisdiction over the

dispute brought by the heirs of the passengers of a ship flying the Panamanian flag which was shipwrecked while sailing between Saudi Arabia and Egypt against the classification and certification society (by the foreign State) of that ship: that company cannot claim the functional immunity conferred on the delegating State, unless it has been granted by that State powers going beyond the mere performance of a technical activity governed by pre-established rules and legal parameters, such as, for example, the interpretation of the requirements necessary for compliance with those measures, for which that State is exclusively responsible.

38. *Corte di Cassazione (plenary session), order of 14 December 2020 No 28384* 971

Pursuant to recital 22 and Articles 25, 29(1) and 31(2) of Regulation (EU) No 1215/2012 of 12 December 2012, the application for a preliminary ruling on jurisdiction lodged under Article 41 of the Code of Civil Procedure is admissible in relation to an action brought by an Italian municipality against two banks – also Italian – seeking a declaration that the latter have failed to fulfil their obligations under two mandate agreements and, in the case of one of those agreements, an investment services contract, all concerning the restructuring of the plaintiff's debt, which establish Italy as the exclusive forum for disputes between the parties, and, in the alternative, their non-contractual liability. This conclusion is not precluded by the defendants' subsequent commencement of proceedings before the English courts against the municipality seeking a declaration of the validity and enforceability of the derivative contracts entered into between the parties in execution of the abovementioned mandates, nor by the absence of their own contractual and non-contractual liability, by virtue of a different exclusive jurisdiction clause contained in two ISDA Master Agreements, inasmuch as the criterion of the predominance of the jurisdiction clause does not apply where the legal relationship between the parties is governed by multiple contractual regulations, containing several conflicting or interfering jurisdiction clauses, when the court chosen by the parties has been seised first: in such case, the criterion according to which the decision on jurisdiction lies with the court first seised pursuant to the ordinary criteria laid down in Regulation No 1215/2012 takes precedence. This Regulation, which allows the Plenary Session of the Court of Cassation to rule – at a preliminary level and expeditiously in the presence of actual or potential conflicts of jurisdiction with foreign courts – on the jurisdiction of the Italian court in cases, such as the instant one, where the Italian court has the power to decide first, would not be admissible if the Italian court was seised second.

Irrespective of the choice made by the parties, pursuant to Article 25 of Regulation No 1215/2012, to submit to the Italian courts all disputes relating to contracts of mandate and contracts for the provision of investment services, in relation to the contractual and non-contractual aspects of the liability alleged by the municipality, in the instant case Italian courts have jurisdiction over such disputes in accordance with the general criteria on jurisdiction set forth by Regulation No 1215/2012 and, notably, the seat of the defendant banks (Article 4), the place of performance of the obligations in question (Article 7(1)(a)) and the place where the non-contractual tort was committed (Article 7(2)).

39. *Corte di Cassazione (plenary session), order of 15 December 2020 No 28675* 391

Pursuant to Articles 41 and 380-*ter* of the Code of Civil Procedure, the Plenary Sessions of the Court of Cassation have wide discretion in the choice of the procedure to be applied to the preliminary ruling on jurisdiction: for instance, they can decide on its treatment in open court instead of in chambers, considering that these procedures are, in any case, equivalent for the purposes of cross-examination and that the use of the former (which, unlike the latter, is not expressly provided for) instead of the latter amounts to a mere procedural irregularity.

Pursuant to Article 41 of the Code of Civil Procedure, a preliminary ruling on jurisdiction is admissible if it is proposed before the taking of the evidence relied on by the parties, unless it concerns a preliminary investigation relevant to the ruling on jurisdiction, which is effectively and concretely precluded by the proposal of the application for a ruling.

Pursuant to Articles 41 and 42 of the Code of Civil Procedure and Articles 29 and 30 of Regulation (EU) No 1215/2012 of 12 December 2012, any question concerning *lis pendens* and related actions pending in Italy and abroad is inadmissible in the context of the ruling on jurisdiction if these have not been verified by the court deciding on the merit: on the one hand, this does not qualify as a question of jurisdiction; on the other hand, the ruling on jurisdiction cannot be converted into an "improper" ruling on jurisdiction, which is never allowed against measures that do not entail a stay of the proceedings. In the context of such regulation, however, a separate assessment of Italian jurisdiction in relation to the lis pendens or related actions is permitted.

Pursuant to Articles 7(1) and 25 of Regulation (EU) No 1215/2012, Italian courts do not have jurisdiction over the action brought by an Italian company against two German companies, in the context of a decades-long relationship between entrepreneurs in the field of high-level technology and owners of intellectual property rights, aimed at the negative assessment of the plaintiff's liability with regard to the conduct alleged by the defendants as improper or unlawful in various ways and aimed at obtaining undue profit, by submitting inaccurate or incomplete data on the actual profitability of certain patents, this dispute being of a contractual nature since it arose from the above-mentioned relationship, in the context of which a clause extending jurisdiction in favour of the German court was entered into by the parties.

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012, Italian courts have jurisdiction over the non-contractual action brought by the Italian company for a declaration that the conduct engaged in Germany by the two German companies through a campaign in German newspapers is unlawful since it amounts to defamatory and disparaging conduct as well as professional misconduct. Pursuant to Article 7(2) as interpreted by the CJEU, the concept of "harmful event" refers both to the place where the damage occurred and to the place of the event giving rise to that damage, so that the defendant may be sued, at the plaintiff's choice, before the courts of either of those places: when the plaintiff is a legal person, the former usually coincides with the place of its registered office, unless its activity in a different place is so prevalent as to exclude the coincidence of the place of its registered office with its centre of interests. In the instant case, Italian courts have jurisdiction provided the plaintiff, which is a legal person, has its registered office in Italy, absent proof

that its effective centre of interest is located in a different place. On the other hand, the place where the damaging information was actually circulated is irrelevant.

Pursuant to Articles 2, 7(2), 8(1) and 24 of Regulation (EU) No 1215/2012, Italian courts do not have jurisdiction over the non-contractual actions for a negative declaration of the unlawfulness of the overall multiannual conduct of three directors of that Italian company and/or other companies in the relevant group, in concert with that company, towards one or more German companies, and, in one case, of the Italian company itself, in so far as: (i) both the place where the damage occurred, i.e., the place where the information and good faith obligations incumbent on those directors were infringed, and the place where the damage occurred, which is the registered office of the injured parties, are in Germany; (ii) there is no connection between those actions and the action for negative declaratory relief for breach of contract brought by the Italian company against the German companies, given that, for two claims to be regarded as related: (i) they shall not have different subject-matter or grounds; (ii) they must be compatible with each other and not subordinate to each other; and (iii) there must be no risk of irreconcilable decisions (in this respect, only divergent solutions are admissible or the fact that the potential ineligibility of one claim may have an indirect effect on the interest underlying the other). Finally, the claim brought by the German companies against the directors does not concern a decision of the company administered by them, the validity of which is exclusively a matter for the court of the latter's seat.

Pursuant to Articles 2, 7(2) and 8(1) of Regulation (EU) No 1215/2012, Italian courts do not have jurisdiction over the non-contractual actions for damages brought by two directors of the Italian company and/or other companies in the relevant group against one or both of the German companies, and in one case the Italian company, in respect of the aforementioned conduct of defamation, disparagement or professional misconduct, there being no connection between the compensation sought and the relationship between the directors and the Italian company: in fact, the place where the event giving rise to the damage occurred is located in Germany and the place where the damage occurred is located in Switzerland (which in the case of natural persons is normally their place of domicile), no evidence having been brought that the domicile of those directors does not coincide with their centre of interests. On the other hand, Italian jurisdiction exists in relation to a similar action brought by a third director of the Italian company whose domicile is in Italy.

40. *Corte di Cassazione (plenary session), order of 21 December 2020 No 29179* 408

A reference for a preliminary ruling on jurisdiction under Article 41 of the Code of Civil Procedure is inadmissible if it seeks to establish whether the conditions for lis pendens under Article 29 of Regulation (EU) No 1215/2012 of 12 December 2012 are met, which is a matter for the court having jurisdiction on the merits.

Pursuant to the first indent of Article 7(1)(b) first indent of the same Regulation, Italian courts do not have jurisdiction over an action seeking payment for the supply and installation of an industrial kitchen to be delivered in another Member State, in respect of which jurisdiction lies with the courts of the place where the goods were delivered or should have been delivered

under the contract of sale concluded between two English companies. This conclusion is not affected by the fact that the Italian company, which was the assignee of the contractual claim, brought an action before the Italian court, since the connecting factor laid down in Article 7(1) is applicable not only where the contracting parties are in dispute but also where a third party – who is not related to the original contractual relationship – brings an action against the parties to the contract, provided such action is based on that contract.

41. *Turin Tribunal, 7 January 2021* 747

In the proceedings for opposition to a European order for payment pursuant to Regulation (EC) No 1896/2006 of 12 December 2006, the motion alleging lack of jurisdiction of the Italian court, raised in the statement of defence and reply by the opposing party, who previously brought opposition proceedings by means of a document entitled 'Grounds of opposition to the European order for payment', is timely and admissible.

In accordance with Article 7(1)(a) and (b) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over a dispute concerning the payment of services supplied by an Italian company to a Spanish company, where the invoices all bear the wording EXW (Ex Works) and FF (Ex Factory), a clause not contested by the defendant and indicating that the seller delivers by placing the goods at the buyer's disposal at its own premises. This is the case even if it is maintained that the obligation at issue is the payment of the price of the service, since the monetary obligation is, in the instant case, a pecuniary obligation and, as such, it is portable to the creditor's domicile.

42. *Corte di Cassazione (plenary session), 5 February 2021 No 2867* 413

Since Article 15 of Law 31 May 1995 No 218, in stating that foreign law must be applied by the Italian court making use of all the interpretative tools provided by the legal system in question, does not answer the questions of the characterisation and nature of the rule of another State, the Italian court, in order to identify the conflict rule applicable to the claim in accordance with Law No 218/1995, must determine the meaning of the relevant legal expressions on the basis of the *lex fori*, *i.e.* according to the rules of characterisation of the Italian legal system. Consequently, in relation to the succession of an English national who married an Italian national at a time subsequent to the drafting of the will, the question of the revocation of the will due to the testator's subsequent marriage must be considered as a matter of succession, and not as a matter of matrimonial property regime.

Pursuant to Article 46 of Law 218/1995, according to which successions are governed by the national law of the testator at the time of death, the succession of a person with British nationality and domicile, whose assets include immovable property situated in Italy and various movable property, is governed in accordance with the English common law conflict of laws rules – which subject succession in respect of movable property to the law of the deceased's domicile and succession in respect of immovable property to the *lex rei sitae*. Therefore, in the instant case the succession is governed, as far as movable property is concerned, by English law as the law of the deceased's domicile, and, by virtue of the reference-back allowed by Article 13(1)(b) of Law No 218/1995, by Italian law as for the immovable property situated in Italy. It

follows that the estate is subject to different rules on the succession and administration of the estate, *i.e.* different laws verifying the validity and effectiveness of the title of succession, identifying the heirs and beneficiaries, determining the size of the shares and the methods of acceptance and publicity, and providing for any protection granted by forced heirship rules.

43. *Corte di Cassazione (plenary session), order of 9 February 2021 No 3125* 423

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over proceedings brought by an Italian company against a Swedish public body seeking to establish the latter's liability for having caused, following the unlawful termination of a contract originally awarded to the plaintiff company and then transferred by the latter to a Swedish special purpose vehicle controlled by the plaintiff, the insolvency of that special purpose vehicle and the subsequent enforcement of a first-call bank guarantee issued by an Italian bank in favour of a Swedish bank and counter-guaranteed by the plaintiff company. The action concerns non-contractual matters and, on the basis of that provision, regard must be had to the "place where the harmful event occurred", which is the place where the damage arose, ie, the place where the causal fact, giving rise to liability for an offence or quasi-offence, produced its harmful effects directly on the immediate victim and, in the instant case, the damage alleged by the plaintiff company, consisting in the enforcement of the counter-guarantee by the Italian bank, occurred in Italy.

With respect to the same action, Italian jurisdiction is not excluded as a result of the the clause, contained in the tender contract, that gives exclusive jurisdiction to the Swedish courts: although the plaintiff company was originally a party to that contract, it then transferred the contract to the special purpose company controlled by it. Therefore, pursuant to Article 25 of Regulation No 1215/2012, the plaintiff company is not bound by the contract, not even with respect to the jurisdiction clause contained therein.

44. *Corte di Cassazione, order of 17 February 2021 No 4222* 686

Appeal in Cassation is inadmissible against a Family Court decision which – although implicitly establishing the unlawful retention of a minor child, against the wishes of one of her parents, since September 2018 (when the father had returned to the mother the documents necessary for their return to Spain) – refused to allow the child's immediate return to her last place of habitual residence, in Spain, finding that the conditions preventing the mother's return to Ibiza were her lack of work and housing, as well as her lack of financial means, and her lack of significant family or emotional ties, a situation necessarily bound to have a negative impact on her relationship with her daughter, and thus on the minor herself. In fact, the assessment of whether the conditions considered relevant and preventing the child's return under Article 13(1)(b) of the Hague Convention of 25 October 1980 (i.e. the degree of physical or psychological harm or the otherwise intolerable situation) constitutes a factual investigation that is not subject to the review of the Court of Cassation: notably, it requires an assessment of the evidence, and namely whether the lower court's assessment is supported by a reasoning that is devoid of flaws in logic and under the law.

45. *Turin Tribunal, 19 February 2021* 1017

The exclusive jurisdiction clause contained in an airline's general contractual terms and conditions, which the passenger accepted by clicking on it at the time of the online purchase of the ticket, must be considered validly concluded within the meaning of Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012 and enforceable against the third party assignee of the passengers' claim for recovery of the sums due because of the flight delay within the meaning of Regulation (EC) No 261/2004 of 11 February 2004. Accordingly, Italian courts do not have jurisdiction: consistently with the jurisdiction clause, in an action for the compensation of damages brought by a German company (assignee of the claim of two passengers for the delay of a flight on an entirely Italian route) against the Irish airline that operated the flight, jurisdiction lies exclusively with the Irish courts.

46. *Corte di Cassazione, order of 26 February 2021 No 5327* 692

Pursuant to Article 34 of Council Regulation (EC) No 44/2001 of 22 December 2000, a Polish judgment establishing, for the purposes of the payment of maintenance, the paternity link between an Italian national and a foreign child is contrary to procedural public policy – and, consequently, it is not eligible for enforcement in Italy – in so far as the court of origin, after initially ordering, of its own motion, a DNA test, subsequently revoked that order without any motives and despite the declared willingness of the child's father to take the test, thus giving rise to an unjustified interruption in the procedure for the taking of evidence of particular demonstrative value.

47. *Milan Court of Appeal, 2 March 2021* 1021

Pursuant to Article 19(1) of the Vienna Convention of 11 April 1980 on the International Sale of Goods, where a purchase order in response to a general offer to sell adds specific information on the quality of the goods to be sold, such as the trade mark, that order constitutes not an acceptance of the offer but, rather, a counter-offer. The addition of elements concerning the quality of the goods substantially alters the terms of the initial offer within the meaning of Article 19(3) of the Convention. If the seller does not accept such a counter-offer, and if he proceeds with the delivery without requesting further clarification, he is obliged to supply exactly the goods requested by the buyer through the purchase order, *i.e.* the counter-offer, on the basis of which the contract between the parties was concluded.

48. *Corte di Cassazione (plenary session), order of 4 March 2021 No 6001* 697

Pursuant to Article 5(1)(a) of the Lugano Convention of 30 October 2007 – according to which, in contractual matters, the court of the place where the obligation in question was or is to be performed has jurisdiction – Italian courts have jurisdiction over an action seeking payment of the fees for the defence services provided in Italy by the plaintiff in favour of the mother of the defendants, domiciled in Switzerland and Italy respectively, who had expressly acknowledged the existence and extent of the debt in a document addressed to the plaintiff: in fact, the activity in question is a professional activity carried out and to be remunerated in Italy, and Article 16(2) of that Convention, in accordance to which an action against a consumer may be brought only in the courts of the Contracting State in whose territory the

consumer is domiciled, is not applicable. Although in the relationship between a lawyer and a client the latter is to be regarded as a consumer, Article 15(1)(c) of the Convention provides that, in all cases not covered by subparagraphs (a) and (b) of the same provision, jurisdiction over consumer contracts is governed by the rules in Section 4 which regulate jurisdiction only provided the professional pursues its activities in the State of the consumer's domicile or where those activities are directed, by whatever means, to that State, provided that the contract falls within the scope of those activities, which is not the case here.

49. *Corte di Cassazione, 5 March 2021 No 6216* 703

Pursuant to Articles 2 and 7 of the Washington Agreement of 23 May 1973 between Italy and the United States of America on social security, the Italian rules on insurance schemes for so-called 'minor risks' apply to work carried out in the United States. While it is true that, in addition to the general compulsory insurance for disability, old age and survivors and the treatments in lieu thereof, other social security schemes, including future ones, also fall within the scope of that agreement, in relation to the latter, the exception to the principle of territoriality requires that the same event protected by Italian legislation shall also be protected by U.S. legislation, an equivalence not found with reference to the aforementioned 'minor risks'.

50. *Corte di Cassazione, order of 5 March 2021 No 6228* 1022

Pursuant to Article 14(a) and (b) of Legislative Decree 19 November 2007 No 251, subsidiary international protection cannot be granted to a Nigerian citizen who has been subjected, in her country of origin, to repeated and devious pressure to marry, since such pressure did not reach the level of a real and proper imposition, so as to expose the victim to treatment harmful, by its own nature, to her personal dignity. This does not detract from the fact that when, as in the case in point, the pressures and inductions in fact suffered were such as to cause strong discomfort and suffering in the person, as well as to affect her self-determination and personal liberty so much as to place her in a situation of particular vulnerability, the "serious reasons of a humanitarian character" which ground the concession of the residence permit pursuant to and for the effects of the Article 5(6) of Legislative Decree 25 July 1998 No 286 are satisfied.

51. *Corte di Cassazione, order of 10 March 2021 No 6747* 1024

Although Legislative Decree 6 February 2007 No 30 does not require, for the issuance of a residence permit for family reasons, the actual cohabitation of the spouses, nor the prior and lawful stay of the applicant, in accordance with Article 30, paragraph 1-bis of Legislative Decree 25 July 1998 No 286 and also taking into account the relevant guidelines elaborated by the European Commission, a residence permit for family reasons cannot be granted to an Ukrainian citizen married to an Italian citizen: having been ascertained that the couple met only three days before the celebration of the wedding, which took place while the woman was awaiting the execution of a decree of expulsion just issued against her, and having the husband also reported that he had married her in return for a financial payment, the marriage is to be considered fictitious. The duration of the marriage and of the applicant's stay in Italy,

which lasted more than ten years, do not ground the applicant's right to be recognised as having a right to permanent residence in accordance with Article 14(2) of Legislative Decree 6 February 2007 No 30.

52. *Milan Court of Appeal, 15 March 2021* 708

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction over an action for damages, on the basis of liability for breach of contract, brought by Italian investors against a number of individuals held liable for the placement in Italy of shares in a hedge fund established in the Cayman Islands, on the basis of an inaccurate representation of the hedge fund's assets, and, in particular, against the Irish company which acted as administrator of that fund, held liable for having calculated and certified its net asset value (NAV) in an inaccurate manner. In fact, prospectus liability is non-contractual in nature and the place where the harmful event occurred is Italy, coinciding with the (allegedly) deceptive conduct of the defendants, aimed at inducing potential investors to make financially detrimental decisions. In accordance with this provision, the notion of 'the place where the harmful event occurred' may refer both to the place where the damage occurred (*locus damni*) and the place where the event giving rise to that damage occurred (*locus commissi delicti*), leaving the plaintiff free to seise, at its discretion, the courts of either place.

53. *Corte di Cassazione (plenary session), 31 March 2021 No 9006* 977

In his capacity as government official, an Italian mayor has standing to bring proceedings pursuant to Article 67 of Law 31 May 1995 No 218 for the recognition of the effectiveness of a decree issued by the Surrogate's Court of the State of New York stating the full adoption of a child born in that State – such proceedings arising from the refusal of the mayor to register the child's birth certificate (such refusal not being based on formal flaws of the certificate) according to which the child is the adopted son of a same-sex male couple residing in the State of New York, one member of which is an Italian citizen. In such proceedings, both adoptive parents are necessary joinders, since the act is inseparable from the recognition of the parental status of both. However, where the action is brought by only one of the parents, but the other voluntarily intervenes in the cassation proceedings by joining the appellant's defences and without prejudice to the parties' procedural rights, the Court of Cassation may not find that there is lack of adversarial proceedings, nor refer the case back to the judge hearing the case on the merits: rather, the Court of Cassation must examine the appeal and rule on it, since the principle of effectiveness takes precedence in assessing the exercise of and infringement on the rights of defence. This dispute must be dealt with by the Court of Appeal in a single instance, since the special laws on child adoption referred to in Article 41 of Law 218/1995 do not apply in the absence of the subjective requirements set forth in Articles 35 and 36 of Law 4 May 1983 No 184, nor can the dispute be brought under the rules set forth in Articles 95 and 96 of Presidential Decree 3 November 2000 No 396, given that the registration concerns a deed drawn up abroad, in relation to which the conditions for recognising its effectiveness in the Italian system (and not its formal aspects or the scope of the powers and competences of the civil registrar) are relevant. The decree in question is not contrary to the principles of international public

policy and may therefore be recognised in Italy pursuant to Article 64 of Law 218/1995: the fact that the family unit is same-sex does not constitute an obstacle to such recognition, provided that the parentage is not based on a surrogacy agreement.

54. *Bergamo Tribunal, 15 April 2021* 1025

Italian courts do not have jurisdiction over a dispute concerning the recovery of sums owed by a Monegasque company to an Italian company as payment for the provision of services by the latter to the former in Monte Carlo: in accordance with the first indent of Article 7(1)(b) of Regulation (EU) No 1215/2012 of 12 December 2012 – applicable also to relations with defendants domiciled in non-EU Member States by virtue of the reference, made in Article 3(2) of Law 31 May 1995 No 218, to the Brussels Convention of 27 September 1968, as subsequently amended – in the case of contracts for the provision of services, the place of performance of the obligation in question is the place where the services were or should have been provided under the contract, *i.e.*, in the instant case, Monte Carlo.

55. *Corte di Cassazione (plenary session), 16 April 2021 No 10107* 713

On the subject of the exoneration of the executor of a will from his office, the decision of the president of the court of first instance may be challenged before the president of the Court of Appeal and the decision taken by the latter may not be challenged by way of extraordinary appeal under Article 111 of the Constitution, since the decision lacks the characteristics of decisiveness and finality. On the other hand, the allegation of a procedural flaw relating to jurisdiction or venue or to the violation of situations of procedural importance is irrelevant since the ruling on the question of compliance with the procedural rules has the same nature as the decision towards which the trial is ultimately ordained: as such, it cannot have the independent value of a decisive and final measure, if the contested act lacks these characteristics.

Although, according to settled case-law, references for a preliminary ruling on interpretation enjoy a presumption of relevance, a request for a reference to the Court of Justice of the European Union for a preliminary ruling is not admissible if the appeal in Cassation is ruled inadmissible: on the one hand, that would be tantamount to a declaration by the referring court that it completely disregards such ruling; on the other hand, it would entitle the Court of Justice to dismiss the request, since the interpretation sought would manifestly lack connection with the reality or the subject-matter of the main proceedings.

Pursuant to Articles 6(a) and 7 of Regulation (EU) No 650/2012 of 4 July 2012, the decision by which an Italian court (while it declines jurisdiction) identifies a Dutch court as the one having jurisdiction to hear an application for the suspension and revocation of the appointment of an individual as executor of the estate of a Dutch national, who had resided for many years in Italy (and who had designated Dutch law as the law applicable to his succession, as the law of his nationality), is binding. This is premised on the fact that one of the parties to the proceedings pleaded lack of jurisdiction in favour of the Dutch court and that – on the grounds that the law chosen by the testator to govern his succession is Dutch law, that the drafting of the will took place in The Netherlands in Dutch, as well as on the grounds of the

objective complexity of the estate and of the fact that the most valuable of the relict assets are to be found in The Netherlands – the Italian court considered the Dutch court as better placed to decide the case.

56. *Corte di Cassazione (plenary session), order of 20 April 2021 No 10356* 996

Pursuant to Article 3 of Regulation (EU) No 2015/848 of 20 May 2015 – to be applied, pursuant to Article 84 of the same Regulation, to insolvency proceedings opened after 26 June 2017 – Italian courts have jurisdiction over an insolvency petition brought against an Italian company which has transferred its registered office to another Member State prior to the declaration of insolvency, where no economic activity is actually carried on in the new place of business and the centre of the undertaking's management, administrative and organisational activity has not been moved: because of the fictitious nature of the transfer, the centre of the debtor's main interests (COMI), *i.e.*, the place where the debtor exercises the management of his interests in a manner which is habitual and recognisable to third parties, continues to be located in Italy. Furthermore, where the transfer abroad of the registered office of the debtor company took place less than three months before the date on which the application for insolvency was made, the presumption laid down in Article 3(2) of Regulation 2015/848, which identifies the centre of the debtor's main interests (COMI) in the place where its registered office is located, does not apply.

57. *Corte di Cassazione, 10 May 2021 No 12344* 999

Pursuant to [Article 16 of] the Rome Convention of 19 June 1980, Italian law (and not Algerian law, which, however, is relevant in accordance with Article 6 of the Convention) is applicable to an action seeking the declaration of the unlawfulness of a dismissal and reinstatement in employment in relation to an employment contract which arose, was performed and terminated in Algeria, In fact, Algerian law does not afford protection to employees in case of individual dismissals for organisational reasons, nor does it guarantee respect for the fundamental principle of proportionate and adequate remuneration (Article 36 of the Italian Constitution) in cases where the agreement between the parties conceals a contract of employment and gives the worker a remuneration lower than that to which he/she is entitled. Thus, Algerian law conflicts with the principles of international public policy, compliance with which is found in the protection (common to the various legal systems) of fundamental human rights or in the set of fundamental values of the legal system at a given historical time and, in particular, in the system of protections provided at a level higher than that of primary legislation. It follows that reference must be made to the labour protection provided by the Italian Constitution (Articles 1, 4 and 35 thereof) and, after the entry into force of the Lisbon Treaty, to the guarantees provided to fundamental rights according to the Nice Charter (elevated to the level of the founding Treaties of the European Union by Article 6 TEU), all such sources affording workers protection against unjustified dismissal.

58. *Pistoia Tribunal, 1 June 2021* 1028

Pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, applicable *ratione temporis*, Italian courts have jurisdiction over an action

brought by an Italian company against a sole proprietor established in the Czech Republic for the payment of goods sold and delivered in the Czech Republic, in view of the fact that the jurisdiction clause extending the jurisdiction to the Pistoia court, expressly set out in the general terms and conditions of sale at the bottom of the invoices in question and tacitly accepted by the opponent, was the expression of a well-established usage in the plant-nursery sector which could not have been unknown to the opponent, given that the requirement of written form required for the clause extending jurisdiction is to be considered fulfilled not only in the case of written acceptance of such clause, but also when the contract has been concluded by tacit acceptance, through its execution pursuant to Article 1327 of the Civil Code if the relationship has been preceded by commercial transactions in which the clause is duly accepted in writing and consistently applied, without there being any evidence to justify the presumption of a contrary intention in respect of that uninterrupted commercial practice.

Pursuant to Article 4(1)(a) of Regulation (EC) No 593/2008 of 17 June 2008, in the absence of a choice of law by the parties, a contract for the sale of goods is governed by the law of the country in which the seller is habitually resident: it follows that Italian law applies to the limitation period for the plaintiff's claim, according to which the ordinary limitation period is ten years.

59. *Corte di Cassazione, order of 9 June 2021 No 16172* 1030

In light of the consolidated principle of law according to which gender violence (which includes forced marriage and attempted sexual abuse) warrants by its very nature the recognition of international protection, gender violence can also be understood as a prerequisite for granting the refugee status under the Geneva Convention of 28 July 1951, interpreted in the light of the UNHCR guidelines on gender persecution. These guidelines show that, despite the fact that the definition of refugee in Article 1(A)(2) of the Convention and Article 2(1)(e) of Legislative Decree No 251 of 19 November 2007 does not expressly provide for gender as a cause of persecution, it is nevertheless necessary that legislation on asylum be also interpreted from a gender perspective. Hence, gender must be understood as an expression of social, economic and cultural status and not only as a mere biological and chemical differentiation between opposite sexes. It follows that gender affiliation can (and, indeed, must) be considered, subject to certain conditions, as referring to "a particular social group", which may be the object of persecution within the meaning and for the purposes of Article 1(A)(2) of the Convention. Consequently, a woman of Nigerian origin, who has been subjected to repeated and devious pressure to marry and to sexual harassment for refusing to do so, must be granted refugee status if there is a risk that she may again be subjected to a treatment which is equally prejudicial to her fundamental rights upon her return to her State of origin.

60. *Corte di Cassazione (plenary session), order of 25 June 2021 No 18299* 1008

The reference made in Article 3(2) of Law 31 May 1995 No 218 to the Brussels Convention of 27 September 1968 as pertains matters falling in the Convention's scope of application must now be deemed to have been made to Regulation (EU) No 1215/2012 of 12 December 2012 in view of the fact that Article 68 of Regulation (EC) No 44/2001 of 22 December 2000 and Regu-

lation No 1215/2012 – respectively specifying that the provisions of the Brussels Convention are to be replaced, as between EU Member States, by the respective Regulation and that "any reference to that Convention shall be construed as a reference to this Regulation" – gave rise to an "amendment in force for Italy" of that Convention for the purposes of Article 3(2) of Law 218/1995. Therefore, in an action for the termination of a contract for the sale of watches and jewelry manufactured in China, brought by an Italian company for breach of contract against the Hong Kong manufacturing company, Italian courts have jurisdiction pursuant to the first indent of Article 7(2)(b) of Regulation No 1215/2012, which, in light of the above, is also applicable to defendants not domiciled in a EU Member State. In fact, this provision identifies as the court having jurisdiction over sale contracts the court for the place where the goods were or should have been delivered under the contract: as clarified by the case law of the Court of Justice of the European Union, when it is not possible to determine that place on the basis of the provisions of the contract, such place must be found in the place of physical delivery of the goods, and in the instant case, Italy.

61. *Constitutional Court, 20 July 2021 No 157* 954

Pursuant to Articles 3, 24, 113 and 117(1) of the Italian Constitution (the latter in relation to Article 47 of the Charter of Fundamental Rights of the European Union), Article 79(2) of Presidential Decree 30 May 2002 No 115 on the costs of justice is unconstitutional in so far as it does not provide that, in cases in which it proves impossible to produce the consular certificate, nationals of non EU Member States may produce documents in lieu of said certification (relying, by analogy, on the institutions provided under national law), provided they can show that they have done everything that can be fairly and diligently done to obtain the required certificate. In fact, although Article 119 of Presidential Decree No 115/2002 equates – for the purposes of admission to legal aid in civil, administrative, accounting and tax proceedings – the treatment of a "foreign national lawfully residing in the national territory at the time when the relationship arises or at the time when the event which is the subject-matter of the proceedings to be instituted occurs" with that of an Italian citizen, the provision in question places only on nationals of non EU Member States – and not on Italian nationals or citizens of EU Member States – the onus of having the truthfulness of the information relating to the income they have generated abroad certified by the competent consular authority: while doing so, the provision fails to provide for any remedy against the case of lack of cooperation on the part of that authority. Thus, the provision places on the applicant the risk of being unable to produce the specific documentary evidence required in order to obtain legal aid, hence infringing on the inalienable right to access to justice.

EU CASE-LAW

Access to justice: 1, 6, 9.
Competition: 12.
Consumer protection: 3, 19, 21, 22, 26.
Contracts: 2, 23.

Co-operation in criminal matters: 45.
EC Regulation No 44/2001: 23, 27, 44.
EC Regulation No 2201/2003: 47.
EC Regulation No 1393/2007: 18.
EC Regulation No 593/2008: 42, 43.
EC Regulation No 4/2009: 29, 38, 49.
EU Regulation No 1259/2010: 34.
EU Regulation No 650/2012: 33.
EU Regulation No 1215/2012: 16, 25, 30, 32, 36, 37, 39, 41, 46, 48.
EU Regulation No 848/2015: 35.
EU citizenship: 17.
EU law: 4, 5, 8, 11, 20, 28, 31, 40.
Freedom to provide services: 13, 18, 42, 43.
Intellectual property rights: 10.
Judicial proceedings before the Court of Justice: 7, 14, 24.
Right of residence and establishment: 15.
Treaties and general international rules: 27.

1. *Court of Justice, 24 June 2019 case C-619/18* 180

By providing that the measure consisting in lowering the retirement age of the judges of the Sąd Najwyższy (Supreme Court, Poland) is to apply to judges in post who were appointed to that Court before 3 April 2018 and by granting the President of the Republic the discretion to extend the period of judicial activity of judges of that Court beyond the newly fixed retirement age, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

2. *Court of Justice, 11 July 2019 case C-502/18* 177

Articles 5(1)(c) and 7(1) of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, read together with Article 3(5) of the same Regulation, must be interpreted as meaning that, in the case of connecting flights, where there are two flights that are the subject of a single reservation, departing from an airport located within the territory of a Member State and travelling to an airport located in a non-Member State *via* the airport of another non-Member State, a passenger who suffers a delay in reaching his or her destination of three hours or more, the cause of that delay arising in the second flight, operated, under a code-share agreement, by a carrier established in a non-Member State, may bring his or her action for compensation under that Regulation against the Community air carrier that performed the first flight.

3. *Court of Justice, 5 September 2019 case C-28/18* 449

Article 9(2) of Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro must be interpreted as precluding a contractual clause which excludes payment by direct debit in euros under the European Union-wide direct debit scheme (SEPA direct debit) where the payer does not have his place of residence in the same Member State as that in which the payee has established his place of business.

4. *Court of Justice, 24 September 2019 case C-507/17* 177

On a proper construction of Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and of Article 17(1) of Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is not required to carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States, using, where necessary, measures which, while meeting the legal requirements, effectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject's name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request.

5. *Court of Justice, 1 October 2019 case C-673/17* 449

Articles 2(f) and 5(3) of Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Directive 2009/136/EC, read in conjunction with Article 2(h) of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Articles 4(11) and 6(1)(a) of Regulation (EU) No 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46, must be interpreted as meaning that the consent referred to in those provisions is not validly constituted if, in the form of cookies, the storage of information or access to information already stored in a website user's terminal equipment is permitted by way of a pre-checked checkbox which the user must deselect to refuse his or her consent.

Articles 2(f) and 5(3) of Directive 2002/58, as amended by Directive 2009/136, read in conjunction with Article 2(h) of Directive 95/46 and Articles 4(11) and 6(1)(a) of Regulation No 2016/679, are not to be interpreted differently according to whether or not the information stored or accessed on a website user's terminal equipment is personal data within the meaning of Directive 95/46 and Regulation No 2016/679.

Article 5(3) of Directive 2002/58, as amended by Directive 2009/136, must be interpreted as meaning that the information that the service provider must give to a website user includes the duration of the operation of cookies and whether or not third parties may have access to those cookies.

6. *Court of Justice, 5 November 2019 case C-192/18* 182

By granting the (Polish) Minister for Justice the right to decide whether or not to authorise judges of the ordinary Polish courts to continue to carry out their duties beyond the newly fixed (lower) retirement age of the same judges, pursuant to Articles 1(26)(b) and (c) and 13(1) of the Law amending the law on the system of ordinary courts and certain other laws of 12 July

2017, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

7. *Court of Justice, Order of 6 November 2019 case C-234/19* 175

Regulation (EC) No 805/2004 is not applicable in proceedings related to a request for recovery of an unpaid debt involving two Croatian legal persons brought before the national court not seised with an application for certification as a European Enforcement Order of the enforcement order made by the notary on the basis of internal provisions; moreover, the credit in question is not an 'uncontested claim' as required by Article 3 of the same Regulation, having been challenged by the defendant. Besides, having the proceedings no cross-border element, Regulation (EU) No 1215/2012 cannot be applied to a dispute relating to a purely domestic situation.

It follows that the request for interpretation of provisions of EU law in such proceedings is manifestly inapplicable since both Regulations No 805/2004 and No 1215/2012 are not applicable, nor does the referring court provide any other reason why the cause of which it is invested presents a link with European Union law. Purely hypothetical perspectives linked to the free circulation of judicial decisions are not sufficient to attribute to the Court of Justice the competence to examine a preliminary question on the basis of Article 18 TFEU. Moreover, when reverse discrimination has been invoked, the Court of Justice subordinated the interpretation of an act of EU law to the condition that national law requires the referring court to extend to national citizens the benefit of the rights recognized by EU law to a citizen of another Member State that is in the same situation. However, the certification as a European Enforcement Order of an execution order issued by a notary does not take place automatically under Regulation No 805/2004, but is subject to some requirements which must be guaranteed by each Member State, in accordance with its own internal legal system. Likewise, such an order does not, in itself, fall within the scope of application of Regulation No 1215/2012. Consequently, nationals of other Member States derive from these two Regulations neither the right to have an execution order issued by a notary under Croatian law certified as a European Enforcement Order, nor the right to benefit from the free circulation of the execution order as a judicial decision. In such circumstances, in absence of a link with EU law, there is a clear lack of jurisdiction of the Court of Justice of the EU on a request for preliminary ruling.

8. *Court of Justice, 19 November 2019 joined cases C-609/17 and C-610/17* 763

Article 7(1) of Directive 2003/88/EC concerning certain aspects of the organisation of working time must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.

9. *Court of Justice, 19 November 2019 joined cases C-585/18, C-624/18 and C-625/18* 182

Article 47 of the Charter of Fundamental Rights of the European Union and Article 9(1) of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provision. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the abovementioned chamber, so that those cases may be examined by a court which meets the abovementioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

10. *Court of Justice, 21 November 2019 case C-678/18* 448

Article 90(1) of Regulation (EC) No 6/2002 on Community designs must be interpreted as meaning that the courts and tribunals of the Member States with jurisdiction to order provisional measures, including protective measures, in respect of a national design also have jurisdiction to order such measures in respect of a Community design.

11. *Court of Justice, 5 December 2019 case C-671/18* 176

Articles 7(2)(g) and 20(3) of Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, as amended by Framework Decision 2009/299/JHA, must be interpreted as meaning that where a decision requiring payment of a financial penalty has been notified in accordance with the national legislation of the issuing Member State, indicating the right to contest the case and the time limit for such a legal remedy, the authority of the Member State of execution may not refuse to recognise and execute that decision provided that the person concerned has had sufficient time to contest that decision, which is for the national court to verify, and the fact that the procedure imposing the financial penalty in question is administrative in nature is not relevant in that regard.

Article 20(3) of Framework Decision 2005/214, as amended by Framework Decision 2009/299 must be interpreted as meaning that the competent authority of the Member State of execution may not refuse to recognise and execute a decision requiring payment of a financial penalty in respect of road

traffic offences where such a penalty has been imposed on the person in whose name the vehicle in question is registered on the basis of a presumption of liability laid down in the national legislation of the issuing Member State, provided that that presumption may be rebutted.

12. *Court of Justice, 12 December 2019 case C-435/18* 447

Article 101 TFEU must be interpreted as meaning that persons who are not active as suppliers or customers on the market affected by a cartel, but who provide subsidies, in the form of promotional loans, to buyers of the products offered on that market, may seek an order that the undertakings which participated in that cartel pay compensation for the losses they suffered as a result of the fact that, since the amount of those subsidies was higher than what it would have been without that cartel, those persons were unable to use that difference more profitably.

13. *Court of Justice, 19 December 2019 case C-16/18* 448

Article 1(3)(a) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services must be interpreted as meaning that it does not cover the provision, under a contract concluded by an undertaking established in a Member State and an undertaking established in another Member State, which is contractually linked to a railway undertaking established in that same Member State, of on-board services, cleaning or food and drink services for passengers carried out by salaried employees of the first undertaking, or by workers hired out to it by an undertaking also established in the first Member State, on international trains crossing the second Member State, where those workers carry out a significant part of the work inherent in those services in the territory of the first Member State and where they begin or end their shifts there.

14. *Court of Justice, 21 January 2020 case C-274/14* 1053

The preliminary ruling mechanism established by Article 267 TFEU may be activated only by a body responsible for applying EU law which satisfies, *inter alia*, the criterion of independence. The external aspect of independence requires that the body concerned exercises its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever. The irremovability of the members of the body concerned constitutes a guarantee that is essential to judicial independence in that it serves to protect the person of those who have the task of adjudicating in a dispute. The principle of irremovability, the cardinal importance of which is to be emphasised, requires that judges may remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. There can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. Thus it is widely accepted that judges may be dismissed if they are deemed unfit for the purposes of carrying out their duties on account of incapacity or a serious breach of their obligations, provided the appropriate procedures are followed. The guarantee of irremovability of the members of a court or tribunal thus requires that dismissals of members of that body should be determined by specific rules, by

means of express legislative provisions offering safeguards that go beyond those provided for by the general rules of administrative law and employment law which apply in the event of an unlawful dismissal.

With regard to the *Tribunal Económico-Administrativo Central (TEAC)*, its President and members may be removed from office by Royal Decree adopted by the Council of Ministers on the proposal of the Minister for the Economy and Finance. Likewise, the members of the regional TEAs may be removed from office by that Minister. Such arrangements for removal are not determined by specific rules, by means of express legislative provisions, such as those applicable to members of the judiciary, but are covered solely by the general rules of administrative law. Consequently, the removal of the President and the other members of the TEAC and of the members of the other TEAs is not limited to certain exceptional cases reflecting legitimate and compelling grounds that warrant the adoption of such a measure, subject to the principle of proportionality and to the appropriate procedures being followed, such as cases of incapacity or of a serious breach of obligations rendering the individuals concerned unfit for the purposes of carrying out their duties. It follows that the TEAC and the TEAs are not protected against direct or indirect external pressures that are liable to cast doubt on their independence.

The second – internal – aspect of the concept of 'independence' is linked to 'impartiality' and seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law. Thus, the concept of 'independence', which is inherent in the task of adjudication, implies above all that the body in question acts as a third party in relation to the authority which adopted the contested decision.

Certain characteristics of the extraordinary appeal procedure before the Special Chamber for the Unification of Precedent, Spain, are such as to cast doubt on the fact that the TEAC acts as a 'third party' with respect to the interests before it. Consequently, the TEAC does not satisfy the internal aspect of the requirement of independence that is characteristic of a court or tribunal. Therefore, its request for preliminary ruling is inadmissible.

15. *Court of Justice, 27 February 2020 case C-405/18* 760

Article 49 TFEU must be interpreted as meaning that a company incorporated under the law of a Member State, which transfers its place of effective management to another Member State without that transfer affecting its status as a company incorporated under the law of the first Member State, may rely on that article for the purposes of contesting a refusal in the second Member State to defer losses prior to that transfer.

Article 49 TFEU must be interpreted as not precluding legislation of a Member State which excludes the possibility for a company, which has transferred its place of effective management and, as a result, its tax residency to that Member State, from claiming a tax loss incurred, prior to that transfer, in another Member State, in which it has retained its registered seat.

16. *Court of Justice, 27 February 2020 case C-803/18* 167

Articles 15(5) and 16(5) of Regulation (EU) No 1215/2012 on jurisdiction and

the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the jurisdiction clause in an insurance contract covering a 'large risk', within the meaning of the latter provision, concluded by the policyholder and the insurer, may not be relied on against the party insured under that contract, who is not an insurance professional, who has not consented to that clause and who is domiciled in a Member State other than that in which the policyholder and the insurer are domiciled.

17. *Court of Justice, 27 February 2020 case C-836/18* 174

Article 20 TFEU must be interpreted as precluding a Member State from rejecting an application for family reunification submitted by the spouse, who is a third-country national, of a Union citizen who holds the nationality of that Member State and who has never exercised the freedom of movement, on the sole ground that that Union citizen does not have, for him or herself and his or her spouse, sufficient resources not to become a burden on the national social assistance system, without it having been examined whether there is a relationship of dependency between that Union citizen and his or her spouse of such a kind that, if the latter were refused a derived right of residence, that Union citizen would be obliged to leave the territory of the European Union as a whole and would thus be deprived of the effective enjoyment of the substance of the rights conferred by his or her status.

Article 20 TFEU must be interpreted as meaning that a relationship of dependency, such as to justify the grant of a derived right of residence under that article, does not exist on the sole ground that the national of a Member State, who is of full age and has never exercised the freedom of movement, and his or her spouse, who is of full age and a third-country national, are required to live together, by virtue of the obligations arising out of the marriage under the law of the Member State of which the Union citizen is a national.

18. *Court of Justice, 27 February 2020 case C-25/19* 164

Article 152(1) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), read in conjunction with Article 151 of that Directive and recital 8 of Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Regulation (EC) No 1348/2000, must be interpreted as meaning that the appointment by a non-life insurance undertaking of a representative in the host Member State also includes the authorisation for that representative to receive a document initiating court proceedings for damages in respect of a road traffic accident.

19. *Court of Justice, 3 March 2020 case C-125/18* 760

Articles 6(1) and 7(1) of Directive 93/13/EEC on unfair terms in consumer contracts must be interpreted as not precluding the national court, where an unfair contractual term setting a reference index for calculating the variable interest of a loan is null and void, from replacing that index with a statutory index applicable in the absence of an agreement to the contrary between the parties to the contract, in so far as the mortgage loan agreement in question is not capable of continuing in existence if the unfair term is removed and annulment of that agreement in its entirety would expose the consumer to particularly unfavourable consequences.

20. *Court of Justice, 4 March 2020 case C-183/18* 764

The concept of 'legal person' set out, inter alia, in Articles 1(a) and 9(3) of Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties must be interpreted in the light of the law of the State which issued the decision imposing a financial penalty.

Framework Decision 2005/214 must be interpreted as meaning that it does not require a national court to refrain from applying a provision of national law that is incompatible with Article 9(3) of the same Framework Decision, since that provision is devoid of direct effect. Nevertheless, the referring court is required to give, as far as is possible, an interpretation of national law that is in accordance with EU law in order to ensure a result that is compatible with the aim pursued by the Framework Decision.

21. *Court of Justice, 5 March 2020 case C-679/18* 760

Articles 8 and 23 of Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as imposing an obligation on a national court to examine, of its own motion, whether there has been a failure to comply with the creditor's pre-contractual obligation to assess the consumer's creditworthiness, provided for in Article 8 of that Directive, and to draw the consequences arising under national law of a failure to comply with that obligation, on condition that they satisfy the requirements of Article 23. Articles 8 and 23 of Directive 2008/48 must also be interpreted as precluding national rules under which a failure by the creditor to comply with its pre-contractual obligation to assess the consumer's creditworthiness is penalised by the nullity of the credit agreement, linked with an obligation on the consumer to return the principal sum to the creditor at a time appropriate to the consumer's financial capacity, solely on condition that that consumer raises an objection of such nullity within a three-year limitation period.

22. *Court of Justice, 11 March 2020 case C-511/17* 1052

Article 6(1) of Directive 93/13/EEC on unfair terms in consumer contracts must be interpreted as meaning that a national court, hearing an action brought by a consumer seeking to establish the unfair nature of certain terms in a contract that that consumer concluded with a professional, is not required to examine of its own motion and individually all the other contractual terms, which were not challenged by that consumer, in order to ascertain whether they can be considered unfair, but must examine only those terms which are connected to the subject matter of the dispute, as delimited by the parties, where that court has available to it the legal and factual elements necessary for that task, as supplemented, where necessary, by measures of inquiry.

Articles 4(1) and 6(1) of Directive 93/13 must be interpreted as meaning that, while all the other terms of the contract concluded between a professional and that consumer should be taken into consideration in order to assess whether the contractual term forming the basis of a consumer's claim is unfair, taking such terms into account does not entail, as such, an obligation on the national court hearing the case to examine of its own motion whether all those terms are unfair.

23. *Court of Justice, 26 March 2020 case C-215/18* 160

Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights must be interpreted as meaning that a passenger on a flight which has been delayed for three hours or more may bring an action for compensation under Articles 6 and 7 of that Regulation against the operating air carrier, even if that passenger and that air carrier have not entered into a contract between them and the flight in question forms part of a package tour covered by Directive 90/314/EEC on package travel, package holidays and package tours.

Article 5(1) of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for compensation brought pursuant to Regulation No 261/2004 by a passenger against the operating air carrier comes within the concept of 'matters relating to a contract', within the meaning of that provision, even if no contract was concluded between those parties and the flight operated by that air carrier was provided for by a package travel contract, also including accommodation, concluded with a third party.

Articles 15 to 17 of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought by a passenger against the operating air carrier, with which that passenger has not concluded a contract, does not come within the scope of those articles relating to special jurisdiction over consumer contracts.

24. *Court of Justice, 26 March 2020 joined cases C-558/18 and C-563/18* 1056

Article 267 TFEU gives national courts the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them. National courts are, moreover, free to exercise that discretion at whatever stage of the proceedings they consider appropriate. Therefore, a rule of national law cannot prevent a national court from using that discretion, which is an inherent part of the system of cooperation between the national courts and the Court of Justice established in Article 267 TFEU and of the functions of the court responsible for the application of EU law, entrusted by that provision to the national courts. Provisions of national law which expose national judges to disciplinary proceedings as a result of the fact that they submitted a reference to the Court for a preliminary ruling cannot therefore be permitted. Indeed, the mere prospect, as the case may be, of being the subject of disciplinary proceedings as a result of making such a reference or deciding to maintain that reference after it was made is likely to undermine the effective exercise by the national judges concerned of the discretion and the functions referred to in the preceding paragraph. For those judges, not being exposed to disciplinary proceedings or measures for having exercised such a discretion to bring a matter before the Court, which is exclusively within their jurisdiction, also constitutes a guarantee that is essential to judicial independence, which independence is, in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU.

25. *Court of Justice, 2 April 2020 case C-500/18* 170

Article 17(1) of Regulation (EU) No 1215/2012 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 financial contract for differences concluded with a finance company, carries out transactions through that company may 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 purposes of that classification, first, factors such as the fact that that person carried out a high volume of transactions within a relatively short period or that he or she invested significant sums in those transactions are, as such, in principle irrelevant, and secondly, the fact that that same person is a 'retail client' within the meaning of Article 4(1) point 12 of Directive 2004/39/EC on markets in financial instruments, and Directive 2000/12/EC is, as such, in principle irrelevant.

Regulation No 1215/2012 must be interpreted as meaning that, for the purposes of determining the courts having jurisdiction, an action in tort brought by a consumer comes under Chapter II, Section 4, of that Regulation if it is indissociably linked to a contract actually concluded between that consumer and the seller or supplier, which is a matter for the national court to verify.

26. *Court of Justice, 2 April 2020 case C-329/19* 761

Articles 1(1) and 2(b) of Directive 93/13/EEC on unfair terms in consumer contracts must be interpreted as not precluding national case-law which interprets legislation intended to transpose that Directive into national law in such a way that its protective rules of consumer law also apply to a contract between a seller or supplier and a subject of the law such as the '*condominio*' (*i.e.* co-ownership) in Italian law, notwithstanding that such a subject of the law does not fall within the scope of that Directive.

27. *Court of Justice, 7 May 2020 case C-641/18* 162

Article 1(1) of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for damages, brought against private-law corporations engaged in the classification and certification of ships on behalf of and upon delegation from a third State, falls within the concept of 'civil and commercial matters', within the meaning of that provision, and, therefore, within the scope of that Regulation, provided that that classification and certification activity is not exercised under public powers, within the meaning of EU law, which it is for the referring court to determine. The principle of customary international law concerning immunity from jurisdiction does not preclude the national court seised from exercising the jurisdiction provided for by that Regulation in a dispute relating to such an action, where that court finds that such corporations have not had recourse to public powers within the meaning of international law.

28. *Court of Justice, 7 May 2020 joined cases C-267/19 and C-323/19* 172

Article 18 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation

which gives notaries, acting within the framework of the powers conferred on them in enforcement proceedings based on an authentic document, the power to issue writs of execution, which cannot be recognised and enforced in another Member State.

29. *Court of Justice, 4 June 2020 case C-41/19* 165

Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations is to be interpreted as meaning that an application opposing enforcement brought by the maintenance debtor against enforcement of a decision given by a court of the Member State of origin and which established that debt, which has a close link with the procedure for enforcement, falls within its scope and is within the international jurisdiction of the courts of the Member State of enforcement.

Pursuant to Article 41(1) of Regulation No 4/2009 and to the relevant provisions of national law, it is for the referring court, being a court of the Member State of enforcement, to adjudicate on the admissibility and the validity of the evidence adduced by the maintenance debtor, seeking to support the submission that he has predominantly discharged his debt.

30. *Court of Justice, 9 July 2020 case C-343/19* 441

Article 7(2) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where a manufacturer in a Member State has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State, the place where the damage occurs is in that latter Member State.

31. *Court of Justice, 16 July 2020 case C-311/18* 1056

Article 2(1) and (2) of Regulation (EU) No 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, must be interpreted as meaning that that Regulation applies to the transfer of personal data for commercial purposes by an economic operator established in a Member State to another economic operator established in a third country, irrespective of whether, at the time of that transfer or thereafter, that data is liable to be processed by the authorities of the third country in question for the purposes of public security, defence and State security.

Articles 46(1) and 46(2)(c) of Regulation No 2016/679 must be interpreted as meaning that the appropriate safeguards, enforceable rights and effective legal remedies required by those provisions must ensure that data subjects whose personal data are transferred to a third country pursuant to standard data protection clauses are afforded a level of protection essentially equivalent to that guaranteed within the European Union by that Regulation, read in the light of the Charter of Fundamental Rights of the European Union. To that end, the assessment of the level of protection afforded in the context of such a transfer must, in particular, take into consideration both the contractual clauses agreed between the controller or processor established in the European

Union and the recipient of the transfer established in the third country concerned and, as regards any access by the public authorities of that third country to the personal data transferred, the relevant aspects of the legal system of that third country, in particular those set out, in a non-exhaustive manner, in Article 45(2) of that Regulation.

Article 58(2)(f) and (j) of Regulation No 2016/679 must be interpreted as meaning that, unless there is a valid European Commission adequacy decision, the competent supervisory authority is required to suspend or prohibit a transfer of data to a third country pursuant to standard data protection clauses adopted by the Commission, if, in the view of that supervisory authority and in the light of all the circumstances of that transfer, those clauses are not or cannot be complied with in that third country and the protection of the data transferred that is required by EU law, in particular by Articles 45 and 46 of that Regulation and by the Charter of Fundamental Rights, cannot be ensured by other means, where the controller or a processor has not itself suspended or put an end to the transfer.

32. *Court of Justice, 16 July 2020 case C-73/19* 443

Article 1(1) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State, in which those authorities seek, primarily, findings of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements and, as ancillary measures, an order for publicity measures and the imposition of a penalty payment, falls within the scope of the concept of 'civil and commercial matters' in that provision.

33. *Court of Justice, 16 July 2020 case C-80/19* 437

Regulation (EU) No 650/2012 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 a situation in which the deceased, a national of one Member State, was residing in another Member State at the date of his or her death but had not cut ties with the first of those Member States, in which the assets making up his or her estate are located, while his or her successors have their residence in both of those Member States, falls within the scope of the concept of 'succession with cross-border implications'. The last habitual residence of the deceased, within the meaning of that Regulation, must be established by the authority dealing with the succession in only one of those Member States.

Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that, subject to verification by the referring court, Lithuanian notaries do not exercise judicial functions when issuing certificates of succession. However, it is for the referring court to determine whether those notaries act by delegation or under the control of a judicial authority and whether, consequently, they can be classed as 'courts' within the meaning of that provision.

Article 3(1)(g) of Regulation No 650/2012 must be interpreted as meaning that, in the event that the referring court should find that Lithuanian notaries

can be classed as 'courts' within the meaning of that Regulation, certificates of succession that they deliver can be regarded as 'decisions' within the meaning of that provision, with the result that, for the purposes of issuing such certificates, those notaries can apply the rules of jurisdiction laid down in Chapter II of that Regulation.

Articles 4 and 59 of Regulation No 650/2012 must be interpreted as meaning that notaries of a Member State, who are not classed as 'courts' for the purposes of that Regulation, can issue national certificates of succession without applying the general rules of jurisdiction laid down by that Regulation. If the referring court finds that those certificates satisfy the conditions laid down in Article 3(1)(i) of that Regulation and can, therefore, be regarded as 'authentic instruments', within the meaning of that provision, such certificates produce, in other Member States, the effects that Article 59(1) and Article 60(1) of Regulation No 650/2012 attribute to authentic instruments.

Articles 4, 5, 7 and 22, together with Article 83(2) and (4) of Regulation No 650/2012 must be interpreted as meaning that the testator's wish and the agreement between his or her heirs can lead to the determination of a court having jurisdiction in matters of succession and the application of the law on succession of a Member State other than those which would result from the application of the criteria laid down by that Regulation.

34. *Court of Justice, 16 July 2020 case C-249/19* 435

Article 10 of Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation must be interpreted as meaning that the expression 'where the law applicable by virtue of Article 5 or Article 8 makes no provision for divorce' applies only where the applicable foreign law makes no provision for divorce in any form.

35. *Court of Justice, 16 July 2020 case C-253/19* 445

The first and fourth subparagraphs of Article 3(1) of Regulation (EU) 2015/848 on insolvency proceedings must be interpreted as meaning that the presumption established in that provision for determining international jurisdiction for the purposes of opening insolvency proceedings, according to which the centre of the main interests of an individual not exercising an independent business or professional activity is his or her habitual residence, is not rebutted solely because the only immovable property of that person is located outside the Member State of habitual residence.

36. *Court of Justice, 3 September 2020 case C-186/19* 751

Article 1(1) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, brought in parallel with substantive proceedings concerning a claim arising from alleged non-payment for fuel supplied for the purposes of a peacekeeping operation carried out by that organisation, is covered by the concept of 'civil and com-

mercial matters', in so far as that action is not pursued under public powers, within the meaning of EU law, which is a matter for the assessment of the referring court.

Article 24(5) of Regulation No 1215/2012 is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, does not fall within the exclusive jurisdiction of the courts of the Member State in which the interim garnishee order was executed.

37. *Court of Justice, Order of 3 September 2020 case C-98/20* 754

The concept of 'consumer's domicile' referred to in Article 18(2) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as designating the consumer's domicile at the date on which the court action is brought.

38. *Court of Justice, 17 September 2020 case C-540/19* 433

A public body which seeks to recover, by way of an action for recovery, sums paid in place of maintenance to a maintenance creditor, and to which the claims of that maintenance creditor against the maintenance debtor have been transferred by way of subrogation, may validly invoke the jurisdiction of the court for the place where the creditor is habitually resident, as provided in Article 3(b) of Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

39. *Court of Justice, 11 November 2020 case C-433/19* 755

Point 1 of Article 24 of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action by which a co-owner of immovable property seeks to prohibit another co-owner of that property from carrying out changes, arbitrarily and without the consent of the other co-owners, to the designated use of his or her property subject to co-ownership, as provided for in a co-ownership agreement, must be regarded as constituting an action 'which has as its object rights *in rem* in immovable property' within the meaning of that provision, provided that that designated use may be relied on not only against the co-owners of that property, but also *erga omnes*, which it is for the referring court to verify.

Point 1(a) of Article 7 of Regulation No 1215/2012 must be interpreted as meaning that, where the designated use of immovable property subject to co-ownership provided for by a co-ownership agreement cannot be relied upon *erga omnes*, an action by which a co-owner of immovable property seeks to prohibit another co-owner of that property from carrying out changes, arbitrarily and without the consent of the other co-owners, to that designated use must be regarded as constituting an action 'in matters relating to a contract', within the meaning of that provision. Subject to verification by the referring

court, the place of performance of the obligation on which that action is based is the place where the property is situated.

40. *Court of Justice, 12 November 2020 case C-427/19* 765

Article 274 of Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance must be interpreted as meaning that a decision of the competent authority to withdraw the authorisation of the insurance undertaking concerned and to appoint a provisional liquidator cannot constitute a 'decision to open winding-up proceedings with regard to an insurance undertaking' within the meaning of that article, unless the law of the home Member State of that insurance undertaking provides either that that provisional liquidator is empowered to realise the assets of that insurance undertaking and distribute the proceeds among its creditors or that the withdrawal of the authorisation of that insurance undertaking has the effect of opening automatically the winding-up proceedings, without a separate authority being required to adopt a formal decision to that end.

Article 274 of Directive 2009/138 must be interpreted as meaning that, if the conditions required for a decision to withdraw the authorisation of an insurance undertaking and to appoint a provisional liquidator for that undertaking to constitute a 'decision to open winding-up proceedings with regard to an insurance undertaking', within the meaning of that article, are not met, Article 274 does not oblige the courts of other Member States to apply the law of the home Member State of the insurance undertaking concerned, which law provides for the stay of all court proceedings that have been opened with regard to such an undertaking.

41. *Court of Justice, 24 November 2020 case C-59/19* 758

Article 7(2) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to an action seeking an injunction against certain practices implemented in the context of the contractual relationship between the applicant and the defendant, based on an allegation of abuse of a dominant position by the latter in breach of competition law.

42. *Court of Justice, 8 December 2020 case C-620/18* 1047

Directive 2018/957/EU amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services is such as to develop the freedom to provide services on a fair basis, since it ensures that the terms and conditions of employment of posted workers are as close as possible to those of workers employed by undertakings established in the host Member State, by providing that those posted workers have the benefit of terms and conditions of employment in that Member State that offer greater protection than those provided for by Directive 96/71. By guaranteeing increased protection of posted workers, the Directive seeks to ensure the realisation of the freedom to provide services in the European Union in the framework of competition which does not depend on excessive differences in the terms and conditions of employment to which the undertakings of various Member States are subject within one and the same Member State. The Directive does not however remove any competitive advantage which the service providers in

some Member States may have enjoyed, since it has in no way the effect of eliminating all competition based on costs.

Neither the substitution of the concept of 'remuneration' for that of 'minimum rates of pay' in point (c) of the first subparagraph of Article 3(1) of the amended Directive 96/71, nor the application to posted workers of terms and conditions of employment of the host Member State with respect to reimbursement of expenditure to cover travel, board and lodging expenses for workers who are away from home for professional reasons, have the consequence that those workers are placed in a situation that is identical to or analogous to the situation of workers who are employed by undertakings established in the host Member State. Those amendments do not entail the application of all the terms and conditions of employment of the host Member State, since only some of those terms and conditions are, in any event, applicable to those workers under Article 3(1) of the amended Directive 96/71.

Given both their nature and their content, both Article 3(1) of the amended Directive 96/71, with respect to posted workers, and Article 3(1a) of that Directive, with respect to workers who are posted for a period that, in general, exceeds 12 months, constitute special conflict-of-law rules, within the meaning of Article 23 of the 'Rome I' Regulation. Further, the drafting process of the 'Rome I' Regulation demonstrates that Article 23 of that Regulation covers the special conflict-of-law rule previously laid down in Article 3(1) of Directive 96/71, since, in the Proposal for a Regulation on the law applicable to contractual obligations (Rome I), the Commission had annexed a list of special conflict-of-law rules established by other provisions of EU law, which mentions that Directive.

43. *Court of Justice, 8 December 2020 case C-626/18* 1050

The prohibition on restrictions on freedom to provide services applies not only to national measures, but also to measures adopted by the European Union institutions. However, in relation to the free movement of goods, persons, services and capital the measures adopted by the EU legislature, whether measures for the harmonisation of legislation of the Member States or measures for the coordination of that legislation, not only have the objective of facilitating the exercise of one of those freedoms, but also seek to ensure, when necessary, the protection of other fundamental interests recognised by the Union which may be affected by that freedom. That is the case, in particular, where, by means of coordination measures seeking to facilitate the freedom to provide services, the EU legislature takes account of the general interest pursued by the various Member States and adopts a level of protection for that interest which seems acceptable in the European Union.

Directive 2018/957/EU amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, by guaranteeing increased protection of posted workers, seeks to ensure the realisation of the freedom to provide services in the European Union in the framework of competition which does not depend on excessive differences in the terms and conditions of employment to which the undertakings of various Member States are subject within one and the same Member State. To that extent, the Directive undertakes a re-balancing of the factors affecting whether the undertakings established in the various Member States may compete with one

another, but does not however remove any competitive advantage which the service providers in some Member States may have enjoyed, since it has in no way the effect of eliminating all competition based on costs.

Given both their nature and their content, both Article 3(1) of the amended Directive 96/71, with respect to posted workers, and Article 3(1a) of that Directive, with respect to workers who are posted for a period that, in general, exceeds twelve months, constitute special conflict-of-law rules, within the meaning of Article 23 of the 'Rome I' Regulation. Further, the drafting process of the 'Rome I' Regulation demonstrates that Article 23 of that Regulation covers the special conflict-of-law rule previously laid down in Article 3(1) of Directive 96/71, since, in the Proposal for a Regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), the Commission had annexed a list of special conflict-of-law rules established by other provisions of EU law, which mentions that Directive. Article 9 of the 'Rome I' Regulation, which must be interpreted strictly, refers to 'overriding mandatory provisions of the law' of the Member States, namely mandatory provisions respect for which is regarded as crucial by a country for safeguarding its public interests. Article 3(1a) of the amended Directive 96/71 is not contrary to such overriding mandatory provisions of law.

44. *Court of Justice, 10 December 2020 case C-774/19* 749

Article 15(1) of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a natural person domiciled in a Member State who, first, has concluded with a company established in another Member State a contract to play poker on the Internet, containing general terms and conditions determined by that company, and, secondly, has neither officially declared such activity nor offered it to third parties as a paid service does not lose the status of a 'consumer' within the meaning of that provision, even if that person plays the game for a large number of hours per day and receives substantial winnings from that game.

45. *Court of Justice, 17 December 2020 joined cases C-354/20 PPU and C-412/20 PPU* 1046

The principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.

Articles 6(1) and 1(3) of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, where the executing judicial authority, which is called upon to decide whether a person in respect of whom a European arrest warrant has been issued is to be surrendered, has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the Member State that issues that arrest warrant which existed at the time of issue of that warrant or which arose after that issue, that authority

cannot deny the status of 'issuing judicial authority' to the court which issued that arrest warrant and cannot presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that Member State, run a real risk of breach of his or her fundamental right to a fair trial, guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, without carrying out a specific and precise verification which takes account of, *inter alia*, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled.

46. *Court of Justice, 25 February 2021 case C-804/19* 1041

The provisions set out in Section 5 of Chapter II of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, under the heading 'Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer.

The provisions set out in Section 5 of Chapter II of Regulation No 1215/2012 must be interpreted as precluding the application of national rules of jurisdiction in respect of an action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, irrespective of whether those rules are more beneficial to the employee.

Article 21(1)(b)(i) of Regulation No 1215/2012 must be interpreted as meaning that an action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer may be brought before the court of the place where or from where the employee was required, pursuant to the contract of employment, to discharge the essential part of his or her obligations towards his or her employer, without prejudice to point 5 of Article 7 of that Regulation.

47. *Court of Justice, 24 March 2021 case C-603/20 PPU* 1035

Article 10 of Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility must be interpreted as meaning that it is not applicable to a situation where a finding is made that a child has, at the time when an application relating to parental responsibility is brought, acquired his or her habitual residence in a third State following abduction to that State. In that situation, the jurisdiction of the court seised will have to be determined in accordance with the applicable international conventions, or, in the absence of

any such international convention, in accordance with Article 14 of that Regulation.

48. *Court of Justice, 25 March 2021 case C-307/19* 1042

Article 1(1) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for recovery of a fee relating to a daily parking ticket for a designated parking space situated on the public highway, brought by a company which has been appointed by a local authority to manage such parking spaces, comes within the concept of 'civil and commercial matters' within the meaning of that provision.

Article 24(1) of Regulation No 1215/2012 must be interpreted as meaning that an action for recovery of a fee relating to a daily parking ticket for a designated parking space situated on the public highway does not come within the concept of 'tenancies of immovable property' within the meaning of that provision.

Article 7(1) of Regulation No 1215/2012 must be interpreted as meaning, first, that an action for the recovery of a fee arising from a contract for parking in one of the defined parking spaces situated on the public highway which are organised and managed by a company appointed for that purpose comes within the scope of 'matters relating to a contract' within the meaning of that provision and, second, that that contract constitutes a contract for the provision of services within the meaning of the second indent of Article 7(1)(b) of that Regulation.

49. *Court of Justice, 15 April 2021 case C-729/19* 1038

Article 75(2)(a) of Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations must be interpreted as applying only to decisions given by national courts in States which were already members of the European Union on the date of adoption of those decisions.

Regulation No 4/2009 must be interpreted as meaning that no provision of that Regulation enables decisions in matters relating to maintenance obligations, given in a State before its accession to the European Union and before the date of application of that Regulation, to be recognised and enforced, after that State's accession to the European Union, in another Member State

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