GENERAL INDEX YEAR LVIX
VOLUME LVIX – 2023 – INDEX

INDEX

ARTICLES

E. Benvenuti, Climate Change Litigation and EU Private International Law: Is There Room for Collective Redress? 848

C. Campiglio, The Status of Women between Present and Future: Private International Law Perspectives 38

C. Campiglio, Jurisdiction and Applicable Law in Matters of Medical Liability (Namely, on the Issue of Conflicts of Characterisation) 793

P. Franzina, A New Private International Law on the Protection of Adults: The European Commission's Proposals and the Developments Anticipated in Italy 519

Y. Haga, Avatars, Personalities in the Metaverse: Introductory Analysis on Conflict-of-Laws (in English) 261

O. Lopes Pegna, Continuity in Interpretation and Novelties Functional to the Protection of the Interest of the Child in the Brussels II*b* Regulation 832

F. Salerno, The Impact of the Preliminary Rulings of the Court of Justice on National Private International Law 5

SHORTER ARTICLES, NOTES AND COMMENTS

M. Farina, Proceedings for the Recognition and Enforcement of Foreign Judgments in the Recent Italian Reform of Civil Procedure 65

P. Franzina, The Court of Cassation Changes Approach on Incoterms and the Place of Delivery of the Goods 290

G. Greco, The So-Called Alternative Use of the Referral for a Preliminary Ruling on Interpretation 914

R. Rossi, Reflections on Choice-of-Court Agreements in Favour of Third States under Regulation (EU) No 1215/2012 (in English) 579

F. Sartori, On the Admissibility of Hetero-Integration between Foreign Law and *Lex Fori* in Matters of Compensation for Non-Pecuniary Damage 314

OBITUARIES

L. Fumagalli, Riccardo Luzzatto 337

CASES IN ITALIAN COURTS[*]

Bankruptcy: 47.
Civil proceedings: 2, 3, 5, 7, 13, 15, 16, 22, 24, 25, 27, 30, 32, 40, 42, 47.
Companies: 41.
Contracts: 1, 4, 35, 43, 44.
Duties and taxes: 41.
EC Regulation No 1346/2000: 50.
EC Regulation No 44/2001: 14, 28, 39, 50.
EC Regulation No 2201/2003: 16, 30, 45.
EC Regulation No 805/2004: 2.
EC Regulation No 1393/2007: 32.
EU Regulation No 1215/2012: 13, 46, 53.
European Union law: 1, 9, 20, 23, 33, 36, 43.
Filiation: 8, 11, 19.
Foreign judgments and administrative acts: 2, 6, 9, 13, 18, 27, 38, 51.
Foreign law: 42.
Foreigner: 9.
International abduction of children: 3, 7, 10, 16, 22, 30, 37.
Jurisdiction: 12, 14, 15, 17, 26, 28, 29, 31, 34, 39, 40, 45, 46, 48, 49, 50, 53.
Matrimonial property: 18.
Nationality: 5, 21.
Non-contractual obligations: 34, 42.
Personality rights: 33.
Power of attorney: 24.
Public policy: 6.
Relations between parents and children: 6.
Treaties and general international rules: 3, 4, 7, 9, 10, 12, 14, 15, 16, 17, 22, 24, 25, 26, 29, 30, 31, 32, 35, 36, 37, 39, 40, 44, 49, 52.

1. *Corte di Cassazione, 9 April 2021 No 9474* 172

Articles 5 and 7 of Regulation (EC) No 261/2004 of 11 February 2004 do not apply in an action for damages for the delay of a Shanghai-Moscow flight brought against a Russian airline company. In providing for compensation for passengers in the event of cancellation of a flight (and, according to the caselaw of the Court of Justice, in the event of a delay of more than three hours) and irrespective of actual damage, these provisions constitute a special regime applicable, pursuant to Article 3(1) of the same Regulation, to passengers departing from an airport located in a Member State and to those departing from an airport located in a third country with a destination in an airport located in a Member State, if the operating air carrier is a Union carrier. Therefore, the aforesaid rules cannot be extended by analogy beyond the above-mentioned cases, outside of which the general principle underlying Articles 1223 and 2697 of the Civil Code remains applicable, according to which the non-performing debtor is liable (only) for damages that are an immediate and direct consequence of the non-performance, while the creditor is required to prove both the so-called consequential or extrinsic damages and

[*] The English summaries of the case-law are made by Dr. Cristina M. Mariottini.

their causal connection with the debtor's conduct, according to the nexus of legal causation.

2. *Milan Tribunal, order of 14 May 2021* 613

Pursuant to Article 615 of the Code of Civil Procedure, an objection to enforcement based on a German public document certified as a European Enforcement Order is admissible, with the specification that the objections relating to the enforceability of the claim and the non-existence of the right to the claim must be considered inadmissible, since only the court of origin is competent to order the revocation of the European Enforcement Order certificate pursuant to Article 10 of Regulation (EC) No 805/2004 of 21 April 2004, and that pursuant to Articles 21 and 23 of that Regulation, under no circumstances may the certification as a European Enforcement Order be reviewed as to its substance in the Member State of enforcement, and it may be suspended by the court of that Member State only if the debtor claims to have applied for review, correction or withdrawal before the authority of the Member State of origin.

Pursuant to Article 475 Code of Civil Procedure, in the text prior to the amendments referred to in Article 3(34)(b) of Legislative Decree 10 October 2022 No 149, a German public document, certified as a European Enforcement Order, is enforceable without the need for a declaration of enforceability and notified by means of an authentic copy, since Article 20 of Regulation (EC) No 805/2004 does not specify that the enforcement order must be served with an authentic copy and Article 25 emphasises that the public document is enforced without the need for a declaration of enforceability once it has been certified as a European Enforcement Order. Accordingly, that certification, issued by the notary who notarises according to the prescribed form, must be regarded as taking the place of any enforceable certified copy, Annex III appearing capable of conferring enforceability on the authentic instrument on the basis solely of the identification data set out therein, which refer to those of the instrument.

Pursuant to Articles 20 of Regulation (EC) No 805/2004, 122 and 474 of the Code of Civil Procedure, a writ of execution drawn up in Italian, enclosing a German authentic instrument certified as a European Enforcement Order and drawn up, by common accord of the parties, in English as well as a certificate also drawn up in English within the meaning of Article 9(2) of the Regulation, referred to in Article 25 thereof, is valid since, under Article 20(c) of that Regulation, the lodging of the instrument and certificate in the language of the Member State of enforcement is a mere option.

3. *Corte di Cassazione, order of 17 May 2021 No 13214* 1010

In proceedings concerning the return to England of a child removed to Italy by his mother without the father's consent, pursuant to Article 3 of The Hague Convention of 25 October 1980 on the civil effects of international child abduction, the determination of the child's habitual residence is based on factual and legal indicators predetermined by the Convention itself, consisting in ascertaining the custody or guardianship regime (and not its correspondence to the child's best interests) in force between the parties and deriving from the law, a court order, or their agreement, and the assessment of the location in which the child has primarily lived with permanent charac-

ter. The two indicators intersect since, where the principle of co-parenting and equal status in the title and exercise of parental responsibility are in force, habitual residence is to be considered in the light of its communal establishment by the parents until the transfer, while subsequent transfers are not relevant, unless the request for return is received more than a year after the transfer, the temporary separation of the parents also being not relevant. The assumption, according to which the Convention's instrument of urgent protection is based on the assessment of the child's habitual residence in order to root not only the jurisdiction in matters of parental responsibility but also the applicable legal regime in matters of custody of the child (absent the objective identification of a habitual residence, there is no international abduction and the violation of the obligations that parental responsibility imposes on the parent must be ascertained in ordinary family proceedings), is acceptable in theory. However, the ascertainment of habitual residence must be carried out in a strict manner and in compliance with the normative parameters as it constitutes an indispensable requirement for the application of the child protection system established with the same Convention.

The factual assessment of habitual residence may not be the object of review before the Court of Cassation, unless the factual investigation was radically deficient because it was detached from the normative parameters that inform it. The assessment according to which, even limitedly to the judgment in question and its peculiarities, a child's habitual residence may not be identified where the child has lived, since his birth, in England, a country in which the parents – who exercised joint custody of the child until his transfer to Italy – chose to have him born and build a life project together, constitutes an effective violation of Article 3 of The Hague Convention of 1980. Such assessment authorises the unilateral transfer of the child from a place where the parents established their family life and which, even from a prognostic point of view, should have been considered as the child's habitual residence, solely on the grounds that there was a relative internal mobility (i.a., within the same territorial area and in contexts that are familiar to the child, such as the paternal grandparents'house). Against this background, the reference made by the defence to the child's effective custody is not apt to override the erroneous and biased nature of the assessment made by the court on the merits, since in the defence it is neither established nor affirmed that the custody was not effective, but only that the relationship between the child and his mother was preponderant, without giving this statement a specific legal qualification.

4. *Corte di Cassazione, order of 9 December 2021 No 39032* 92

Pursuant to Article 39 of the Vienna Convention of 11 April 1980, in an action for the compensation of damages for breach of a contract for the sale of goods rendered unusable because of their poor state of preservation, brought by an Italian buyer against a Chilean seller, the plaintiff shall notify the seller of the lack of conformity of the goods within a 'reasonable time'. In case such notification is made via a mediator or an intermediary, they shall have power of attorney: the existence of such power of attorney amounting to a question of fact, it shall be assessed by the court on the merits, which has exclusive jurisdiction, on the basis of the evidence gathered. On the other hand, the assessment of the right to a reduction of the price and to compensation for

damages, excluding loss of profit, is not relevant pursuant to Article 44 of the same Convention: such right is subject to the buyer company's proof that it did not fulfil its duty to give timely notice owing to a reasonably excusable fact.

5. *Corte di Cassazione (plenary session), order of 14 January 2022 No 1053* 956

Since, pursuant to Article 9 of Law 5 February 1992 No 91, the acquisition of nationality by concession entails an activity of the State administration that is not binding but, rather, discretionary – as it implies a complex assessment, within which the applicant's interest in obtaining nationality shall be combined with the general interest, since the recognition of nationality implies the attribution of a status of particular public importance, for the purposes of which a complex assessment is required, based on circumstances concerning the applicant's conduct and their employment, economic and family situation, which overall prove their successful integration into the social and economic fabric of the country – the determination in question qualifies as an act of high administration, characterised by broad discretion, the exercise of which is considered subject to review in the administrative courts within very narrow limits, and in particular under the limited profile of the recurrence of sufficient preliminary investigative support, the truthfulness of the facts on which the decision is based and the coherence, logic and reasonableness of the grounds supporting the decision.

The devolution to the administrative court of disputes concerning the acquisition of Italian nationality by concession cannot be considered substantially changed by the effect of Decree-Law 17 February 2017 No 13 – which established, at the lower courts of the place where the Courts of Appeal have their seats, the 'specialised sections on immigration, international protection and free movement of nationals of the European Union', granting them, pursuant to Article 3(2) of Decree Law No 13 of 2017, jurisdiction over disputes concerning the ascertainment of the status of statelessness and the status of Italian nationality, subjecting them to the summary procedure of cognition – as these provisions make no mention of the distribution of jurisdiction over nationality disputes, limiting themselves to identifying the competent court, for those falling under ordinary (*i.e.*, non-administrative) jurisdiction, as well as providing for the procedural rules applicable to such disputes, without altering the general criterion for the distribution of jurisdiction set out in the relevant case-law on the basis of constitutional principles and the rules governing nationality.

6. *Belluno Tribunal, 27 January 2022* 367

In an action brought by an Italian citizen seeking the judicial declaration of paternity of a Ukrainian woman's minor child, conceived and born during the woman's marriage to another Ukrainian citizen, the judgment of disavowal of paternity rendered in Ukraine, which uncritically accepts the declarations of the alleged father and mother – hence, granting them the power to unilaterally modify the status of the minor child, not represented in the proceedings, to the substantial detriment of the child's interests – cannot be recognised. The principle according to which, until proven otherwise, the husband is presumed to be the father of the child conceived and born during the marriage falls within the concept of public policy, referred to in Article 64(g) of Law 31 May

1995 No 218: in this context, 'proof to the contrary' must be understood to mean a judicial ascertainment that is not limited to non-contestation and to the mere acceptance of the declarations of the parties, who would otherwise be given, in an entirely arbitrary manner, the power to decide on the child's status, thus also causing the parents'obligation to maintain the child to lapse. The same judgment is also contrary to the principles of procedural public order and the fundamental right of the defence, as set out in Article 64(b) of Law No 218/1995, since it was issued without the child, as the interested party, being granted the right to be heard, as provided pursuant to Article 247 of the Civil Code, which mandates the compulsory joinder of parties of 'the alleged father, the mother and the child in the proceedings for disavowal'.

7. *Corte di Cassazione, order of 2 February 2022 No 3250* 95

In matters of international child abduction, the measures referred to in The Hague Convention of 25 October 1980 are to be considered as reinstatement measures, aimed at protecting not legal titles but factual situations, so that a prerequisite for their issuance is the child's removal from the previous, actually exercised, custody. In other words, pursuant to Articles 12 and 13 of said Convention it is indispensable, for a return order, that, at the time of the removal, custody rights are actually exercised – not episodically, but continuously – by the applicant seeking the child's return, the causes and reasons for non-exercise being irrelevant. Therefore, a mere abstract assessment on the basis of the legal regime for the exercise of parental responsibility is not sufficient in this context.

As a result of the wording of Article 360(1)(5) of the Code of Civil Procedure as introduced by Law Decree of 22 June 2012 No 83 (converted, with amendments, by Law 7 August 2012 No 134 and applicable in the instant case *ratione temporis*), the review of the legal grounds must be considered reduced to the 'constitutional minimum', so that only an anomaly in the motives of a decision that turns into a constitutionally relevant violation of the law, insofar as it pertains to the existence of the grounds in itself, can be appealed in Cassation, provided that the defect is apparent from the text of the decision, regardless of the comparison with the procedural results. This defect takes form in the absolute lack of grounds in terms of material and graphical appearance, in the apparent motivation, in the contrast arising from irreconcilable statements, and in the perplexing and objectively incomprehensible motivation, to the exclusion of any relevance of the simple defect of 'sufficiency' of the motivation. In particular, the defect of omitted or apparent motivation of a decision (to be assessed not with regard to the correctness of the solution adopted or the sufficiency of the reasoning offered, but solely from the point of view of the existence of an effective motivation) exists when the court deciding on the merits fails to indicate the elements from which it drew its own conviction or indicates them without an in-depth logical and legal examination, thus making any control on the accuracy and logicality of its reasoning impossible.

Consequently, the court's minimum duty to state reasons must be considered to have been met in a decree by which the territorially competent Family Court refused to allow the return to the United States of a child – born in Washington and retained in Italy by her mother beyond the period agreed upon with her father in accordance with a mediation agreement, concluded in

the United States, aimed at defining the child's custody and placement – on the basis of an assessment of whether the appellant father actually exercised his right of custody. Such assessment was based on a number of considerations by the trial court, which found that the appellant had exercised his right of custody only on an episodic and discontinuous basis at the time of the child's retention, whereas the appellant did not adequately discharge his burden of providing detailed evidence of its actual and continuous exercise.

8. *Corte di Cassazione, order of 25 February 2022 No 6383* 106

Pursuant to Article 4(3) of Law 19 February 2004 No 40 – which regulates medically assisted procreation and precludes homosexual couples from accessing heterologous procreation techniques – the request to rectify the birth certificate of an Italian child, born in Italy and conceived abroad via medically assisted procreation techniques, seeking the registration as mother of the child, in addition to the woman who birthed the child, also of the woman who is in a same-sex relationship with the birth mother and to whom the ovum implanted in the birth mother belonged, cannot be granted.

9. *Corte di Cassazione, order of 2 March 2022 No 6909* 620

The application for family reunification, pursuant to Article 29 of Legislative Decree 25 July 1998 No 286, of a non-EU national minor, entrusted in the care of two Italian spouses on the basis of a customary adoption order issued by a Ghanaian court, must be granted, since the principle of the pre-eminence of the child's best interests, expressly affirmed in Article 3 of the New York Convention on the Rights of the Child of 20 November 1989 and reaffirmed in Article 24 of the Charter of Fundamental Rights of the European Union, must be applied also to internal immigration legislation, as provided at Article 28(3) of Legislative Decree No 286/1998, according to which "[i]n all administrative and judicial proceedings aimed at giving effect to the right to family unity and concerning minors, the best interests of the child must be taken into consideration as a matter of priority", regardless of whether the Ghanaian measure is contrary to the Italian public policy principles in matters of adoption, which derives from the failure to ascertain the state of abandonment beforehand, when it is not the capacity of the foreign act to produce direct legal effects in the Italian legal system that is at issue but, rather, its suitability to serve as a factual prerequisite for the administrative measure of family reunification and thus to legitimise the foster parents in the material and affective care of the child, without, on the other hand, the need to establish as between them a filial bond compatible with the Italian legal system. Moreover, the applicant's request for reunification is meritorious also in accordance with Article 29(2) of Legislative Decree No 286/1998, which, for thispurpose, equates to one's own children "minors adopted or entrusted or subject to guardianship".

10. *Corte di Cassazione, order of 4 March 2022 No 7261* 109

Pursuant to The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, the case where (i) an initial agreement was reached by the parents on the transfer of the child to a country other than that in which the child was habitually resident (such agreement being temporary and not definitive by reason of the urgency that led to its conclusion), (ii) one

of the parents subsequently unilaterally decided to retain the child abroad, and (iii) without prejudice to the other requirements under the law – notably, the child's habitual residence in the State from which he or she has been removed and the absence of a period of one year running from the date when the person entitled to the child's return manifested their dissent – amounts to the child's unlawful retention by reason of the parent's retention aimed at preventing the child's return to the State of habitual residence. The above-mentioned agreement ceases to exist where the initial reasons underlying the time-limited removal are no longer in existence either because they have been satisfied or because they are no longer capable of being satisfied due to changes in the underlying factual situation. In such a case, the conflict that has arisen between the parents as to the continued presence of the child in the foreign State must be resolved in accordance with The Hague Convention of 1980, subsequent to the assessment of the unlawful conduct: in fact, a mere dispute on the custody of the child, to be resolved via the competent judicial authority does not amount to a case of unlawful retention. It follows that, pursuant to Articles 3, 12 and 13 of The Hague Convention of 1980, the refusal by the territorially competent Family Court to return a Guatemalan child – who had moved to Italy with both his parents in December 2018 for the time necessary for his mother to undergo medical examinations and treatment for the serious illness from which she suffered, and was retained there by his mother even after his father's return to Guatemala, despite the latter's express dissent (father who, before the expiry of one year from the date of the child's transfer to Italy, had, *inter alia*, applied for the child's return to Guatemala, in accordance with the same Convention) –, issued on the ground that the parents'agreement on the transfer of the child abroad, albeit temporary and not definitive, meant that the continued retention abroad by one of the parents did not constitute international child abduction under civil law, is unlawful.

11. *Corte di Cassazione, order of 7 March 2022 No 7413* 176

The birth certificate of a child born in Italy but conceived abroad, via heterologous medically assisted procreation techniques, by a couple consisting of two women must be rectified where both the mother and her partner, who are in a same-sex relationship, are indicated as the mothers. In fact, such an indication cannot be justified by a constitutionally-oriented broad reading of Article 8 of Law 19 February 2004 No 40, which restricts access to the procreation techniques governed therein to situations of pathological infertility, to which same-sex infertility cannot be equated. A different outcome, intended to protect the interests of the child, cannot be sustained, since the court is not permitted in the instant matter, which touches on ethically sensitive issues, to replace the legislature, on whom solely lies the authority, in the exercise of its discretion, to identify the most appropriate legal instruments to pursue such interests.

12. *Corte di Cassazione (plenary session), 19 April 2022 No 12442* 114

Pursuant to Article 10(1) of the Constitution and Article 11 of the Lateran Treaty of 11 February 1929, Italian courts have jurisdiction over an action brought by an Italian graduate before an administrative court seeking compensation for the damage suffered as a result of the rejection of his application

to a doctoral program set up by the Pontifical Lateran University. On the one hand, the 'central bodies'benefiting from the immunity provided according to Article 11 of the Lateran Treaty are only those Catholic Church bodies which participate, in a strictly and directly functional manner, in the 'central'governance of the universal Church, which does not include the aforesaid University, the qualification attributed to it by the Vatican Secretariat of State being, *inter alia*, wholly irrelevant for this purpose. On the other hand, even if the University were a 'central body' within the meaning of Article 11 of the Lateran Treaty, the dispute in question does not entail any interference by the Italian court in the organisational choices of the foreign entity which, by their nature, are an immediate and direct expression of sovereignty (*acta iure imperii*), and therefore protected by the aforementioned provisions. To the contrary, in the instant case the court is asked to make determinations purely pertaining to the foreign entity's *ius gestionis*.

13. *Corte di Cassazione, order of 4 May 2022 No 14019* 372

Pursuant to Article 39 of the Code of Civil Procedure, a relationship of dependency and continency exists as a result of the simultaneous pendency of an opposition to the enforcement of a Danish payment injunction – brought under Article 615(2) of the Code of Civil Procedure – and an action – brought as a precautionary measure, upheld at first instance and pending before the Court of Appeal – for refusal of recognition and enforcement of the Danish injunction in Italy pursuant to Articles 45 and 47 of Regulation (EU) No 1215 of 12 December 2012 on the ground that such injunction is manifestly contrary to public policy. Accordingly, to prevent a possible conflict of judgments, it is reasonable to stay the proceedings of opposition to the enforcement pursuant to Articles 295 and 337(2) of the Code of Civil Procedure, pending a final decision on the application for refusal. On one hand, the action to ascertain possible grounds for refusal of recognition and enforcement in Italy of the Danish injunction and the opposition to enforcement against the same injunction do not have the same subject-matter, one concerning recognition in Italy of the foreign judgment deciding on the claim and the other being a procedure to oppose enforcement of the same judgment. On the other hand, the *ipso jure* enforceability of court orders issued in other Member States, provided for by Regulation (EU) No 1215/2012, is not applicable to measures issued at the outcome of proceedings for refusal of recognition and enforcement of judgments pursuant to Articles 45 and 47 of that Regulation: to the contrary, such measures are governed by the law of the requested Member State and their effect is subject to *res judicata*.

14. *Corte di Cassazione (plenary session), 10 June 2022 No 18801* 122

Pursuant to the customary rule on the immunity of foreign States from jurisdiction in matters of labour disputes and Article 11(2)(f) of the New York Convention of 2 December 2004 on the Immunity of States and Their Property from Jurisdiction – a provision which is wholly reflective of that customary rule – and Articles 19 and 21 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over the dispute brought by a foreign employee, formerly a secretary in the office of the Ambassador of the United Arab Emirates to Italy, her country of origin, against the Embassy of that State, seeking payment by the latter of salary differences linked to the

performance of superior duties and of the indemnity *in lieu* of notice of dismissal. In this regard, the clauses included in the employment contracts signed by the employee over the years and devolving disputes between the parties to the courts of the State of the Embassy are ineffective as regards her, since, although the disputed relationship relates to the performance of activities strictly inherent in the institutional functions of the foreign State, the dispute in question is of a purely pecuniary nature and therefore does not affect any aspects relating to the sovereignty of the latter. In the present case, therefore, there is no conflict between Article 11 of the 2004 New York Convention, which prevents the exercise of jurisdiction by the State of the forum where there is a written agreement between the parties to the contrary, subject only to considerations of public policy conferring on the courts of that State exclusive jurisdiction by reason of the subject-matter of the action (considerations that do not arise in the instant case), and Article 21(2) of Regulation (EC) No 44/2001, which, on the contrary, allows such clauses only if they are concluded after the dispute arises or allow the employee to bring proceedings in a court other than those indicated in Article 19 of that Regulation. In fact, the relationship between the two provisions, in the function of mediating between the right to access to justice for the employee and the safeguarding of the sovereign prerogatives of foreign States, must not be construed on the basis of the criterion of the prevalence of one over the other, but on the basis of the logic of interpretative coordination, marked by mutual interdependence, on the basis of a distinction of planes that does not place immunity as a preliminary question with respect to that of jurisdiction, but as an exception with respect to the latter when the exercise of jurisdiction by one State comes into conflict with the sovereignty of another State. In accordance with this interpretation, Article 21 of Regulation (EC) No 44/2001 does not conflict with Article 11(2)(f) of the 2004 New York Convention, since the former provision limits, in favour of the employee, the possibility for the parties to derogate from the jurisdiction of the forum by means of the arbitration clause (which is also the subject of the latter provision).

15. *Corte di Cassazione (plenary session), order of 28 June 2022 No 20802* 375

In an action for contractual and, in the alternative, non-contractual liability brought against a Swiss bank and concerning the latter's breach of contract in the management of a portfolio of five insurance policies taken out by a legal person in its own name and on behalf of the applicants, natural persons domiciled in Italy in the context of a fiduciary mandate conferred by them, Italian courts do not have jurisdiction over the contractual aspects of the claim, notwithstanding the clauses extending Italian jurisdiction contained in the fiduciary mandate and in one of the policies taken out. In fact, the effects of the link between the two contracts do not affect jurisdiction, nor can Article 16(1) of the Lugano Convention of 30 October 2007 be applied in the instant case, since, on one hand, the status of consumer does not entail the automatic applicability of the rule contained in that provision, given that Article 15 of the Convention distinguishes between contracts with consumers that fall *sic et simpliciter* within the scope of application of the Convention (sale of movable goods on instalment credit terms or loans connected with financing for such sales) and contracts with consumers for which it is required that the trader perform their activity in the Member State where the consumer is domiciled or that such activity is directed, by whatever means, towards that State, that is to

say, that it is offered to potential customers in that State; on the other hand, in a contract for the benefit of a third party, for the purposes of the application of the consumer protection rules, it is necessary to look at the position of the parties concluding the contract and not at that of the third party beneficiary. Since it is uncontroversial that the contract was performed in Switzerland, Italian jurisdiction may also not be established pursuant to Article 5(1)(a) of the Lugano Convention, which postulates the jurisdiction of the court of the place where the obligation in question was or is to be performed.

With regard to the subordinate claim of non-contractual liability – in spite of the fact that, where the plaintiff brings a principal and a subordinate claim against a defendant not resident in Italy, the existence of the jurisdiction of the Italian court must be verified with exclusive reference to the principal claim – in accordance with the principles of due process and reasonable duration of the proceedings established at Article 111(1) and (2) of the Italian Constitution. The power of the Plenary Session of the Court of Cassation to rule on jurisdiction must be exercised with reference to all the claims, given the need to resolve the question of jurisdiction once and for all on the entire dispute, but without dissolving the link of subordination desired by the party. It follows that the conflict must be resolved by referring the parties to the court with jurisdiction over the main claim and declaring the, possibly different, jurisdiction over the subordinate claim, the latter declaration being relevant only subject to the definition of the preliminary claim, pursuant to Article 295 of the Code of Civil Procedure, which provides for the stay of the proceedings until the foreign court's decision on the main claim is rendered. With respect to such a subordinate claim, Italian courts do not have jurisdiction since, pursuant to Article 5(3) of the Lugano Convention, Italy is relevant neither as the place where the damage occurred nor as the place where the event giving rise to the damage occurred: in the first case because, according to the case-law developed by the Court of Justice in this matter, the courts of the investor's domicile have jurisdiction to rule on the economic damage suffered by the investor only where that damage arose on an account held with a bank established in that same State, and in the second case because the management instructions giving rise to the damage were given in Switzerland.

16. *Corte di Cassazione, order of 1 July 2022 No 21055* 960

In the matter of international child abduction – as the case-law of the Court of Cassation has already stated on several occasions, consistently with the case-law of the Court of Justice of the European Union – for the purposes of the operation of the system of protection introduced with The Hague Convention of 25 October 1980, habitual residence coincides with the place where the child's personal life actually and continuously unfolds and which, with the passage of time, comes to be identified with the place where they, by virtue of a durable and stable permanence, have consolidated their network of affections and relationships, without any significance being attached to the child's residence as merely recorded in the registry office or to any contingent or temporary transfer. In essence, habitual residence is the place where the child is integrated to a certain extent into a social and family environment, and for the purposes of determining this, a series of circumstances are relevant and must be assessed in the light of the specific features of the case in question: the duration, regularity and reasons for residence in the territory of a Member

State, the child's nationality, school attendance and, in general, family and social relationships, in addition to the propensity of that residence to be stable (an element of particular significance in case of a tender age minor).

Habitual residence amounts to a factual situation whose assessment – which may not be challenged in a court of law, provided it is congruously and logically motivated – should be carried out by giving preference to a forward-looking prognosis of the best interests of the child, rather than on the basis of a static interpretation of the data existing at the time of the proceedings, and is reserved for the appreciation of the court of the merits. Consequently, in the instant case the Family Court correctly applied the relevant legislation when, for the purposes of identifying the concept of habitual residence, it carried out a concrete assessment of the living and relational conditions of two minors who had moved to The Netherlands with their mother, on the basis of the measures ordered at the time of separation (not limiting itself to assessing the two children's legitimate entitlement to reside in The Netherlands, the rights of custody assigned to the mother, and the project of stable integration in that European country, but in fact linking those elements to the factual element of the children's durable and stable stay in The Netherlands, their integration into the family environment on their mother's side, the school environment – albeit complicated by the distance learning scheme – and the social environment), thus taking into account the concrete elements that living law requires in order to verify the existence of an actual link of the minors with a given territory (whereas the appellant's motion sought a re-examination of the evidence, which is not permitted in an appeal in Cassation).

Pursuant to Article 13(2) of The Hague Convention of 1980, the purpose of a child's hearing is to take into consideration their possible opposition to return, being relevant in the assessment of the child's integration in their new environment. Such opposition, if manifested, amounts to an obstacle to the acceptance of the request for return, since it constitutes a well-founded risk for the child of being exposed to physical or psychological harm or, in any case, of being placed in an intolerable situation within the meaning of Article 13(1)(b) of the same Convention. Pursuant to Article 11(2) of Regulation (EC) No 2201/2003 of 22 November 2003 – which, in applying Articles 12 and 13 of The Hague Convention of 1980, provided for the need to ensure that the child may be heard during the proceedings if this does not appear inappropriate having regard to their age or degree of maturity – it is necessary not only to recognise the mandatory nature of the hearing of the child where the latter has reached the age of twelve years (beyond which the law imposes the child's hearing without exception), but also to exclude that, below that age, it is left to the unassailable discretion of the court, since the principle laid down by the case-law of the Court of Cassation with reference to proceedings concerning parental responsibility must be considered applicable to the matter in question, according to which the fact that the child was not heard is subject to a specific and circumstantiated motivation, in which the court gives account of the minor's incapacity of discernment or of the reasons why the court considers the hearing manifestly superfluous or contrary to the interests of the minor. Consequently, in the instant case the Family Court failed to comply with the canons of interpretation set out in Article 13 of the same Convention (which, read also in the light of Article 8 ECHR, requires the court to examine in detail and analytically the content of the hearing of the child, such provision

– if the child has the capacity of discernment – making it mandatory to consider the child's opposition to return, as well as to verify all the factual circumstances capable of supporting the will on the point manifested, by preventing the court from taking an alternative course of action, regarded by the supranational legislature as likely to cause obvious harm to the child's development) when it granted the application for return to The Netherlands made by the mother of the two children, lawfully residing there, unduly disregarding the opposition to return expressed by those children, which was reiterated and motivated in relation to current factual circumstances and such as to demonstrate the discomfort and the non-preposterous nature of the reasons expressed, and, on the contrary, it carried out an autonomous, fragmented and incomplete assessment aimed at enhancing factual findings dating back to the time when the minors were in Italy during the separation proceedings and linked to circumstances that are no longer current, failing at the same time to make an adequate and complete assessment of the well-founded risk for the minors of being exposed to psychological harm or, in any event, of being placed in an intolerable situation, in accordance with Article 13(1)(b) of The Hague Convention of 1980.

17. *Corte di Cassazione (plenary session), order of 6 July 2022 No 21351* 384

With reference to the establishment of jurisdiction in an action brought by an Italian television company seeking compensation for the damage suffered as a result of the unlawful uploading onto an online platform, operated by a company under Russian law but also accessible from Italy, of content extracted unlawfully from television programmes broadcast by the applicant, neither Article 24(1)(d) of the Convention between the Italian Republic and the Union of Soviet Socialist Republics of 25 January 1979 on legal assistance in civil matters nor Article 120 of the Italian Industrial Property Code (Legislative Decree 10 February 2005 No 30) are applicable. In fact, the former does not provide for grounds of jurisdiction but merely lays down the conditions for recognising judgments delivered by the courts of the two countries, while the latter sets out "rules of jurisdiction and venue" for actions in industrial property matters, the scope of which, however, is limited to actions relating to the registration and validity of patent rights. With respect to such an action, Italian courts have jurisdiction pursuant to Article 5(3) of the Brussels Convention of 27 September 1968, the application of which extends to defendants domiciled in a non-EU Member State by virtue of the reference made to it in Article 3(2) of Law 31 May 1995 No 218 (since Regulation (EC) No 44/2001 of 22 December 2000 and Regulation (EU) No 1215/2012 of 12 December 2012 have effectively replaced the above-mentioned Brussels Convention when they entered into force, but with exclusive reference to the Member States of the European Union), since the harmful event occurred in Italy. This conclusion is drawn in consideration of the conduct of the defendant company, which is alleged to have contributed to the unlawful uploading onto the Russian portal of audiovisual contents culpably captured from the plaintiff company's television programmes made accessible and communicated to the public of the users, given that "most of the contested contents had been uploaded by a single [Italian] user", resulting in the production of the initial damage in Italy. In this respect, it is of note that it is not possible, for the purposes of determining the place where the harmful event occurred in the matter of unlawful acts committed via the Internet, to refer exclusively to the

place where the servers used by the hosting provider are operated. This originates from the fact that communication via the Internet occurs well beyond the physical space hosting the equipment: in fact, it is a communication activity intended to expand and develop its harmful effects elsewhere, including the place where the centre of interests of the injured party is located which, in the case of legal persons, usually coincides with the place of their statutory seat.

18. *Corte di Cassazione, order of 6 July 2022 No 21462* 130

In an action concerning the patrimonial property regime of a couple's relationsafter their divorce, seeking the enforcement of the marriage contract by which the spouses had agreed that, in the event of a divorce pronounced at the request of the husband (an Iranian-Italian national) and not on the grounds of breach of matrimonial duties by the wife (an Iranian national), the man would have to transfer to the woman half of the assets he acquired during the marriage, the *res judicata* effects of the divorce decree pronounced by the Iranian court must be measured in relation to the cause of action (*causa petendi*) and claim (*petitum*) raised in the foreign proceedings. Pursuant to Article 14 of Law 31 May 1995 No 218, in order to ascertain whether the divorce decree pronounced by the foreign court provides for the thorough regime of the former spouses'relations after their divorce and whether, therefore, the right ascertained by the Iranian court is incompatible with the subjective situations relied on in the proceedings brought before the Italian court, the court is required to examine the Iranian Civil Code, in order to ascertain that the dowry (*Mahr*), governed by Articles 1078 *et seq.* of the Iranian Civil Code, is the woman's property by virtue of the marriage contract and remains due notwithstanding the divorce, as is easily inferred from Article 1093 of the Iranian Civil Code, so that the right to its payment does not arise from the divorce and is in no way related to the regulation of post-marriage relations provided for in the marriage contract; that the reference to 'alimony' in the foreign judgment must be understood in accordance with the combined provisions of Articles 1106 and 1109 of the Iranian Civil Code, so that, even in this case, the ruling concerns an obligation that Iranian law places on the husband and that, according to that law, arises from the marriage and not from the divorce; that compensation for marriage duties during shared life concerns a retrospective rebalancing of the economic relations between the parties, and not a ruling aimed at regulating post-marriage relations in accordance with the provisions of the marriage contract.

19. *Corte di Cassazione, order of 13 July 2022 No 22179* 136

The request to rectify the birth certificate of a child – born in Italy from an Italian mother, but conceived abroad, via heterologous medically assisted procreation techniques, by a couple consisting of the biological mother and the woman with whom said mother is in a same-sex relationship –, by recording the name of the intended mother in addition to that of the biological mother, cannot be granted. Such recording cannot be justified by a constitutionally-oriented broad reading of Article 8 of Law 19 February 2004 No 40, which is applicable pursuant to Article 33 of Law 31 May 1995 No 218 (in accordance to which Italian law governs this matter). On the one hand, samesex infertility cannot be equated to the situations of pathological infertility

governed by Article 8 of Law 40/2004. On the other hand, dual parenthood is not the only way to realise the best interests of the child, which can be adequately protected through adoption in special cases, which, according to the most recent case-law, allows the establishment of parental ties also between the adoptee and the adopter's relatives.

20. *Corte di Cassazione, order of 25 July 2022 No 23058* 142

On the subject of compensation for damages resulting from State aid being declared unlawful by the European Commission, the action for recovery of the State aid is subject to the ordinary ten-year limitation period laid down in Article 2946 of the Civil Code, in so far as it is appropriate to guarantee both the public interest in ensuring the effectiveness of European Union law by reestablishing the *status quo ante* to the infringement of competition law and the private interest in avoiding exposure to recovery proceedings without any time-limit, also in light of the fact that, pursuant to Article 14 of Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 TEC, recovery proceedings are governed by national law.

The starting point of the limitation period does not run from the date of receipt of the aid, within the meaning of Article 15 of Regulation (EC) No 659/1999: in fact, this Article identifies the initial starting point of the socalled limitation period within which the Commission must take action to ascertain whether aid granted by the Member States is unlawful. Rather, the starting point of the limitation period runs from the date of notification of the Commission's decision to the Member State: in fact, it is only from that time that the aid granted can be classified as unlawful. In the absence of proof of direct communication to the Member State by the Commission, the publication of the decision in the Official Journal of the European Union constitutes notification. The internal limitation period is not interrupted by an appeal against the Commission's decisions before the Court of Justice, since, under Article 15(2) of Regulation No 659/1999, that interruptive effect is provided for only in relations between the Commission and the Member States, and not also between the Member State and the recipient of the aid. It is also not possible, for the purposes of the initial running of the limitation period, to wait for the State to adopt special rules for the recovery of the individual State aid, because the consequences of the State's inert or dilatory conduct would be passed on to the creditor.

21. *Constitutional Court, 26 July 2022 No 195* 606

Article 5(1) of Law 5 February 1992 No 91 conflicts with Article 3 of the Italian Constitution on the grounds of intrinsic unreasonableness and is therefore unconstitutional since it does not exclude, from the causes impeding the recognition of the right to nationality, the death of the applicant's spouse occurring during the time allocated for the conclusion of the procedure set out in Article 7(1) of Law 91/1992, in so far as it defers the ascertainment of the non-dissolution of the marriage due to the death of the spouse to the moment of the adoption of the decree granting nationality, instead of the moment of the submission of the application. The profile of intrinsic unreasonableness consists in denying the applicant, who has applied for nationality and fulfilled the relative conditions, the recognition of nationality on the grounds of an

event – such as the death of the spouse – that is completely independent of both the applicant's sphere of control and the rationale for granting nationality.

22. *Corte di Cassazione, order of 28 July 2022 No 23631* 1013

In relation to proceedings for the return to Northern Ireland brought by the father of two minors retained in Italy by their mother, in the voluntary jurisdiction (*i.e.*, non-contentious) proceedings provided at Article 7 of Law 15 January 1994 No 64 ratifying and executing, *i.a.*, The Hague Convention of 25 October 1980 on the civil effects of international child abduction – which falls within the general scheme of special proceedings in matters of family and status of persons, and is therefore subject, in so far as not provided for therein, to the provisions common to proceedings in chambers, and at the same time characterised by the extreme urgency to act in the best interests of the child –, cross-examination is ensured by holding the hearing in chambers and by the fact that the person with whom the child is staying and the person who made the request are informed of the hearing and are put in a position to participate in it. Therefore – given that a hearing in chambers must necessarily be fixed and the court must verify that the Central Authority has duly informed, in accordance with Article 8 of the aforementioned Convention, the person who has submitted the request for the return of the child of the date of the hearing fixed for the examination of the case concerning the alleged international abduction of the child – if it transpires that no hearing in chambers has been fixed or that the petitioning parent has not received notice of the date of the hearing from the administrative authority, the court may not proceed further, without the adversarial process having been completed, against that parent. Consequently, the fact that the court, as emerges from a careful examination of the acts, did not arrange for the hearing in chambers, having rather relied on the summary information that the territorially competent Police Headquarters had taken from the mother accused of the abduction of the minor children, constitutes a violation of Article 7(3) of Law No 64/1994 and, in general, of the principle of cross-examination of the parties.

23. *Corte di Cassazione, order of 26 August 2022 No 25414* 623

As regards compensation for damage caused by the failure to transpose Directive 82/76/EEC of 26 January 1982, amending Directives 75/362/EEC and 75/363/EEC, the appropriate remuneration provided in accordance with Article 189(3) of Directive 82/76/EEC is, according to the case-law of the Court of Justice of the European Union, also owed to individuals enrolled in medical specialisation training (residency) in academic years prior to 1982-1983, but only as of 1 January 1983, *i.e.* as of the deadline for the transposition of the Directive in Italy. The normative changes produced by the judgments of the Court of Justice are, in fact, supervening law (*ius superveniens*): as such, they command the disapplication of the rule or principle of domestic law declared unlawful, such as the previous rulings of the Corte di Cassazione on the point of compensation to medical residents.

24. *Milan Tribunal, order of 31 August 2022* 458

Pursuant to Article 60 of Law 31 May 1995 No 218, Korean law governs the assessment of the formal validity of a power of attorney issued in South Korea.

Such a power of attorney – while exempt from the requirement of legalisation by the Italian consular authority and from the so-called 'apostille' pursuant to The Hague Convention of 5 October 1961, and while provided, in the instant case, with a translation in Italian (as opposed to the notary's certification, which is only in Korean and English) – is null and void for the purposes of Article 12 of Law No 218/1995. In line with the general principle according to which pre-trial documents must be translated in Italian by an expert, pursuant to Article 12 of Law No 218/1995 the power of attorney is null and void absent the translation of both the power of attorney and the certification of the notary stating that the signature was affixed in his presence by a person whose identity the notary had ascertained.

In the same proceedings, flaws in the power of attorney may not be remedied, given the precautionary nature of the appeal, by the assignment of a peremptory time limit pursuant to Article 182 of the Code of Civil Procedure.

25. *Corte di Cassazione, order of 1 September 2022 No 25854* 147

In proceedings brought by the Ministry of the Interior (acting as an intermediary institution within the meaning of Article 2 of the Convention on the Recognition Abroad of Maintenance, signed in New York on 20 June 1956), for the recovery of child maintenance – in accordance with a maintenance agreement – against a parent domiciled in Italy, pursuant to Article 3 of the same Convention, the procedure for recovery is based on the submission of a request to the transmitting authority of the Contracting State where the creditor is located. Such request must contain the names of the parties to the relationship and must be accompanied by all the relevant documents, including "where necessary, a power of attorney authorising the Receiving Agency to act, or to appoint some other person to act, on behalf of the claimant". According to Article 4 of the Convention, such a request must be transmitted, after a formal regularity check by the transmitting authority, to the intermediary institution of the State where the debtor is located, together with all provisional or final judgments or other judicial acts issued in favour of the creditor by a competent court of a Contracting Party to the Convention. Pursuant to Article 6 of the same Convention, the intermediary institution must, on behalf of the creditor, take all appropriate measures to secure the recovery of maintenance by settling the dispute or, if necessary, by bringing an action in court. In the light of these rules, the mere designation of the Ministry of the Interior as the body authorised to act as intermediary institution, made by the Italian State pursuant to Article 2(1) of the Convention when depositing the instrument of ratification, cannot be considered sufficient to legitimise the bringing of the action, which requires a specific investiture, apt to empower the Ministry to act as the creditor's procedural substitute. This investiture normally derives from the will manifested by the submission of the request to the transmitting authority, but may also require, if necessary, the express authorisation of the applicant, as provided for in Article 3(3) of the Convention. In this regard, the production in court of the request submitted by the holder of the claim must be considered essential for verifying the legal standing of the Ministry, which shall attach and prove the identity of the applicant and, if necessary, also the granting of any authorisation required. The submission of these documents is a fortiori essential where there is uncertainty as to the identification of the applicant and there is even doubt as to the applicant's

legal standing to make the claim on behalf of the person entitled to the maintenance claim, as a result of the latter having reached the age of majority.

26. *Corte di Cassazione (plenary session), order of 15 September 2022 No 27174* 151

Pursuant to Articles 8 and 9 of the Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the customary rule on the immunity of foreign States from jurisdiction, Italian courts do not have jurisdiction over the act by which a foreign State refused its consent to the import of waste, since that act is *iure imperii*. It ensues that the administrative measures issued by the Italian authorities which are bound to implement such act cannot be challenged, since they are linked to such act by a necessary precondition in the technical-procedural sense.

Pursuant to Article 20 of the Basel Convention, Italian courts do not have jurisdiction over the decision to not resort to the dispute settlement means referred to in that provision, since those are diplomatic settlement mechanisms of disputes arising on the interpretation, application or observance of the Convention aimed at reaching an agreement between the parties to the Convention. Such agreement constitutes an expression of the exercise of political power, in relation to which a situation of protected interest cannot be configured.

27. *Corte di Cassazione, order of 21 September 2022 No 27600* 968

The Family Court decision on the recognition of a Chilean judgment on adoption, even if adopted in the form of a decree, has the substantive value of a judgment and *res judicata* effect. It follows that, since the instant case is not subject to a single instance of jurisdiction, such decision may be challenged with an appeal before the Court of Appeal and not directly before the Court of Cassation.

28. *Corte di Cassazione (plenary session), order of 29 September 2022 No 28427* 390

Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, applicable *ratione temporis*, Italian courts do not have jurisdiction over an action for the compensation of damages brought by the children, domiciled in Italy, of the victim of a road accident occurred in Germany: in fact, while the rule on jurisdiction in matters relating to non-contractual obligations, which allows the plaintiff to bring proceedings both before the authorities of the *locus actus* and those of the *locus damni*, is intended to ensure the proper administration of justice and procedural economy, it is not intended to provide enhanced protection for the weaker party. It should also be noted that, firstly, the special nature of the rule requires a restrictive interpretation, which cannot go so far as to confer jurisdiction on the court of the place where the relatives of the victim of an accident, occurring in another Member State, claim to have suffered monetary consequences – as clarified by the Court of Justice of the European Union, which has specified, on the one hand, that, for the purposes of determining the law applicable to the compensation claims of the relatives of a road accident victim, the place where that direct damage occurred will be the relevant connecting factor, irrespective of the place where the indirect consequences of that accident occurred. This applies even though, in accordance with Italian law, the damage suffered by the victim's relatives is classified as 'direct'since the rules of European Union law, which do not

expressly refer to the law of the Member States for the purposes of determining their own terms, must be subject to an autonomous and uniform interpretation. Secondly, nor is it possible, in such a case, to have recourse to the forum of the plaintiff's centre of interests: in fact, such a possibility, which corresponds to the ubiquitous nature of online torts, is to be understood as being limited to actions brought by victims of infringements committed via the Internet.

29. *Corte di Cassazione (plenary session), 19 October 2022 No 30903* 155

Pursuant to Article 3 of Law of 31 May 1995 No 218, Italian courts have jurisdiction over an action concerning maintenance obligations brought by the mother of a child, habitually resident in Russia, against the father, an Italian citizen residing in Italy, when the defendant is domiciled or resident in Italy or has a representative authorised to represent them in court, or when, as provided alternatively by Article 37 of the same Law, one of the parents or the child are an Italian citizen or reside in Italy. This is not precluded by the reference made at Article 42 of Law 218/1995 to The Hague Convention of 5 October 1961, enacted with Law 24 October 1980 No 742, and replaced by The Hague Convention of 19 October 1996, enacted with Law 18 June 2015 No 101. Pursuant to Article 5(1) of the 1996 Hague Convention, jurisdiction over disputes concerning the adoption of measures for the protection of the child or the child's property lies with the authorities of the Contracting State of the child's habitual residence, except in the case of wrongful removal or retention of the child. However, the jurisdiction provided for at Article 5(1) of the 1996 Hague Convention does not extend to disputes concerning the determination of the modalities of the parent's contribution to the maintenance of the child, which – in so far as they have a subject-matter relating to the 'maintenance obligation' in the broad sense laid out in the jurisprudence of the Court of Justice of the European Union and the Italian Court of Cassation and, therefore, not limited to maintenance obligations strictly understood in the sense provided for by the Italian legal system – remain excluded from the scope of application of said Convention pursuant to Article 4(e) thereof. Such obligations were, instead, the subject of The Hague Convention of 2 October 1973, enacted with Law of 24 October 1980 No 745, and referred to in the original text of Article 45 of Law 218/1995, which, however – in addition to no longer being applicable as a result of the amendment of Article 45 introduced with Article 1(1)(b) of Legislative Decree of 19 January 2017 No 7, which replaced the aforesaid reference with that to Regulation (EC) No. 4/2009 of 18 December 2008 – did not deal with the allocation of jurisdiction, limiting itself to regulating the law applicable to maintenance obligations. To the contrary, the reference made by Article 45 of Law 218/1995 to Regulation (EC) No 4/2009 is not relevant, since that provision, although specifically concerned with maintenance obligations arising from family relationships, does not deal with the allocation of jurisdiction between the Italian court and the foreign court, but merely identifies the law applicable to such obligations. Nor is relevant the reference to the Convention on Judicial Assistance in Civil Matters between the Italian Republic and the Union of Soviet Socialist Republics of 25 January 1979, enacted with Act No 766 of 11 December 1985, which – in providing at Article 1(2) that 'nationals of a Contracting Party shall have the right to apply freely and without hindrance to the courts, prosecutors'offices and other institutions of the other Contracting Party within whose

jurisdiction, in accordance with the law of the latter Contracting Party, civil (including family) cases fall, and may appear before them, present petitions and file complaints under the same conditions as nationals of the other Contracting Party' – does not regulate the allocation of jurisdiction, but merely recognises, consistently with the object of the Convention, the right of nationals of each Contracting State to bring proceedings in the courts of the other Contracting State, provided, of course, that the court seised has jurisdiction over the dispute submitted to it.

30. *Corte di Cassazione, 2 November 2022 No 32194* 969

In the matter of international child abduction, where a child who is not of school-age is cared for – as of the first months of his life (in this case, as of less than eight months of age, having regard to the time when the application is made) – by his mother in a Member State (Italy) other than that in which the father habitually resides (Spain), the child's habitual residence (a concept which may amount to a precondition for abduction within the meaning of Article 3 of The Hague Convention of 25 October 1980 on the civil effects of international child abduction and Regulation (EC) No 2201/2003 of 22 November 2003, applicable in cases within the territory of the European Union) must be determined by reference to the child's social and family environment and to the circle of persons on whom he is dependent and in which he necessarily participates, as stated by the case-law of the Court of Justice of the European Union. For the purposes of determining that habitual residence, account must be taken, first, of the continuity, conditions and reasons for the parent's previous residence in the territory of the first Member State (in the instant case, Spain, where the mother initially lived as Erasmus student and where she had her child with a man with whom she only entertained a short-lived relationship before she reverted to Italy) and, second, of the family and social relationships actually entertained by the parent and the child, living with her, in that Member State. This is achieved by ascertaining whether, at the time the court was seised, the mother and the child, dependent on her, were present on a stable basis in the territory of that State and whether, having regard to its duration, continuity, conditions and reasons, that residence denotes appreciable integration of that parent into a social environment, thus shared with the child, even though the other parent with whom the child maintains regular contact cannot be disregarded.

Consequently, despite the fact that the assessment of habitual residence lies solely with the court on the merits and cannot be reviewed by the Court of Cassation provided it is congruously and logically motivated, the decree by which the Family Court, in disregard of the above-mentioned factors and giving weight only to the place of birth and to regular contacts that the child entertained with his father in the few months he spent in Spain, ordered, without giving due consideration to the relevant factor of the minor's tender age for the purposes of determining his habitual residence, the immediate return to Spain of the minor in question (who had, *i.a.*, spent the last five months in Italy) must be set aside and referred back to the same court in a different composition.

31. *Corte di Cassazione (plenary session), order of 11 November 2022 No 33366* 398

Pursuant to, respectively, Article IX(4) of the London Agreement of 19 June

1951 Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces ('SOFA'), Article 8 of the Paris Agreement of 26 July 1961 on the special conditions for the installation and operation on Italian territory of International Military Headquarters, the customary rule on restricted immunity, Articles 2 and 39 of the Italian Constitution and Article 28 of Law 20 May 1970 No 300 (the so-called Workers'Statute), Italian courts have jurisdiction over the action brought by a trade union association against the United States of America and the General Headquarters of the American military bases in Italy to ascertain the infringement (also due to unlawful discrimination) of the right to form and join trade unions of the plaintiff and the Italian civilian workers of the aforesaid bases adhering to it. This is supported by the two following reasons. On one hand, jurisdiction of Italian courts is supported by the fact that the 'conditions of protection' of Italian citizens recruited for local manpower needs in order to meet the material requirements of the military organs and civil offices of NATO member countries (so-called personnel with local status), subject to the legislation of the State of stay in accordance with both the London Convention and the Paris Agreement (being, however, excluded that the latter – which constitutes implementation of the first with reference to the Italian territory – is applied only with reference to inter-allied military bases and not to the military bases of the United States that also operate in the NATO context), are guaranteed by the active trade union presence in the workplace, in application of Articles 2 and 39 of the Italian Constitution (which recognises trade union action as a projection of the recognition and guarantees of the fundamental rights of workers). Hence, it follows that the aforementioned action is also subject to Italian law in accordance with Article IX(4) SOFA, which does not preclude either the fact that, at the time of its stipulation and ratification, the workers'statute did not yet exist (since the reference to Italian law made by that provision is formal and not substantial), or the possibility of criminal liability for failure to comply with the decree issued in accordance with Article 28 of the Workers'-Statute, a hypothesis falling within the scope of the rules laid down by SOFA itself. On the other hand, jurisdiction of Italian courts is supported by the fact that the intervention of the Italian court cannot, in the instant case, negatively affect the prerogatives and interests of the foreign State, whose presence in such disputes is excluded, at root, by Article IX(4) SOFA, which places said disputes outside the applicative perimeter of restricted immunity, on account of their peculiar functional cause, imbedded into the consideration which is typical of the subordinate employment relationship and is preordained exclusively to satisfy the local material needs of the armed force in the military base established in the host State.

32. *Corte di Cassazione, order of 16 November 2022 No 33765* 162

Pursuant to Article 142(2) of the Code of Civil Procedure, Article 37 of Legislative Decree of 3 February 2011 No 71 (Consular Law) and the 'Guidelines for the service abroad of administrative acts'of the Ministry of Foreign Affairs and International Cooperation, the service of an injunction order, transmitted, at the request of the Italian Civil Aviation Authority (ENAC), through the consular section of the Italian Embassy in Dublin and served through the Irish postal service on an employee of a company governed by Irish law and with registered office in Ireland, in two languages, Italian and English, is lawful. The obligation to serve the addressee by certified email,

which is optional pursuant to Article 18 of Law 24 November 1981 No 689, is not relevant. Also excluded is the applicability of, respectively: the 1965 Hague Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters and of Regulation (EU) No 1393/2007 of 13 November 2007 on service of documents (because administrative sanctions involve the exercise of a public power and do not fall under 'civil and commercial matters'but under 'customs, tax and administrative matters', which are excluded from their scope of application); the Strasbourg Convention of 1977 on the Service Abroad of Documents in Administrative Matters, because Ireland is not among the signatory countries; and Article 142(1) of the Code of Civil Procedure which is of a residual nature and places the burden on the applicant to prove the impossibility of effecting service in accordance with international conventions or in the manner laid down by consular law, which arises only when the foreign State refuses to cooperate, actively or passively, in the performance of the activities necessary to ensure that the document reaches the addressee residing in its territory, whereas Ireland is among the countries that allow direct transmission of documents for service.

Pursuant to Article 37 of Legislative Decree of 3 February 2011 No 71 (Consular Law), service must be carried out in compliance with the "Guidelines for the service abroad of administrative acts" of the Ministry of Foreign Affairs and International Cooperation and the law of the addressee's foreign State, which regulates the methods for completing the service so that, in the case of the above-mentioned injunction order, the certificate issued by the consular section of the Italian Embassy in Dublin constitutes sufficient proof of service. In fact, upon specifying that "in Ireland there is no registered mail with confirmation of receipt", such certificate encloses the page of the official website of the local postal service, showing the date and time of delivery: this is consistent with the fact that, in the Irish postal system, proof of delivery is not in the return receipt but, rather, in the tracking system. Ultimately, once service by mail is permitted pursuant to the Consular Law, service abroad cannot be made conditional on further methods of service provided under national law: to the contrary, it is sufficient that service be carried out in compliance with the provisions of the Member State of destination that are especially laid down to regulate the concrete execution of service.

33. *Corte di Cassazione, order of 24 November 2022 No 34658* 407

Since the protection of personal data is closely connected to the protection of fundamental rights, it being preordained to the protection of the personal dignity of the person concerned within the meaning of Articles 3(1) and 2 of the Italian Constitution, the order by which, in accordance with Articles 1 and 8 of the Charter of Fundamental Rights of the European Union and with the relevant case-law of the Court of Justice of the European Union, the Italian Data Protection Authority (*Garante per la protezione dei dati personali*) ordered – after balancing the rights of the data subject and the right to freedom of information in accordance with the standards of protection provided by national law – a search engine operator to de-index a given content from all versions of that engine, including those outside Europe, is admissible since, in the instant case, the data subject resided and carried out his professional activity outside the European Union.

34. *Corte di Cassazione, order of 9 December 2022 No 36113* 632

In an action brought by an Italian company alleging the liability of a German company for unfair competition, the jurisdiction of the Italian court, which has been affirmed (even only implicitly) by a final decision, also extends to tortious conducts occurring outside Italy.

It follows that the liability of the German company for acts of unfair competition which occurred between 2009 and 2014 shall be determined on the basis of the law applicable according to the private international law rules of the court seised, *i.e.* on the basis of the Italian system of private international law, which, in the instant case, also happens to be the law of the party that claimed to have suffered the damage. Since unlawful competition is subsumed within the broader scope of non-contractual liability, Article 62 of Law 31 May 1995 No 218 applies, according to which the liability claim is governed by the law of the State where the harmful event occurred.

35. *Corte di Cassazione, order of 12 December 2022 No 36144* 977

In an action for breach of contract for non-payment of the goods, brought by a German seller against an Italian buyer, who in turn alleges the non-conformity of the goods and seeks a reduction of the price, the dispatch by the buyer of a technical data sheet, which is silent on the minimum quantity of silicon that must be present in the steel purchased to make it suitable for its normal use, does not constitute an agreement capable of excluding the application of the criteria relating to the normal conformity of goods, established pursuant to Article 35(2) of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods.

36. *Corte di Cassazione, order of 15 December 2022 No 36776* 662

The obligation to make a reference to the Court of Justice of the European Union (CJEU) for a preliminary ruling, incumbent on the court of last instance, ceases in the presence of an *acte clair*, *i.e.* where the correct application of European Union law is so obvious as to leave no room for any reasonable doubt before all the courts of the other Member States, in all language versions, in all legal terminology, and in the light of EU law as a whole; or where there is an *acte eclairé*, *i.e.* where the claim has already been interpreted by the CJEU in a similar case on a similar subject in other proceedings in one of the Member States. Since, under Article 2(3) of Council Directive 78/2000/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, read in the light of Article 14 of the European Convention on Human Rights and as interpreted by the CJEU, retaliatory dismissal undoubtedly falls within the scope of the prohibition of discrimination in cases where the dismissal is the result of discriminatory conduct, the Corte di Cassazione has ruled out the need for a reference for a preliminary ruling to the CJEU.

37. *Corte di Cassazione, order of 27 December 2022 No 37833* 418

In the case of international child abduction, in light of the applicability in Italy of the Council of Europe Convention on preventing and combating violence against women and domestic violence, signed in Istanbul on 11 May 2011 and

ratified with Law 27 June 2013 No 77, the court, when the recurrence of a form of violence falling within the scope of the aforesaid Convention is alleged, shall verify whether and to what extent such violence (provided it occurred) is such as to affect the overall assessment of the facts and of the preliminary findings relevant to the adoption of the requested return order, albeit within the limits provided for by Article 13(b) of The Hague Convention of 25 October 1980 on the civil aspects of international child abduction. Hence, the decision by which the court granted the application for return to Ecuador, lodged by the father of two minors retained in Italy by their mother, on the assumption that they would live well in Quito with their mother, given the father's choice to voluntarily move out of the family home in Quito, is flawed and must be set aside, with referral back to the same Family Court, in a different composition. In fact, in the instant case the assessment of the absence of risk and/or intolerable situations in the event of return to that country in accordance with Article 13 of The Hague Convention of 1980 was not carried out, not even with regard to the standards set out by the Istanbul Convention, which are abstractly capable of constituting a grave risk for the children of being exposed, by the fact of their return, to physical and psychological harms, or in any case of facing an intolerable situation.

38. *Corte di Cassazione, order of 30 December 2022 No 38141* 638

Pursuant to Article 64(b) of Law 31 May 1995 No 218, the enquiry conducted by the Italian judicial authority seised to ascertain the eligibility for recognition of a foreign judgment comprises the proper service of the writ of summons, which is to be assessed in accordance with the foreign law and the fundamental principles of the legal system, but more generally the judgment's compliance with the right of defence, which presupposes, first and foremost, that the foreign proceedings were brought against the person actually having passive legal standing. According to the same provision, the fact that the man entered as father in the civil-status registers at the mother's request was not summoned to the main proceedings does not constitute a ground for refusal of recognition of a Ukrainian judgment which established that the mother is the sole legal representative of her minor daughter, born of an occasional relationship with a man who never intended to recognise her. In fact, pursuant to Article 135(1) of the Ukrainian Family Code – which can be construed as a rule of reference, according to which the proper establishment of an adversarial process in the proceedings leading to the judgment whose recognition is sought must be assessed – in the event that the child's parents are not married, the indication of the father's name is included in the birth certificate at the sole initiative of the mother and is not apt to establish filiation. The attribution of paternity can only take place through a joint declaration by both parents, a unilateral declaration by the father or a judgment establishing filiation (Art. 125(2)) and not also through a unilateral declaration by the mother, which only allows the above-mentioned indication to be included in the birth certificate (Art. 135(1)). This indication is a necessary pre-condition for the validity of the declaration made by the father in the event of the death, incapacity or unavailability of the mother, revocation of parental capacity or abandonment of the child by the same (Art. 127), and its absence precludes the judicial establishment of paternity (Art. 128(4)). However, its presence does not result in the attribution of paternity in favour of the holder of the name indicated in the birth certificate, who does not acquire the rights and does not assume the

obligations arising from filiation, and is therefore in the same situation as if his name had not been indicated in the birth certificate, except only in the hypothesis, irrelevant in this case, that he, in turn, intends to either recognise the child within the meaning of Article 127 or initiate judicial proceedings for the assessment of paternity.

39. *Corte di Cassazione (plenary session), order of 10 January 2023 No 361* 425

In an action brought by an Italian company against a French company for compensation of damages for breach of the obligations under a contract for the supply of an industrial plant, which provided, *inter alia*, for the installation of industrial equipment and a series of other activities to be carried out at the defendant company's plant in Italy, Italian courts have jurisdiction. On one hand, the prorogation clause in favour of the French court, included in the general terms and conditions of the contract in a text which is separate and autonomous from the text of the contract but lacking any connection or specific reference in the text of the contract and merely referred to in the table of contents of the contract, does not constitute, according to the settled interpretation of the Court of Justice of the European Union, the subjectmatter of a specific negotiated agreement between the parties, manifested in a clear and precise manner, within the meaning of Article 17 of the Brussels Convention of 27 September 1968, transposed in Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012. On the other hand, Italian courts have jurisdiction because, since the contract at issue must be classified as a contract for the provision of services – in fact, for the purposes of differentiating between a contract for sale of goods and a contract for services, when the performance of doing, which characterises a contract for the provision of services, is accompanied by the performance of giving, which is typical of a sale, regard must be had to whether or not the work prevails over the subjectmatter, having regard to the intention of the contracting parties as well as to the objective meaning of the transaction in order to ascertain whether the delivery of material is a mere means for the production of goods and the work the purpose of the contract (which is, therefore, a contract for the provision of services), or whether the work is the means for the transformation of the materials and obtaining the goods the actual purpose of the contract (which is, therefore, a contract for the sale of goods) – the place where the obligation in question has been or is to be performed within the meaning of Article 5(1) of the 1968 Brussels Convention is to be determined in accordance with the law governing the obligation at issue according to the conflict rules of the court seised, *i.e.* Article 57 of Law 31 May 1995 No 218 – therefore, the law of the country with which the contract is most closely connected (in this case Italy) –, and not on the basis of the place of delivery of the goods (in France) within the meaning of Article 5(1) of the 1968 Brussels Convention, as incorporated in the first indent of Article 5(1)(b) of Regulation (EC) 44/2001 of 22 December 2000. The parties'choice of French law is of no relevance for the same reasons as those given with regard to the prorogation clause.

40. *Corte di Cassazione, order of 12 January 2023 No 663* 642

For the purposes of verifying the timeliness of the appeal against the judgment by which the court hearing the legal separation of the spouses declares that the Italian court has no jurisdiction over the applications relating to the custody

and maintenance of the couple's minor children, to be filed exclusively by electronic means pursuant to Article 16-*bis*, paragraph 9-*ter* of Decree-Law 18 October 2012 No 179, only the receipt of successful delivery by the Ministry of Justice's certified e-mail operator is valid. In fact, pursuant to paragraph 7 of the aforementioned Article, the filing by telematic means is deemed to have taken place when the receipt of successful delivery by the Ministry of Justice's certified e-mail operator is generated. Conversely, no invalidating significance can be attributed to the circumstance of the electronic filing of the document in a registry other than the registry dedicated to contentious matters: on one hand, such a circumstance does not determine, even in general, a nullity, in the absence of express provision of law (Art. 156 of the Code of Civil Procedure), as it only amounts to a mere irregularity; on the other hand, once the document has been entered in the computerised registry of the court, after generation of the receipt of delivery by the Ministry's certified e-mail operator, the purpose is always fulfilled, since it is premised on establishing the contact between the party and the judicial office, just as on establishing the contact with the other parties so as to ensure their right of defence, which is relevant for the purposes of establishing the procedural relationship.

For the purposes of establishing jurisdiction and identifying the applicable law in relation to applications on the custody and maintenance of children made in the context of legal separation proceedings between the parents of two minors having dual citizenship, Italian *iure sanguinis* and American *iure soli*, measures concerning the children must be assessed in relation to the function performed and, therefore, those that, while affecting parental authority, pursue a child-protection purpose, fall within the scope of Article 42 of Law 31 May 1995 No 218. Pursuant to that provision and [Article 1] of The Hague Convention of 1961, Italian courts do not have jurisdiction, in favour of the jurisdiction of the United States of America, in relation to applications relating to the custody and maintenance of the two minors, born and always residing in the United States: in fact, the mandatory criterion of attribution of jurisdiction based on the so-called proximity, laid out in the best interests of the child, is so significant that it also entails the exclusion of the validity of the consent to prorogation of jurisdiction on the part of the respondent parent, at the time of their commencement of proceedings; furthermore, Article 4 of that Convention, which establishes the priority of the measures adopted by the court of the State of which the child is a national over those adopted in the place of habitual residence, cannot be applied in the case of children with dual nationality.

41. *Corte di Cassazione, 19 January 2023 No 1544* 435

For the purposes of the application of Article 73(3) (formerly Article 87(3)) of Presidential Decree 22 December 1986 No 917, Consolidated Law on Income Tax (*Testo unico delle imposte sul reddito*, also known as the T.U.I.R), which indicates the registered office, the seat of administration and the principal object as equal and alternative connecting criteria between the taxpayers (in this case, companies) of direct taxation and the territory of the Italian State, the recurrence of which, for the greater part of the tax period, determines the taxpayer's residence in Italy and, with it, its subjection to the taxing power of the Italian tax authorities (regardless of the ascertainment of a possible elusive purpose of the taxpayer), the notion of 'seat of administration', as opposed to

'registered office', coincides with the notion of 'effective seat'(of civil law matrix), understood as the place where the administrative and management activities of the entity are actually carried out and where the meetings are convened, *i.e.* the place designated, or permanently used, for the centralisation – in internal and third party relations – of the corporate bodies and offices with a view to the completion of business and the drive of the entity's activity. It is understood that such an assessment, in the individual case in point, precisely because it is aimed at ascertaining an 'effective' datum, cannot fail to also take into account those relevant substantial factors (including, in the event, the performance of the main activity) which – in the face of formal data relating to the geographical location of the place where the administrative and management activity is performed – point, instead, to the effective attribution of the latter to a different territorial context. In particular, for the purposes of ascertaining whether a foreign company controlled by an Italian company resides in Italy for tax purposes, the identification of the place from which management impulses or administrative directives emanate cannot constitute the exclusive criterion for ascertaining the seat of 'effective management'where it is identified with the (legal or administrative) seat of the Italian parent company. In such a case, it is also necessary to ascertain that the foreign subsidiary is not a purely artificial construction, but corresponds to a real entity that actually carries on its activities in accordance with its statute or bylaws, since foreign companies are not, therefore, deprived of their legal and patrimonial autonomy and, therefore, automatically qualifiable as screens. The concept of the 'seat of administration' cannot simply coincide with the management and coordination activity that the parent company, or in any event the controlling company, exercises over the subsidiary, using that prerogative typical of corporate control referred to in Article 2359 of the Italian Civil Code, which is realised through acts of strategic and operational direction that connote the state of dependence of the interests of the subsidiary to the benefit of the group as a whole or of the controlling company. The actual transfer, to the parent company, of the seat of the subsidiary's administration presupposes, on the other hand, a higher degree of concrete hetero-direction, constituting a case in which the parent company takes on the features of a true and proper indirect administrator of the subsidiary, of which it appropriates the entrepreneurial impetus, depriving it of all sovereign prerogatives with regard to its own operations and reducing it to a mere satellite or dependency (that is to say, to a non-effective structure, in respect of which, therefore, the protection granted by EU law to freedom of establishment would not even operate, as has already been pointed out).

Consequently, the judgment of the Regional Tax Commission upholding the previous decision of the competent Provincial Tax Commission, which had upheld the appeal of a Portuguese company established in the Madeira Free Zone – and subsequently moved to Italy in 2010 – against the tax assessment notice issued by the Italian Tax Agency following the tax assessment report drawn up in 2010 in respect of the same company for the tax periods from 2000 to 2009, in which the formal and fictitious nature of the company's foreign registered office was challenged, on the grounds that the taxpayer's actual registered office was in Italy (where the taxpayer's sole shareholder joint-stock company was situated). In fact, that decision, however briefly, expressly identified the connecting criterion (the registered office of the ad-

ministration) used in the contested assessment and to be verified; provided, just as explicitly, an interpretation of the same criterion in a substantive key (actual registered office of company management), supported, in the assessment of the Territorial Tax Commission, by objective and verifiable data that were not merely formal and abstract (the use of a physical operational structure at the Portuguese registered office and the holding of meetings of the company bodies in Portugal, as well as relations with the Portuguese banking system); compared the results of the investigation with the specific nature of the relationship between the parent company and the subsidiary, in order to avoid classifying as the exercise of effective administration, on the part of the parent company, those conducts rather attributable to manifestations of the corporate control exercised by the Italian parent company; and, finally, assessed the compatibility of its own reconstruction with the freedom of establishment under EU law, associated to the deemed effectiveness of the company having its seat in Portugal, with the consequent irrelevance of the attainment of a tax advantage which is not presumptively and necessarily undue.

42. *Corte di Cassazione, interlocutory order of 26 January 2023 No 2418* 446

Although, pursuant to Article 62 of Law 31 May 1995 No 218, the action brought by the family members – Albanian citizens residing in Albania – of the victim of an accident that occurred in that country and sought compensation from the tortfeasor and his insurer based in Italy for the monetary and non-monetary damage suffered is conclusively governed by Albanian law, it is nevertheless necessary to clarify whether, once it is determined that the foreign law is applicable in accordance with the rules of private international law, it is possible to quantify the non-monetary damage caused by the loss of the parental relationship by resorting to the criteria laid down by Italian law if the foreign legal system referred to by the conflict-of-law rules, while admitting the compensability of such damage, does not provide for any positive rules that may guide the court in its liquidation. Such a question assumes nomophylactic importance (as to upholding or protecting the law, especially its uniform interpretation), both because of its novelty and of the issues it raises in the field of private international law. It also presupposes an assessment that is supported by an adequate depiction of the foreign law which, pursuant to Article 14 of Law No 218/1995, must be acquired *ex officio*, thus making it necessary for it to be dealt with during a public hearing. In the current structure of the proceedings before the court of last instance (Court of Cassation), a public hearing constitutes the most appropriate setting in which decisions having such relevance must be taken, in the form of a judgment and by means of the widest and most direct interlocution between the parties, and between the parties and the Public Prosecutor, such decisions having nomophylactic relevance.

43. *Corte di Cassazione, 10 February 2023 No 4261* 1016

In an action brought against an Irish airline seeking compensation for the cancellation of a flight caused by a strike called by the air traffic controllers'-trade unions, the abstract characterisation of the circumstance which led to the cancellation as an 'external event'of the airline is not sufficient, in itself, to exclude the air carrier's liability under Article 5(3) of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and

assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, by virtue of which that entity is not required to pay compensation under Article 7 thereof, if it can prove that the cancellation is due to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. To this aim, the airline shall demonstrate the impracticability of any other residual possibility of intervention on its part, so as to attest – in a comprehensive, irrefutable and unequivocal manner – the absolute independence of the sacrifice of the passenger's reasons from any contractual commitment actually enforceable by the airline concerned, as clarified by the relevant case-law of the Court of Justice of the European Union.

44. *Corte di Cassazione, order of 15 February 2023 No 4723* 1021

In an action aimed at establishing the liability of a Russian airline for the delayed delivery of the luggage of two passengers travelling from Milan to New Delhi, the passengers also have the right to seek non-pecuniary damages. In fact, although Article 19 of the Warsaw Convention of 12 October 1929 – applicable to the case *ratione temporis* – is limited to identifying the violation which determines the contractual liability of the air carrier for the delay in its services without identifying the non-pecuniary interests susceptible to compensation, this interest was identified by the court in the right to free movement enshrined in Article 16 of the Italian Constitution, which, although it does not amount to an 'inviolable' right, can only be restricted by reasons of health and safety. Against this background, the reference to the 'brief' restriction to the freedom of movement, made by the Court of Appeal, satisfies the need for the judicial authority to indicate, at least summarily and within the scope of its broad discretionary power, the criteria followed to liquidate the damage pursuant to Articles 1226 and 2056 of the Civil Code.

45. *Corte di Cassazione (plenary session), order of 27 February 2023 No 5830* 647

In an action for judicial separation between spouses brought by the husband, an Italian national with a certificate of residence in Italy for more than six months, the jurisdiction of Italian courts is established on the basis of the applicant's habitual residence if he resided there for at least six months immediately before the application was made and is a national of the Member State referred to in Article 3(a), sixth indent, of Regulation (EC) No 2201/2003 of 27 November 2003, since habitual residence must be identified with the place of actual residence, where there is actual and continuous pursuit of personal and, where appropriate, working life at the date the application is made. In this regard, the registry certifications contained in public registers have an essential function, *i.e.* that of legal certainty, and major economic and social importance, inasmuch as they produce or circulate special means of certainty regarding events, which, directly or indirectly, make economic and social relations secure, or at least easier. It follows that, when one intends to claim the falsity of the findings of a certification of residence, it is necessary that the proof, where admitted, be extremely rigorous in its evidence and certain in its outcome. The allegations, supported by evidence and further circumstantial elements lacking conclusiveness, according to which the husband's registered residence in Italy is formal and fictitious are not sufficient, where other elements are consistent with that residence, such as the location in

Italy of the husband's network of friendships and contacts as well as of the medics who treat him, his role as director of a paternal company established in Italy, ownership of real estate property in Italy, registration in the Italian register of financial promoters and in the Italian Health Service, an Italian telephone number, and the cancellation of the lease of the flat in Italy.

46. *Corte di Cassazione (plenary session), order of 27 February 2023 No 5868* 651

Pursuant to Article 7(1)(a) of Regulation (EU) No 1215/2012 of 12 December 2012, applicable *ratione temporis*, Italian courts have jurisdiction over an action for revocation brought against a natural person domiciled in the United Kingdom who had entered into a contract of guarantee with an Italian credit institution in order to guarantee the obligations that a commercial company had entered into in relation to that credit institution. In fact, in the instant case Article 18(2) of that Regulation, according to which an action against a consumer may be brought only before the authorities of the Member State in which the consumer is domiciled, does not apply since a guarantor who has contracted for purposes outside his private sphere and instead relates to the purposes of the professional activity carried on by him and his spouse does not qualify as a consumer.

47. *Corte di Cassazione, order of 28 February 2023 No 5988* 654

With respect to an ordinary action for revocation brought in Italy against an Italian company, which was the beneficiary in a sale of assets carried out by a Swiss company, later declared bankrupt, the legal standing of a creditor (who acts, in his own name but on behalf of the estate) of the bankrupt company must be recognised by virtue of a special agreement concluded with the Swiss bankruptcy administration pursuant to Article 260 of the Swiss Federal Act of 11 April 1889 on Debt Collection and Bankruptcy.

48. *Corte di Cassazione (plenary session), order of 9 March 2023 No 7065* 657

Since the action brought by an Italian company against a Saudi Arabian company seeking a declaration that a preliminary contract of sale of a future asset is void and the restitution of sums unduly paid on the basis of that contract falls within the concept of 'matters relating to a contract'within the meaning of Article 5(1)(a) of Regulation (EC) No 44/2001 – applicable, *ratione temporis*, also to relations with defendants domiciled in non-Member States by virtue of the reference made by Article 3(2) of Law 31 May 1995 No 218 to the Brussels Convention of 27 September 1968, as subsequently amended – Italian courts have jurisdiction over both claims. This is supported by the need to ensure the harmony of judgments – which requires that the court hearing the application for restitution and the court having jurisdiction to rule on the assessment of the invalidity of the contract (which constitutes a logical antecedent to the decision on the right to restitution) coincide – and by the fact that, for the purposes of identifying the court having jurisdiction, the relevant place is not the place where the undue service was performed in implementation of the invalid contractual obligation but, rather, the place where the different obligation to repay the sums unduly received must be fulfilled, to be identified in the light of the substantive law referred to by the rules of private international law of the court seised and coinciding, in the instant case, with the domicile of the Italian creditor.

49. *Corte di Cassazione (plenary session), order of 12 April 2023 No 9782* 981

Pursuant to Article 16(1) of the Lugano Convention of 30 October 2007, Italian courts have jurisdiction (on the basis of the plaintiff's domicile) over an action seeking a declaration of nullity, annulment or a declaration of the ineffectiveness of bank account contracts brought against a Swiss bank by clients domiciled in Italy. Such jurisdiction is to be determined not on the basis of the statement of the claim as made by the parties but, rather, by taking into account the true nature of the dispute, to be determined by reference to the concrete subjective positions of the parties, on the basis of the evidence already on the record and entered in the proceedings, without the admission of evidence deriving from investigative proceedings aimed at gaining knowledge formed at or within the process. Notably, Article 16(1) of the 2007 Lugano Convention is applicable, pursuant to Article 15(1)(c) thereof, where the Swiss bank's activity is directed towards Italy, albeit through the work of an external asset manager connected to the Swiss bank by a relationship of long-standing acquaintance and previous professional collaboration. The application of Article 16(1) of the 2007 Lugano Convention is not precluded by the clauses prorogating jurisdiction in favour of the Swiss court contained in the general terms and conditions of the contract drawn up by the Swiss bank, expressly referred to in the bank account contracts in question and therefore binding on contracting parties domiciled in Italy, since none of the conditions laid down in Article 17 of the 2007 Lugano Convention is satisfied in support of a derogation from the provisions on jurisdiction over consumer contracts.

50. *Corte di Cassazione (plenary session), order of 13 April 2023 No 9954* 991

In an action brought by a wife against her husband, seeking to obtain the transfer, promised to the wife by means of public deed, of immovable property situated in Germany, Italian courts do not have jurisdiction over the liquidator appointed following the commencement in Germany of bankruptcy proceedings against her husband and summoned by the latter to obtain, as incidental question, a declaration that such immovable property does not belong to the debtor's assets involved in the insolvency proceedings and, as main question, that the husband has the right to dispose freely of it. Similarly, Italian courts lack jurisdiction with regards to any request intended to order the liquidator to cease all acts preventing both the husband from performing his contractual obligations (towards the wife) and the transcription in the German land registers of the wife's right of ownership in respect of the same immovable property. In fact, the Article 6(2) of Regulation (EC) No 44/2001 of 22 December 2000 is not applicable, since the action brought against the liquidator seeks a genuine review, from one side, on whether the very conditions for the opening of bankruptcy proceedings in Germany were satisfied, and, from the other, on the same validity of the activities performed by the person called in the capacity of liquidator, who was clearly subject to the supervision of the German bankruptcy authorities responsible for monitoring the proceedings. In fact, the issue in question falls within the 'bankruptcy' matter, which is excluded from the scope of application of Regulation (EC) No 44/2000 pursuant to Article 1(2)(b) thereof. In this framework, the non-applicability of Regulation (EC) No 1346/2000 of 29 May 2000 is not relevant either, due to the fact that the insolvency proceedings in question were opened before the same Regulation entered into force. Lastly, even Article 3(2) of Law

31 May 1995 No 218 does not apply, since – even if it confers jurisdiction to Italian courts on the basis of the criteria laid down for territorial jurisdiction in matters excluded from the scope of application of the 1968 Brussels Convention (*i.a.*, bankruptcy)–, insolvency proceedings opened in Germany have effects only in the territory of that State.

51. *Corte di Cassazione, order of 20 April 2023 No 10671* 999

Pursuant to Article 67 of Law 31 May 1995 No 218, in relation to a German judgment establishing paternity, the interest in bringing an action to ascertain the requirements for its recognition in Italy is met provided at least one of the conditions set out in paragraph 1 of that provision is satisfied: *i.e*., in the event of failure to comply with the foreign judgment, or of opposition to its recognition, or when it is necessary to proceed with enforcement. This prerequisite, absent the civil registrar's refusal of the transcription of the foreign judgment, may also arise in the course of the proceedings.

Pursuant to Article 64(1)(a) of Law No 218 of 1995 – for the applicability of which, pursuant to Article 72(1) thereof, reference must be made to the rules in force not at the time when the proceedings were instituted in the State of origin but, rather, at the time when the corresponding recognition proceedings were commenced in the requested State – the aforementioned German judgment, issued following an action brought by the son, a German national residing in Germany, against the father, an Italian national residing in Italy, may be recognised in Italy according to a criterion of jurisdiction similar to that provided at Article 37 of Law No 218 of 1995 (which establishes, in matters of filiation, the jurisdiction of the Italian court when one of the parents or the child is an Italian national or resides in Italy).

52. *Corte di Cassazione, 24 April 2023 No 10897* 1002

Pursuant to Article 2(d) of the Protocol to the Italo-Croatian Agreement done at Zagreb on 5 November 1996 on the promotion and protection of investments, Article 2 of that Agreement and Article 31 of the Vienna Convention of 23 May 1969 on the law of treaties, each Contracting Party is under an obligation to "ensure effective means for making claims and asserting rights in respect of investments, related authorisations and investment agreements" only with respect to the foreign investor making investments of national interest in its territory and not with respect to its own investors abroad, this obligation having to be interpreted in the 'context'and in the light of the 'purpose' and 'object'of the treaty in question, which is aimed at 'encouraging' investors of the other Contracting Party to make investments in that territory.

53. *Corte di Cassazione (plenary session), order of 2 May 2023 No 11346* 450

In an action brought by a company established in Italy against a company established in France for non-payment of the price of goods sold by the former to the latter, Italian courts have jurisdiction pursuant to the first indent of Article 7(1)(b) of Regulation (EU) No 1215/2012 of 12 December 2012, if it is established that the goods were or should have been delivered in Italy under the contract. In interpreting the contract for this purpose, the court of the merits shall verify, in particular, whether or not the contract comprises the Incoterm 'EXW' ('ex works'). If so, the place of delivery of the goods must be identified on the basis of that clause. As indicated by the Court of Justice of

the European Union in the *Electrosteel* judgment, the Incoterm 'EXW', once included in the contract, does not merely allocate the costs and risks of the transaction between the parties but also identifies the place of delivery of the goods, unless the contract itself shows different and additional elements that lead to the conclusion that the parties have agreed to locate the delivery in a place other than that indicated in the Incoterm. In the instant case, the circumstance that the clause 'ex works Italy' appears both in the invoices issued by the seller and in the orders from the buyer leads to the conclusion that the parties actually intended to transpose the Incoterm 'EXW' into the contract to regulate their relations with binding effect, and therefore located the place of delivery of the goods in Italy, according to the contract, also for the purposes of jurisdiction.

*EU CASE LAW**

Access to justice: 13.
Contracts: 2, 20, 25, 33, 39.
EC Regulation No 1346/2000: 7.
EC Regulation No 44/2001: 36.
EC Regulation No 1206/2001: 44.
EC Regulation No 2201/2003: 41, 42, 48, 51.
EC Regulation No 1896/2006: 45.
EC Regulation No 1393/2007: 30, 35, 38.
EC Regulation No 864/2007: 22.
EC Regulation No 4/2009: 42.
EU Regulation No 650/2012: 27, 34.
EU Regulation No 1215/2012: 17, 22, 26, 37, 40, 43, 50.
EU Regulation No 2015/848: 24.
European Union citizenship: 15, 29.
European Union law: 3, 4, 5, 9, 10, 12, 13, 14, 16, 19, 21, 23.
External relations: 8.
Freedom of movement of persons: 46.
Freedom to provide services: 18.
Intellectual property rights: 28, 47.
Maintenance obligations: 31.
Preliminary ruling: 1, 6, 9, 32.
Right of residence and establishment: 7.
Treaties and general international rules: 25, 31, 39, 49.

1. *Court of Justice, 2 September 2021 case C-66/20, criminal proceedings against XK, Finanzamt für Steuerstrafsachen und Steuerfahndung Münster intervening* ... 195

Although Article 267 TFEU does not make the reference to the Court subject to there having been an *inter partes* hearing in the proceedings in the course of which the national court refers the questions for a preliminary ruling, a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to

* The paragraphs indicated in parenthesis refer to the Court's reasoning in those parts recognized as relevant for private international law aspects.

lead to a decision of a judicial nature. However, when the office of an Italian public prosecutor, such as the Public Prosecutor's Office, Trento, acts as an authority for the execution of an EIO within the meaning of Article 2(d) of Directive No 2014/41, it is not called upon to rule on a dispute and cannot, therefore, be regarded as exercising a judicial function. Article 1(1) of that Directive defines an EIO as a judicial decision which has been issued or validated by a judicial authority of a Member State in order to have one or several specific investigative measures carried out in another Member State to obtain evidence in accordance with that Directive, including evidence that is already in the possession of the competent authorities of that Member State. As is apparent from recital 34 of that Directive, the investigative measures provided for by an EIO are provisional in nature. The sole purpose of their execution is to obtain evidence and, if the necessary conditions are met, to transmit it to the issuing authority, referred to in Article 2(c) of that Directive. In those circumstances, the executing authority, within the meaning of Article 2(d) of that Directive, which recognises and executes an EIO, cannot be regarded as being entrusted to 'give judgment'within the meaning of Article 267 TFEU. In that regard, it is exclusively for the competent judicial authorities of the issuing Member State to reach a final decision on that evidence in the context of the criminal proceedings opened there. Therefore, when the office of an Italian public prosecutor, such as the Public Prosecutor's Office, Trento, acts as an authority for the execution of an EIO within the meaning of Article 2(d) of Directive No 2014/41, it does not act in proceedings which are intended to result in a judicial decision.

2. *Court of Justice, 2 September 2021 case C-337/20, DM and others v. Caisse régionale de Crédit agricole mutuel (CRCAM) – Alpes-Provence* 196

Article 58 and Article 60(1) of Directive No 2007/64/EC on payment services in the internal market, amending Directives No 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive No 97/5/EC must be interpreted as precluding a payment service user from being able to trigger the liability of the provider of those services on the basis of a liability regime other than that provided for by those provisions, in the case where that user has failed to fulfil his or her obligation to notify laid down in that Article 58.

Article 58 and Article 60(1) of Directive No 2007/64 must be interpreted as not precluding the guarantor of a payment service user from relying, by reason of a failure on the part of the payment service provider to fulfil its obligations relating to an unauthorised transaction, on the civil liability of such a provider, which is entitled to the guarantee, in order to challenge the amount of the guaranteed debt, in accordance with a contractual liability regime under the general law *(see also paras. 34-36, 41-42, 45-46, 50-51, 58-60, 63-64, 66-68).*

3. *Court of Justice, 9 September 2021 case C-107/19, XR v. Dopravní podnik hl. m. Prahy, akciová spolecnost* 193

The principle of primacy of EU law must be interpreted as precluding a national court, ruling following the setting aside of its judgment by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those assessments are not compatible with EU law.

4. *Court of Justice, 6 October 2021 case C-136/20, criminal proceedings against LU* 194

Article 5(1) of Council Framework Decision No 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision No 2009/299/JHA, must be interpreted as meaning that the authority of the executing State, apart from the grounds for refusal of recognition or execution expressly provided for by the Framework Decision, cannot, in principle, refuse to recognize and enforce a final decision imposing a financial penalty where the authority of the issuing State has classified the offense in question, in the certificate referred to in Article 4 of that Framework Decision, as falling within one of the categories of offenses for which Article 5(1) does not provide for verification of the double criminality of the act *(see also paras. 37-40).*

5. *Court of Justice, 6 October 2021 case C-338/20, criminal proceedings against D.P., Prokuratura Rejonowa Lódz Baluty intervening* 195

Article 20(3) of Council Framework Decision No 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision No 2009/299/JHA, must be interpreted as allowing the authority of the executing Member State to refuse to execute a decision, within the meaning of Article 1(a) of the Framework Decision, imposing a financial penalty for a road traffic offence, where that decision has been notified to the addressee thereof without a translation, into a language which he or she understands, of the elements of the decision which are essential in order to enable him or her to understand the charge against him or her and to fully exercise his or her rights of defence, and without that addressee being afforded the opportunity to obtain such a translation upon request.

6. *Court of Justice, 6 October 2021 case C-561/19, Consorzio Italian Management et al. v. Rete Ferroviaria Italiana s.p.a.* 690

Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law must comply with its obligation to bring before the Court of Justice a question concerning the interpretation of EU law that has been raised before it, unless it finds that that question is irrelevant or that the provision of EU law in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt.

The existence of such a possibility must be assessed in the light of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union.

Such a court or tribunal cannot be relieved of that obligation merely because it has already made a reference to the Court for a preliminary ruling in the same national proceedings. However, it may refrain from referring to the Court a question for a preliminary ruling on grounds of inadmissibility specific to the procedure before that court or tribunal, subject to compliance with the principles of equivalence and effectiveness.

7. *Court of Justice, 11 November 2021 case C-168/20, BJ, trustee in bankruptcy of Mr M. et al. v. Mrs M et al.* 180

Article 49 TFEU must be interpreted as precluding a provision of the law of a Member State which makes, in principle, the full and automatic exclusion from the bankruptcy estate of pension rights accrued under a pension scheme dependent on the requirement that, at the time of the bankruptcy, the pension scheme concerned be tax approved in that Member State, where that requirement is imposed in a situation where an EU citizen who had, prior to becoming bankrupt, exercised his right of free movement by moving permanently to that Member State for the purposes of pursuing a self-employed economic activity there, has pension rights accrued under a pension scheme established and tax approved in his home Member State unless the restriction on freedom of establishment constituted by that national provision is justified in so far as it furthers an overriding reason relating to the public interest, is appropriate to ensure that the objective it pursues is achieved and does not go beyond what is necessary to achieve that objective *(see also paras. 75-76, 93)*

8. *Court of Justice, 16 November 2021 case C-479/21 PPU, criminal proceedings against SN et al., Governor of Cloverhill Prison et al. intervening* 687

Article 50 TEU, Article 217 TFEU and Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and the TFEU, must be interpreted as meaning that Article 62(1)(b) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, read in conjunction with the fourth paragraph of Article 185 thereof, and Article 632 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, are binding on Ireland *(see also paras. 49-51, 54-58, 60-63, 67-69).*

9. *Court of Justice, 23 November 2021 case C-564/19, criminal proceedings against IS* 472

Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted to the Court under Article 267 TFEU by a lower court is unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings, without, however, altering the legal effects of the decision containing that request. The principle of the primacy of EU law requires that lower court to disregard such a decision of the national supreme court.

Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice under that provision.

10. *Court of Justice, 25 November 2021 case C-372/20, QY v. Finanzamt Österreich* 473

Article 11(3)(a) of Regulation (EC) No 883/2004 on the coordination of social security systems is to be interpreted as meaning that an employed person who is a national of a Member State in which she and her children reside, who is hired under a contract of employment as a development aid worker by an employer established in another Member State, who is covered, pursuant to the legislation of that other Member State, by the compulsory social security scheme of the other Member State, who is posted to a third country not immediately after being employed but after completing a training course in the other Member State and who subsequently returns there for a reintegration period is to be regarded as pursuing an activity as an employed person in that Member State, within the meaning of that provision.

Article 288(2) TFEU is to be interpreted as not precluding the adoption, by a Member State, of national legislation the scope *ratione personae* of which is broader than that of Regulation No 883/2004, in that that legislation provides that nationals of the Contracting Parties to the Agreement on the European Economic Area of 2 May 1992 are to be treated in the same way as its own nationals, provided that the legislation is interpreted in accordance with that Regulation and that the primacy of the Regulation is not called into question.

13. *Court of Justice, 21 December 2021 joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, criminal proceedings against PM et al., KI et al., FQ et al. and NC, with Ministerul Public, Parchetul de pe lânga Înalta Curte de Casatie si Justitie, Directia Nationala Anticoruptie et al. intervening, and case CY et al. v. Inspectia Judiciara et al.* 473

Commission Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption is, as long as it has not been repealed, binding in its entirety on Romania. The benchmarks in the annex to that Decision are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on it, to the effect that Romania is required to take the appropriate measures to meet those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that Decision, and in particular the recommendations made in those reports.

Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928 are to be interpreted as not precluding national rules or a national practice under which the decisions of the national constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive, as required by those provisions. However, those provisions of the EU Treaty and that Decision are to be interpreted as precluding national rules under which any failure to comply with the decisions of the national constitutional court by national judges of the ordinary courts can trigger their disciplinary liability.

The principle of primacy of EU law is to be interpreted as precluding national rules or a national practice under which national ordinary courts are bound by

decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgment of the Court of Justice, that that case-law is contrary to the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU or Decision 2006/928.

12. *Court of Justice, 21 December 2021 case C-124/20, Bank Melli Iran v. Telekom Deutschland GmbH* 193

Article 5(1) of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, as amended by Regulation (EU) No 37/2014, and by Commission Delegated Regulation (EU) 2018/1100, which amended the Annex to Regulation No 2271/96, must be interpreted as prohibiting persons referred to in Article 11 of Regulation No 2271/96, as amended, from complying with the requirements or prohibitions laid down in the laws specified in the annex to that Regulation, even in the absence of an order directing compliance issued by the administrative or judicial authorities of the third countries which adopted those laws.

Article 5(1) of Regulation No 2271/96, as amended by Regulation No 37/2014 and Delegated Regulation 2018/1100, must be interpreted as not precluding a person referred to in Article 11 of that Regulation, as amended, who does not have an authorisation within the meaning of Article 5(2) of that Regulation, as amended, from terminating contracts concluded with a person on the Specially Designated Nationals and Blocked Persons List, without providing reasons for that termination. Nevertheless, Article 5(1) of the same Regulation, as amended, requires that, in civil proceedings relating to the alleged infringement of the prohibition laid down in that provision, where all the evidence available to the national court suggests *prima facie* that a person referred to in Article 11 of Regulation No 2271/96, as amended, complied with the laws specified in the annex to that Regulation, as amended, without having an authorisation in that respect, it is for that same person to establish to the requisite legal standard that his or her conduct was not intended to comply with those laws.

Regulation No 2271/96, as amended by Regulation No 37/2014 and Delegated Regulation 2018/1100, in particular Articles 5 and 9 thereof, read in the light of Article 16 and Article 52(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the annulment of the termination of contracts effected by a person referred to in Article 11 of that Regulation, as amended, in order to comply with the requirements or prohibitions based on the laws specified in the annex to that Regulation, as amended, even though that person does not have an authorisation, within the meaning of Article 5(2) of the same Regulation, as amended, provided that that annulment does not entail disproportionate effects for that person having regard to the objectives of Regulation No 2271/96, as amended, consisting in the protection of the established legal order and the interests of the European Union in general. In that assessment of proportionality, it is necessary to weigh in the balance the pursuit of those objectives served by the annulment of the termination of a contract effected in breach of the prohibition laid down in Article 5(1) of that Regulation, as amended, and the probability that the

person concerned may be exposed to economic loss, as well as the extent of that loss, if that person cannot terminate his or her commercial relationship with a person included in the list of persons covered by the secondary sanctions at issue resulting from the laws specified in the annex to that Regulation, as amended.

13. *Court of Justice, 21 December 2021 case C-497/20, Randstad Italia s.p.a. v. Umana s.p.a. et al.* 478

Article 4(3) and Article 19(1) TEU, and Article 1(1) and (3) of Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23/EU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a provision of a Member State's domestic law which, according to national case-law, has the effect that individual parties, such as tenderers who participated in a procedure for the award of a public contract, cannot challenge the conformity with EU law of a judgment of the highest court in the administrative order of that Member State by means of an appeal before the highest court in that Member State's judicial order *(see also paras. 52-54, 62-65, 75, 77-81).*

14. *Court of Justice, 13 January 2022 case C-724/20, Paget Approbois SAS v. Depeyre entreprises SARL et al.* 474

Article 292 of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) must be interpreted as meaning that the concept of a 'pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested', referred to in that Article, includes a pending lawsuit concerning a claim for insurance compensation made by a policyholder, in respect of damage sustained in one Member State, from an insurance undertaking subject to winding-up proceedings in another Member State.

Article 292 of Directive 2009/138/EC must be interpreted as meaning that the law of the Member State within the territory of which the lawsuit is pending, within the meaning of that Article, is intended to govern all the effects of the winding-up proceedings on that lawsuit. In particular, the provisions of the law of that Member State should be applied which, first, provide that the opening of such liquidation proceedings results in the suspension of the pending lawsuit, secondly, make the resumption of the proceedings subject to the claim for insurance compensation being lodged against the estate of the insurance undertaking by the creditor and to the bodies responsible for the winding-up proceedings being summoned and, thirdly, preclude an order to pay the insurance compensation, since such an order can no longer be the subject of a judgment except relating to the determination and fixing the amount of the compensation, since, in principle, those provisions do not encroach on the power reserved to the law of the home Member State, in accordance with Article 274(2) of that Directive *(see also paras. 35-55, 59-67).*

15. *Court of Justice, 18 January 2022 case C-118/20, JY v. Wiener Landesregierung* 472

The situation of a person who, having the nationality of one Member State

only, renounces that nationality and loses, as a result, his or her status of citizen of the Union, with a view to obtaining the nationality of another Member State, following the assurance given by the authorities of the latter Member State that he or she will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where that assurance is revoked with the effect of preventing that person from recovering the status of citizen of the Union.

Article 20 TFEU must be interpreted as meaning that the competent national authorities and, as the case may be, the national courts of the host Member State are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality of that Member State, which makes the loss of the status of citizen of the Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

16. *Court of Justice, 25 January 2022 case C-638/19 P, European Food SA et al. v. European Commission, Federal Republic of Germany et al. intervening* 686

In *Achmea*, the Court of Justice held that Articles 267 and 344 TFEU must be interpreted as precluding a provision contained in an international agreement concluded between two Member States under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept. By concluding such an agreement, the Member States which are parties to it agree to remove from the jurisdiction of their own courts and, therefore, from the system of judicial remedies which the second subparagraph of Article 19(1) TEU requires them to establish in the fields covered by EU law disputes which may concern the application or interpretation of EU law. Such an agreement is, therefore, capable of preventing those disputes from being resolved in a manner that guarantees the full effectiveness of that law. Commission Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption is, as long as it has not been repealed, binding in its entirety on Romania. The benchmarks in the annex to that Decision are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on it, to the effect that Romania is required to take the appropriate measures to meet those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that Decision, and in particular the recommendations made in those reports.

With effect from the date of Romania's accession to the European Union, EU law, including Articles 107 and 108 TFEU, was applicable to that Member State. As the compensation sought by the arbitration applicants in the case in question did not relate exclusively to the damage allegedly suffered before that date of accession, the dispute brought before the arbitral tribunal cannot be regarded as being confined in all respects to a period during which Romania,

which had not yet acceded to the European Union, was not yet bound by the rules and principles of EU law. The arbitral tribunal before which that dispute was brought does not form part of the EU judicial system which the second subparagraph of Article 19(1) TEU requires the Member States to establish in fields covered by EU law, which, with effect from Romania's accession to the European Union, replaced the mechanism for resolving disputes that might concern the interpretation or application of EU law. First, that arbitral tribunal is not a 'court or tribunal of a Member State' within the meaning of Article 267 TFEU and, second, the arbitral award delivered by that court is not subject, in accordance with Articles 53 and 54 of the ICSID Convention, to any review by a court of a Member State as to its compliance with EU law. This assessment cannot be called into question by the fact that Romania had consented to the possibility of litigation being brought against it in the context of the arbitration procedure provided for by the BIT. Such consent, unlike that which would have been given in commercial arbitration proceedings, does not originate in a specific agreement reflecting the freely expressed wishes of the parties concerned, but derives from a treaty concluded between two States in the context of which they have, generally and in advance, agreed to exclude from the jurisdiction of their own courts disputes which may concern the interpretation or application of EU law in favour of arbitration proceedings. In those circumstances, since, with effect from Romania's accession to the European Union, the system of judicial remedies provided for by the TEU and TFEU replaced that arbitration procedure, the consent given to that effect by Romania, from that time onwards, lacked any force.

17. *Court of Justice, 3 February 2022 case C-20/21, J.W. et al. v. LOT Polish Airlines* 188

The second indent of Article 7(1)(b) 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, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs on which transport is performed by separate air carriers, where a claim for compensation, brought on the basis 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, and repealing Regulation (EEC) No 295/91, arises exclusively from a delay of the first leg of the journey caused by a late departure and is brought against the air carrier operating that first leg, the place of arrival for that first leg may not be classified as a 'place of performance' within the meaning of that provision *(see also paras. 17-19, 23-27).*

18. *Court of Justice, 10 February 2022 case C-219/20, LM v. Bezirkshauptmannschaft Hartberg-Fürstenfeld, Österreichische Gesundheitskasse intervening* 685

Article 5 of Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and in the light of the general principle of EU law relating to the right to good administration, must be interpreted as not precluding national legislation providing for a five-year limitation period for failure to comply with obligations relating to the remuneration of posted workers *(see also paras. 46-52).*

19. *Court of Justice, 22 February 2022 case C-430/21, in the proceedings brought by RS* 1047

The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.

The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.

20. *Court of Justice, 24 February 2022 case C-451/20, Airhelp Ltd v. Austrian Airlines AG.* 691

Article 3(1) of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as meaning that that Regulation is not applicable to a flight with a connecting flight, booked under a single booking but consisting of two flights, both of which are operated by a Community air carrier, if both the departure airport of the first flight and the arrival airport of the second flight are in the territory of a third country and only the airport where the stopover takes place is in the territory of a Member State.

21. *Court of Justice, 10 March 2022 case C-177/20, 'Grossmania' Mezogazdasági Termelo és Szolgáltató Kft. v. Vas Megyei Kormányhivatal* 1048

EU law, in particular Article 4(3) TEU and Article 267 TFEU, must be interpreted as meaning that a national court hearing an action against a decision rejecting a request for reinstatement of rights of usufruct which have been extinguished by operation of law and deleted from the land register pursuant to national legislation which is incompatible with Article 63 TFEU, as interpreted by the Court in a preliminary ruling, is required: to disapply that legislation; and in the absence of objective and legitimate obstacles, in particular those of a legal nature, to order the competent administrative authority to reinstate the rights of usufruct, even though the deletion of those rights has not been contested before the courts within the legal time limits and has consequently become final in accordance with national law.

22. *Court of Justice, 10 March 2022 case C-498/20, ZK, in his capacity as successor to JM, liquidator in the bankruptcy of BMA Nederland BV, v. BMA Braunschweigische Maschinenbauanstalt AG, Stichting Belangbehartiging Crediteuren BMA Nederland intervening* 189

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 the court for the place of establishment of a company whose debts have become irrecoverable, because the grandparent company of that company breached its duty of care towards that company's creditors, has jurisdiction to hear a collective action for damages in matters relating to tort, delict or quasi-delict which the liquidator in the bankruptcy of that company has brought, by virtue of his statutory duty to wind up the estate, for the benefit of, but not on behalf of, the general body of creditors.

Article 8(2) of Regulation No 1215/2012 must be interpreted as meaning that if the court seised of the original proceedings reverses its decision that it has jurisdiction in respect of those proceedings, such a reversal also automatically excludes its jurisdiction in respect of the claims made by the intervening third party.

Article 4 of Regulation (EC) No 864/2007 on the law applicable to noncontractual obligations must be interpreted as meaning that the law applicable to an obligation to pay compensation by virtue of the duty of care of the grandparent company of a company declared bankrupt is, in principle, that of the country in which the latter is established, although the pre-existence of a financing agreement between those two companies, which includes a choice of court, is a circumstance capable of establishing manifestly closer connections with another country, for the purposes of Article 4(3) *(see also paras. 31-40, 48, 51-66).*

23. *Court of Justice, 17 March 2022 case C-232/20, NP v. Daimler AG, Mercedes-Benz Werk Berlin* 1048

Article 10(1) of Directive 2008/104/EC of 19 November 2008 on temporary agency work is to be interpreted as meaning that in the absence of a provision of national law intended to impose penalties for non-compliance with that Directive by temporary work agencies or by user undertakings, the temporary agency worker cannot derive an individual right from EU law at the establishment of an employment relationship with a user undertaking.

Directive 2008/104 is to be interpreted as not precluding a national law which empowers the social partners to derogate, at the level of the branch of user undertakings, from the maximum assignment period of a temporary agency worker prescribed by such a provision *(see also paras. 95-100).*

24. *Court of Justice, 24 March 2022 case C-723/20, Galapagos BidCo. Sàrl v. DE, in its capacity as liquidator of Galapagos SA, et al.* 470

Article 3(1) of Regulation (EU) 2015/848 on insolvency proceedings must be interpreted as meaning that the court of a Member State with which a request to open main insolvency proceedings has been lodged retains exclusive jurisdiction to open such proceedings where the centre of the debtor's main interests is moved to another Member State after that request has been lodged, but before that court has delivered a decision on it. Consequently, in so far as that Regulation is still applicable to that request, the court of another Member State with which another request is lodged subsequently for the same purpose cannot, in principle, declare that it has jurisdiction to open main

insolvency proceedings until the first court has delivered its decision and declined jurisdiction *(see also paras. 26-36, 38-41)*.

25. *Court of Justice, 7 April 2022 case C-561/20, Q et al. v. United Airlines Inc.* 691

Article 3(1)(a), read in conjunction with Articles 6 and 7 of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a passenger on a connecting flight, comprising two legs and subject to a single booking with a Community carrier, departing from an airport located in the territory of a Member State and arriving at an airport located in a third country via another airport in that third country, is entitled to compensation from the third-country air carrier which operated the entirety of that flight acting on behalf of that Community carrier, where that passenger has reached his or her final destination with a delay of more than three hours caused in the second leg of the said flight.

There is no factor such as to affect the validity of Regulation No 261/2004 in the light of the principle of customary international law according to which each State has complete and exclusive sovereignty over its airspace *(see also paras. 52-58, 61)*.

26. *Court of Justice, 7 April 2022 case C-568/20, J v. H Limited* 467

Article 2(a) and Article 39 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 order for payment made by a court of a Member State on the basis of final judgments delivered in a third State constitutes a judgment and is enforceable in the other Member States if it was made at the end of adversarial proceedings in the Member State of origin and was declared to be enforceable in that Member State. The fact that it is recognised as a judgment does not, however, deprive the party against whom enforcement is sought of the right to apply, pursuant to Article 46 of that Regulation, for a refusal of enforcement on one of the grounds referred to in Article 45 *(see also paras. 27-47)*.

27. *Court of Justice, 7 April 2022 case C-645/20, V.A. et al. v. T.P.* 185

Article 10(1)(a) of 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 court of a Member State must raise of its own motion its jurisdiction under the rule of subsidiary jurisdiction referred to in that provision where, having been seised on the basis of the rule of general jurisdiction established in Article 4 of that Regulation, it finds that it has no jurisdiction under that latter provision *(see also paras. 27-46)*.

28. *Court of Justice, 28 April 2022 case C-44/21, Phoenix Contact GmbH & Co. KG v. HARTING Deutschland GmbH & Co. KG et al.* 686

Article 9(1) of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as precluding national case-law

under which applications for *interim* relief for patent infringement must, in principle, be dismissed where the validity of the patent in question has not been confirmed, at the very least, by a decision given at first instance in opposition or invalidity proceedings.

29. *Court of Justice, 5 May 2022 joined cases C-451/19 and C-532/19, Subdelegación del Gobierno en Toledo v. XU and QP* 1041

Article 20 TFEU must be interpreted as precluding a Member State from refusing an application for family reunification made for the benefit of a third-country national who is family member of a Union citizen, the latter being a national of that Member State and who has never exercised his or her right of freedom of movement, on the sole ground that that Union citizen does not have, for himself or herself and for that family member, sufficient resources so as not to become a burden on the national social assistance system, without there having been an examination of whether there exists, between that Union citizen and that member of his or her family, a relationship of dependency of such a nature that, in the event of a refusal to grant a derived right of residence to that family member, that Union citizen would be forced to leave the territory of the European Union as a whole and would thereby be deprived of the genuine enjoyment of the substance of the rights conferred by his or her status as a Union citizen.

Article 20 TFEU must be interpreted as meaning, first, that a relationship of dependency capable of justifying the grant of a derived right of residence under that Article does not exist on the sole ground that a national of a Member State who is an adult and has never exercised his or her right of freedom of movement, and his or her spouse, who is an adult and a third-country national, are required to live together under the obligations arising from marriage according to the law of the Member State of which the Union citizen is a national and in which the marriage was entered into and, second, that, where the Union citizen is a minor, the assessment of the existence of a relationship of dependency capable of justifying the grant of a derived right of residence under that article to that child's parent, who is a third-country national, must be based on the taking into account, in the child's best interests, of all of the circumstances of the case. Where that parent lives on a stable basis with the other parent, who is a Union citizen, of that minor, there is a rebuttable presumption of such a relationship of dependency.

Article 20 TFEU must be interpreted as meaning that a relationship of dependency capable of justifying the grant of a derived right of residence under that Article to a minor child, who is a third-country national, of the spouse, who himself or herself is a third-country national, of a Union citizen who has never exercised his or her right of freedom of movement exists where the marriage between that Union citizen and his or her spouse generates a child who is a Union citizen and who has never exercised his or her right of freedom of movement, and where that child would be forced to leave the territory of the European Union as a whole if the minor child who is a third-country national were forced to leave the territory of the Member State concerned *(see also paras. 49, 54, 56-58, 66-70, 86).*

30. *Court of Justice, 5 May 2022 case C-346/21, ING Luxembourg SA v. VX* 181

Article 8(1) of Regulation (EC) No 1393/2007 on the service in the Member

States of judicial and extrajudicial documents in civil matters, and repealing Regulation (EC) No 1348/2000, is to be interpreted as requiring the addressee of a judicial document to be served in another Member State is informed, in all circumstances, using the standard form set out in Annex II to that Regulation, of his or her right to refuse receipt of this document, including when it is drawn up or accompanied by a translation in a language understood by that addressee or in the official language or one of the official languages of the place where service is to be effected.

Regulation No 1393/2007 must be interpreted as precluding national legislation which provides for the nullity of the service of a judicial document in another Member State where it has been carried out without the addressee of this document having been informed, using the standard form in Annex II to that Regulation, of his or her right to refuse receipt of the said document when it is not drawn up or accompanied by a translation into one of the languages indicated in Article 8(1) of that Regulation, regardless of whether or not national law sets a specific time limit for the addressee to invoke invalidity *(see also paras. 24-40, 42-46, 48).*

31. *Court of Justice, 12 May 2022 case C-644/20, W.J. v. L.J. and J.J., legally represented by A.P.* 183

Article 3 of The Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, approved, on behalf of the European Community, by Council Decision 2009/941/EC, must be interpreted as meaning that, for the purpose of determining the law applicable to the maintenance claim of a minor child who was removed by one of his or her parents to the territory of a Member State, the circumstance that a court of that Member State ordered, in the context of separate proceedings, the return of that minor to the State where he or she habitually resided with his or her parents immediately before his or her removal, is not sufficient to prevent the minor from acquiring habitual residence in the territory of that Member State *(see also paras. 62-74, 78).*

32. *Court of Justice, order of 19 May 2022 case C-722/21, in the proceedings brought by Frontera Capital Sàrl* 690

In order to be entitled to refer to the Court of Justice a request for preliminary ruling, the referring body must be able to be qualified as a 'court', within the meaning of Article 267 TFEU, which it is for the Court to verify on the basis of the same request. In order to assess whether a referring body can be qualified as a 'court', within the meaning of Article 267 TFEU, a question which falls solely under Union law, the Court takes into account a set of elements, such as the legal origin of this body, its permanence, the obligatory nature of its jurisdiction, the contradictory nature of its procedure, the application, by said body, of legal norms as well as its independence. Furthermore, it is necessary to examine the specific nature of the functions, jurisdictional or administrative, which it exercises in the particular normative context in which it referred the matter to the Court, with a view to verifying whether a dispute is pending before such a body and if the latter is called upon to rule in the context of a procedure intended to result in a decision of a judicial nature. In this case, it should be noted that the factual and regulatory context of the main case, as set out in the request for a preliminary ruling, does not make it

possible to identify the existence of a dispute pending before the notary concerned, within the framework of which the latter would be called upon to render a decision of a jurisdictional nature.

In the present case, it is apparent from the request for a preliminary ruling that, following a request made by a company governed by Luxembourg law, the notary concerned was sanctioned by the general directorate of registers and notaries for having, in violation of the applicable national regulations, issued European orders for payment against several debtors having their habitual residence in Spanish territory and that, considering itself directly empowered by Regulation (EC) No 1896/2006 to issue European orders for payment in cross-border cases, the notary concerned decided to refer the Court for a preliminary ruling regarding the direct effect of this Regulation as well as the primacy of Union law. In those circumstances, it must be considered that, in the absence of elements to establish that, in the particular context in which she brought the matter before the Court, the notary concerned can be considered as exercising a judicial function and thus be empowered to address, under Article 267 TFEU, preliminary questions to the Court concerning the interpretation of Union law, this notary cannot be described as a 'court'within the meaning of Article 267 TFEU, with no need to examine whether said notary meets the other criteria. Having regard to the foregoing considerations, the request for a preliminary ruling made by the notary concerned is manifestly inadmissible, pursuant to Article 53(2) of the Rules of Procedure.

33. *Court of Justice, 2 June 2022 case C-589/20, JR v. Austrian Airlines AG* 1049

Article 17(1) of the Convention for the unification of certain rules for international carriage by air concluded on 28 May 1999 in Montreal, signed on 9 December 1999 by the European Community and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that a situation in which, for no ascertainable reason, a passenger falls on a mobile stairway set up for the disembarkation of passengers of an aircraft and injures himself or herself constitutes an 'accident', within the meaning of that provision, including where the air carrier concerned has not failed to fulfil its diligence and safety obligations in that regard.

The first sentence of Article 20 of the Convention for the unification of certain rules for international carriage by air must be interpreted as meaning that, where an accident which caused damage to a passenger consists of a fall of that passenger, for no ascertainable reason, on a mobile stairway set up for the disembarkation of the passengers of an aircraft, the air carrier concerned may be exonerated from its liability towards that passenger only to the extent that, taking account of all the circumstances in which that damage occurred, that carrier proves, in accordance with the applicable national rules and subject to the observance of the principles of equivalence and effectiveness, that the damage suffered by that passenger was caused or contributed to by the negligence or other wrongful act or omission of that passenger, within the meaning of that provision *(see also paras. 22-24, 34).*

34. *Court of Justice, 2 June 2022 case C-617/20, T.N. et al. v. E.G.* 465

Articles 13 and 28 of Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforce-

ment of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that a declaration concerning the waiver of succession made by an heir before a court of the Member State of his or her habitual residence is regarded as valid as to form in the case where the formal requirements applicable before that court have been complied with, without it being necessary, for the purposes of that validity, for that declaration to meet the formal requirements of the law applicable to the succession *(see also paras. 35-48, 51).*

35. *Court of Justice, 2 June 2022 case C-196/21, SR v. EW, FB et al. intervening* 463

Article 5(2) 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 Council Regulation (EC) No 1348/2000, must be interpreted as meaning that, where a court orders the transmission of judicial documents to third parties that apply for leave to intervene in the proceedings, that court cannot be regarded as being the 'applicant'within the meaning of that provision *(see also paras. 31-37, 39-44, 46-47).*

36. *Court of Justice, 20 June 2022 case C-700/20, London Steam Ship Owners'Mutual Insurance Association Limited v. Kingdom of Spain* 460

Article 34(3) of Council 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 judgment entered by a court of a Member State in the terms of an arbitral award does not constitute a 'judgment', within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that Regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on *lis pendens* contained in Article 27 of that Regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State.

Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that, in the event that Article 34(3) of that Regulation does not apply to a judgment entered in the terms of an arbitral award, the recognition or enforcement of a judgment from another Member State cannot be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award *(see also paras. 42-64, 67-72, 77-79, 80).*

37. *Court of Justice, 30 June 2022 case C-652/20, HW et al. v. Allianz Elementar Versicherungs AG* 681

Article 11(1)(b) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where that provision is applicable, it determines both the international jurisdiction and the local jurisdiction of the court of a Member State within whose jurisdiction the claimant is domiciled *(see also paras. 22-24, 34-42, 46-57).*

38. *Court of Justice, 7 July 2022 case C-7/21, LKW WALTER Internationale Transportorganisation AG v. CB et al.* 678

Article 8(1) of Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of the Member State of the authority which issued a document to be served, pursuant to which the starting point of the one-week period referred to in Article 8(1) of that Regulation, within which the addressee of such a document may refuse to accept it on one of the grounds set out in that provision, is the same as the starting point for the period within which a remedy is to be sought against that document in that Member State. Articles 13 and 28 of 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 declaration concerning the waiver of succession made by an heir before a court of the Member State of his or her habitual residence is regarded as valid as to form in the case where the formal requirements applicable before that court have been complied with, without it being necessary, for the purposes of that validity, for that declaration to meet the formal requirements of the law applicable to the succession *(see also paras. 34-49).*

39. *Court of Justice, 14 July 2022 case C-500/20, ÖBB-Infrastruktur Aktiengesellschaft v. Lokomotion Gesellschaft für Schienentraktion mbH* 693

Where a case is brought before it in accordance with Article 267 TFEU, the Court of Justice of the European Union has jurisdiction to interpret Article 4, Article 8(1)(b) and Article 19(1) of Appendix E to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, entitled 'Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI)'.

Article 8(1)(b) of Appendix E to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, must be interpreted as meaning that the liability of the infrastructure manager for loss of or damage to property does not cover the costs incurred by the railway undertaking in order to lease replacement locomotives while the damaged locomotives were being repaired.

Article 4 and Article 19(1) of Appendix E to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, must be interpreted as meaning that the parties to the contract may extend their liability by a blanket reference to national law, under which the scope of the infrastructure manager's liability is broader and that liability is dependent on the existence of fault *(see also paras. 42, 51-52, 65-66, 68-77).*

40. *Court of Justice, 14 July 2022 joined cases C-274/21 and C-275/21, EPIC Financial Consulting Ges.m.b.H. v. Republic of Austria et al.* 684

Regulation (EU) No 1215/2012 is applicable only where a dispute concerns

several Member States or a single Member State provided, in the latter case, that there is an international element because of the involvement of a third State. That situation is such as to raise questions relating to the determination of international jurisdiction. When the international element is lacking, as in the present proceedings, that Regulation does not apply.

41. *Court of Justice, 14 July 2022 case C-572/21, CC v. VO* 667

Article 8(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, read in conjunction with Article 61(a) of that Regulation, must be interpreted as meaning that a court of a Member State that is hearing a dispute relating to parental responsibility does not retain jurisdiction to rule on that dispute under Article 8(1) of that Regulation where the habitual residence of the child in question has been lawfully transferred, during the proceedings, to the territory of a third State that is a party to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children *(see also paras. 27-30, 32-44)*.

42. *Court of Justice, 1 August 2022 case C-501/20, MPA v. LCDNMT* 669

Article 3(1)(a) of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and Article 3(a) and (b) of Council 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 meaning that the status of the spouses concerned as members of the contract staff of the European Union, working in the latter's delegation to a third country and in respect of whom it is claimed that they enjoy diplomatic status in that third State, is not capable of constituting a decisive factor for the purposes of determining habitual residence, within the meaning of those provisions.

Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that, for the purposes of determining a child's habitual residence, the connecting factor of the mother's nationality and her residence, prior to the marriage, in the Member State of the court seised of an application relating to parental responsibility is irrelevant, whereas the fact that the minor children were born in that Member State and hold the nationality of that Member State is insufficient.

Where no court of a Member State has jurisdiction to rule on an application for the dissolution of matrimonial ties pursuant to Articles 3 to 5 of Regulation No 2201/2003, Article 7 of that Regulation, read in conjunction with Article 6 thereof, must be interpreted as meaning that the fact that the respondent in the main proceedings is a national of a Member State other than that of the court seised prevents the application of the clause relating to residual jurisdiction laid down in Article 7 to establish the jurisdiction of that court without, however, preventing the courts of the Member State of which the respondent is a national from having jurisdiction to hear such an application pursuant to the latter Member State's national rules on jurisdiction.

Where no court of a Member State has jurisdiction to rule on an application relating to parental responsibility pursuant to Articles 8 to 13 of Regulation No 2201/2003, Article 14 of that Regulation must be interpreted as meaning that the fact that the respondent in the main proceedings is a national of a Member State other than that of the court seised does not preclude the application of the clause relating to residual jurisdiction laid down in Article 14 of that Regulation.

Article 7 of Regulation No 4/2009 must be interpreted as meaning that: where the habitual residence of all the parties to the dispute in matters relating to maintenance obligations is not in a Member State, jurisdiction founded, on an exceptional basis, on the *forum necessitatis* referred to in Article 7 may be established if no court of a Member State has jurisdiction under Articles 3 to 6 of that Regulation, if the proceedings cannot reasonably be brought or conducted in the third State with which the dispute is closely connected, or proves to be impossible, and there is a sufficient connection between the dispute and the court seised; in order to find, on an exceptional basis, that proceedings cannot reasonably be brought or conducted in a third State, it is important that, following an analysis of the evidence put forward in each individual case, access to justice in that third State is, in law or in fact, hindered, in particular by the application of procedural conditions that are discriminatory or contrary to the fundamental guarantees of a fair trial, without there being any requirement that the party relying on Article 7 demonstrates that he or she has been unsuccessful in bringing or has attempted to bring the proceedings in question before the courts of the third State concerned; and in order to consider that a dispute must have a sufficient connection with the Member State of the court seised, it is possible to rely on the nationality of one of the parties *(see also paras. 41-42, 44-66, 70-78, 81-91, 93-96, 99, 101-113).*

43. *Court of Justice, 8 September 2022 case C-399/21, IRnova AB v. FLIR Systems AB* 1037

Article 24(4) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not applying to proceedings aimed at determining, in the context of an action based on alleged inventor or co-inventor status, whether a person is the proprietor of the right to inventions covered by patent applications deposited and by patents granted in third countries *(see also paras.26-28, 31, 34-36, 38-49).*

44. *Court of Justice, Order of 8 September 2022 case C-188/22, VP v. KS, legally represented by AS* 1027

Articles 1 and 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that a court of a Member State wishing to take evidence from a person residing in another Member State is not necessarily obliged, in order to carry out such an act of investigation, to use methods of taking evidence provided for by that Regulation, but may use the written statement of that person, in accordance with the law of the Member State to which that court belongs, and to do so without obtaining the authorisation of the central body or competent authority

of the requested Member State, within the meaning of Article 3 of that Regulation *(see also paras. 26-35).*

45. *Court of Justice, 15 September 2022 case C*-18/21*, Uniqa Versicherungen AG v. VU* 1036

Articles 16, 20 and 26 of Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure, as amended by Regulation (EU) 2015/2421 of 16 December 2015, must be interpreted as not precluding the application of national legislation, which was adopted when the COVID-19 pandemic arose and which interrupted the procedural periods in civil matters for approximately five weeks, to the 30-day time limit laid down by Article 16(2) of that Regulation for the defendant to lodge a statement of opposition to a European order for payment *(see also paras. 31-41).*

46. *Court of Justice, 15 September 2022 case C-22/21, SRS et al. v. Minister for Justice and Equality* 1044

Point (a) of the first subparagraph of Article 3(2) of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States must be interpreted as meaning that the concept of 'any other family members who are members of the household of the Union citizen having the primary right of residence', mentioned in that provision, refers to persons who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience.

47. *Court of Justice, 13 October 2022 case C-256/21, KP v TV and Gemeinde Bodman-Ludwigshafen* 1045

Articles 124(a) and (d) and 128 of Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trade mark must be interpreted as meaning that an EU trade mark court hearing an action for infringement based on an EU trade mark the validity of which is challenged by means of a counterclaim for a declaration of invalidity still has jurisdiction to rule on the validity of that mark, despite the withdrawal of the main action *(see also paras. 33, 37-48, 50-52, 54-58).*

48. *Court of Justice, 15 November 2022 case C-646/20, Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v. TB, Standesamt Mitte von Berlin et al. intervening* 1028

Article 2(4) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility must be interpreted, in particular for the purpose of the application of Article 21(1) of that Regulation, as meaning that a divorce decree drawn up by a civil registrar of the Member State of origin, containing a divorce agreement concluded by the spouses and confirmed by them before that registrar in accordance with the conditions laid down by the legislation of that Member State, constitutes a 'judgment'within the meaning of Article 2(4) *(see also paras. 40-51, 53-61, 63-67).*

49. *Court of Justice, 24 November 2022 case C-358/21, Tilman SA v. Unilever Supply Chain Company AG* 1024

Article 23(1) and (2) of the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that a jurisdiction clause is validly concluded where it is contained in the general terms and conditions to which the contract concluded in writing refers by the inclusion of a hypertext link to a website, access to which allows those general terms and conditions to be viewed, downloaded and printed prior to that contract being signed, without the party against whom that clause operates having been formally asked to accept those general terms and conditions by ticking a box on that website *(see also paras. 28-31, 33-34, 40-45, 47-57, 59).*

50. *Court of Justice, 22 December 2022 case C-98/22, Eurelec Trading SCRL et al. v. Ministre de l'Économie et des Finances, Groupement d'achat des centres Édouard Leclerc (GALEC) et al. intervening* 1040

Article 1(1) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the concept of 'civil and commercial matters', within the meaning of that provision, does not include an action of a public authority of a Member State against companies established in another Member State seeking a declaration of the existence of restrictive practices, an order penalising those practices and an order that they cease in relation to suppliers established in the first Member State, where that public authority exercises powers to bring proceedings or powers of investigation falling outside the scope of the ordinary legal rules applicable to relationships between private individuals *(see also paras. 21-30).*

51. *Court of Justice, 16 February 2023 case C-638/22 PPU, T.C. et al., interested parties M.C. and Prokurator Prokuratury Okregowej we Wroclawiu* 1032

Article 11(3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a piece of national legislation which confers on authorities that are not courts the power to obtain automatic suspension, for a period of at least two months, of the enforcement of a return decision handed down on the basis of the Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on 25 October 1980, without having to provide reasons for their request for suspension *(see also paras. 41-43, 60-77, 81-89, 92-93).*

DOCUMENTS

Amendments to the Italian Code of Civil Procedure (Legislative Decree 10 October 2022 No 149) 199

New Italian rules on the recognition and enforcement of foreign decisions in voluntary jurisdiction matters (Legislative Decree 10 October 2022 No 149) 204

Amendments to the Italian conflict of law provisions on divorce and legal separation (Legislative Decree 10 October 2022 No 149) 206

Amendments to the Italian Code of Criminal Procedure and its implementation, coordination and transitional rules (Legislative Decree 10 October 2022 No 150) 207

Treaty on judicial cooperation in criminal matters between Italy and Ecuador (Quito, 25 November 2015) 481

Agreement on a Unified Patent Court (Brussels, 19 February 2013) 695

Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection 728

Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangement 739

Italian rules implementing Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Legislative Decree 10 March 2023 No 28) 1051

Treaty for a strengthened bilateral cooperation between Italy and France (Rome, 26 November 2021) 1066

CURRENT EVENTS AND RECENT DEVELOPMENTS

A. FACCHINETTI, State Immunity and the *Exequatur* of Foreign Terrorism-related Judgments: A Recent Ruling by the French Supreme Court 1069

F.C. VILLATA, Regulation (EU) 2023/1114 on market in crypto-assets: first remarks from a private international law perspective 745

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from 3 November 2022 to 4 March 2023) – EU Directive on adequate minimum wages in the European Union – EU Regulation on contestable and fair markets in the digital sector – EU Regulation on European crowdfunding service providers for business – Compromise on the proposal for a EU Regulation on digitalisation of justice in the EU – Proposal for a Decision on an authorisation addressed to France to negotiate a bilateral agreement with Algeria on judicial cooperation in civil and commercial matters – Proposal for a EU Directive harmonising certain aspects of insolvency law – Proposal for a EU Directive on liability for defective products – Proposal for amendments to the EU Regulation on OTC derivatives, central counterparties and trade repositories – EU Council general

orientation on the proposal for a EU Regulation laying down harmonised rules on artificial intelligence – Recent developments concerning a European digital identity (eID) – Towards a new adequacy decision for the EU-US Data Privacy Framework – European Declaration on digital rights and principles – 2022 Annual Report on the Application of the EU Charter of Fundamental Rights – European Parliament Resolution on equal rights for persons with disabilities – European Parliament Resolution on the EU's protection of children and young people fleeing the war in Ukraine – Hague Conference Practitioners'Tool on agreements reached in the course of family matters involving children – Decision establishing the Digital Decade Policy Programme 2030 – EU Commission Communication on guidelines for a best-execution process for sales of non-performing loans on secondary markets – French Supreme Court on the impossibility to apply the UNIDROIT principles as *lex contractus* 214

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from 4 March to 10 May 2023) – EU Decision on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia – EU Regulation on a Single Market for digital services – Amendments to the Rules of Procedure and to the Practice Rules for the Implementation of the Rules of Procedure of the General Court – European Parliament legislative resolution on the accession of the EU to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters – EU Commission's Cyber Package – Proposal for a EU Regulation on horizontal cybersecurity requirements for products with digital elements – Proposed amendments to the EU Directive on preventing and combating trafficking in human beings and protecting its victims – Study on EU cooperation with the UK in civil law matters – ECHR Judgment in the matter of *Dolenc v Slovenia* 493

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from 11 May to 12 July 2023) – Contracting Parties of The Hague conventions in force – Instruments by the Joint Committee established by the Agreement on the withdrawal of the UK from the EU and the EAE laying down arrangements relating to the Windsor Framework – EU Regulation laying down rules for the exercise of the Union's rights under the Agreement on the withdrawal of the UK from the EU and the EAE – EU Council approves the accession by the EU to the Council of Europe Convention on preventing and combating violence against women and domestic violence – Proposal for a Directive on the definition of criminal offences and penalties for the violation of EU restrictive measures – EU Council general orientation on the proposal for a EU Directive on SLAPPs – Proposal for a EU Regulation on horizontal cybersecurity requirements for products with digital elements – Proposal for a EU Directive further expanding and upgrading the use of digital tools and processes in company law – EU Justice Scoreboard 2023 – Report from the Commission on the implementation of open internet access provisions – Opinion of the European Economic and Social Committee on the proposed AI Liability Directive – Proposal for a Cybersecurity Skills Academy – European citizens'initiative on effective implementation of the concept of judicial precedent in EU countries 757

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from 12 July to 22 November 2023) – EU Regulation on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings – New EU Directive on credit agreements for consumers – Proposals concerning the withdrawal of the EU and the Euratom from the Energy Charter Treaty – Opinion of the European Data Protection Supervisor on the opening of negotiations for digital trade disciplines with the Republic of Korea and with Singapore – European Parliament Resolution on the accession of Ukraine to The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters – Towards the introduction of a European digital identity (eID) – Proposal for a Regulation laying down additional procedural rules relating to the enforcement of the GDPR Regulation – Proposal for a Directive further expanding and upgrading the use of digital tools and processes in company law – Amendments by the European Parliament on the proposal for an anti-SLAPPs Directive – Proposal for a Directive on European cross-border associations – Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime – European Parliament Resolution on consumer protection in online video games – 2023 Rule of Law Report – 2022 Annual Report on monitoring the application of EU law 1086

Notices. Eurojusitalia, the database for direct access to the 'Italian' jurisprudence of the Court of Justice and the General Court of the EU 788

Notices: The 2023 summer courses of The Hague Academy of International Law 1124

BOOK REVIEW

P. DE VAREILLES-SOMMIÈRES, S. LAVAL, *Droit international privé* (F.C. Villata) 258

P. BEAUMONT, J. HOLLIDAY (eds.), *A Guide to Global Private International Law* (F.C. Villata) 516

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