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1. *Bergamo Tribunal, judgment of 25 July 2020* 257

Pursuant to Article 7(1) [point (b), second indent] of Regulation (EU) No 1215/2012 of 12 December 2012 – applicable to actions brought against a defendant not domiciled in a Member State by virtue of the reference in Article 3(2) of Law 31 May 1995 No 218 to the provisions of the Brussels Convention of 27 September 1968 – Italian courts do not have jurisdiction over an action brought against a company established in Montecarlo and seeking payment for the supply and installation of furniture to be carried out in France. In fact, the contract must be qualified as a contract for the provision of services and jurisdiction is established in favour of the courts of the place where the service was or should have been provided under the contract. This conclusion is not affected by the fact that the action before the Italian court was brought by the temporary administrator of the company which provided the service, since the action is for the recovery of a claim not arising from bankruptcy and therefore the provisions of Regulation (EU) No 2015/848 do not apply.

2. *Court of Cassation (plenary session), judgment of 24 August 2022 No 25317* 832

On the subject of the loss of Italian citizenship acquired at birth by descent (*iure sanguinis*) as a result of the so-called "great naturalization" of foreigners in Brazil at the end of the 19th century, the international law principle of effectiveness – according to which, in matters of citizenship, it is for each State to determine the conditions subject to which a person may be considered a citizen, provided an effective link exists between that State and the person in question – does not have nullifying efficacy. Such principle does not entail that the attribution of nationality by the government of Brazil could have taken place, and in fact did take place, by an act of government authority (*factum principis*) combined with an alleged tacit acceptance with the effect of renouncing the emigrant's original nationality (in practice, in such a manner that it could have resulted in the loss of the original nationality itself inferred from conclusive facts, combined with the integration of the Italian citizen into

the socio-economic fabric of the host country). Moreover, pursuant to Articles 3, 4, 16 *et seq.* and 22 of the Italian Constitution, Article 15 of the Universal Declaration of Human Rights of 10 December 1948 and the Treaty of Lisbon of 13 December 2007, which are also relevant in relation to the study and interpretation of the pre-constitutional State rules where they are still applicable, every person has a permanent and imprescriptible subjective right to the status of citizen, which encompasses distinct and equally fundamental rights and which can be lost only by renunciation, provided this is voluntary and explicit, in deference to individual freedom. Hence, loss of citizenship may never occur by tacit renunciation, which in turn can be inferred from some form of tacit acceptance of the foreign national's status given by a generalised naturalisation measure.

According to the Italian legal tradition, in the system outlined by the Civil Code of 1865, the subsequent Law 13 June 1912 No 555 and the current Law 5 February 1992 No 91, citizenship by birth is acquired *iure sanguinis* and the status of citizen, once acquired, is permanent in nature. It cannot be forfeited and it can be justified at any time on the basis of simple proof of the fact of acquisition, for instance, as the result of birth from an Italian citizen. The only burden on the applicant for recognition of citizenship is to prove the fact of acquisition and the line of transmission, while it is up to the other party, who has objected, to prove any interruptive event.

As for the effects of the alleged loss in the manner described above and its effects on the line of transmission to descendants, Article 11(2) of the Civil Code, in establishing that Italian citizenship is lost by a person who has "obtained citizenship in a foreign country", requires that it be ascertained that the person who had emigrated at the time had carried out a spontaneous and voluntary act aimed at acquiring foreign citizenship – *e.g.*, in accordance with the procedures provided for by the law of that country, supplemented by an application for registration on the electoral roll, or by the taking up of a public office, or even by a specific separate application. The fact of having established residence abroad, or even of having established one's centre of life abroad, is not sufficient, together with the failure to react to the general naturalisation measure, to integrate the extinction of status by tacit acceptance, such tacit acceptance to be assessed in accordance with Italian law.

The loss of Italian citizenship by acceptance of an "employment by a foreign government" without the authorization of the Italian government must be understood, pursuant to Article 11(3) of the Civil Code 1865 and Article 8(3) of Law No 555/1912, as referring only to governmental employment strictly understood, which results in the assumption of public functions abroad such as to impose obligations of hierarchy and loyalty to the foreign State, of a stable and basically definitive nature, in such a manner that it cannot amount to any mere work activity abroad, whether public or private.

3. *Venice Tribunal, order of 23 November 2022* 190

Pursuant to Article 669-*terdecies* of the Italian Code of Civil Procedure, in the appeal proceedings brought against the order – which, in the context of a motion seeking an *interim* measure pursuant to Article 700 of the Italian Code of Civil Procedure, having established the jurisdiction of the Italian court also over the two companies domiciled in Germany, declares the lack of venue of the court seised – the motion of lack of jurisdiction, put forth and expressly rejected in the first phase, shall be deemed to be waived by the

complaining parties if they do not re-propose it as their main claim (and, rather, they propose it only as a subordinate condition to the acceptance of the complaint on venue).
As regards the jurisdiction of the Italian courts, pursuant to Article 7 of Regulation (EU) No 1215/2012 of 12 December 2012, interpreted according to the principle of ubiquity, the appeal court agrees with the reasons by which the Judge in the first phase of the interlocutory proceedings granted an *interim* measure against the use for commercial purposes of the name and image of Leonardo da Vinci's work "Vitruvian Man", against three companies, one of which is domiciled in Italy and the other two in Germany. In fact, in the instant case, the damage alleged by the plaintiffs actually occurred in Italy, where both the cultural asset in question (understood as an "item embodying a testament to civilization" for the territory in which it is located) and the entity responsible for its custody and administration are located. The jurisdiction of Italian courts can also be established pursuant to Article 8 of Regulation No 1215/2012 – the Italian domicile of one of the three defendant companies (significantly represented by the same lawyer), controlled by the two German companies, being relevant for this purpose, together with the identity of the claim and reflief sought of the *interim* measures sought against them, so that there is a subjective combination of claims against several joint debtors. The Italian courts also have jurisdiction pursuant to Article 35 of Regulation No 1215/2012, read in conjunction with Article 10 of Law 31 May 1995 No 218 and Article 669-*ter* of the Italian Code of Civil Procedure, according to which the claims brought against several joint debtors must be heard and decided in accordance with the provisions of Article 669-*ter* of the Italian Code of Civil Procedure, since the Italian court, in addition to having abstract jurisdiction on the merits, is also the court of the place where the *interim* measure is to be executed.
Pursuant to Article 16 of Regulation (EC) No 864/2007 of 11 July 2007 and Article 17 of Law No 218/1995, in the light of its crucial importance in safeguarding the (both social and economic) public interest, the Italian Code of Cultural Property (Legislative Decree of 22 January 2004 No 42) is applicable to the case at hand as an overriding mandatory provision. Italian law is also applicable, pursuant to Article 4 of Regulation No 864/2007, as the law of the country in which the damage occurred (irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred). In the instant case, that place is Italy and, in particular, Venice as the place where the cultural object is kept and exhibited, and where the entity that possesses the object and claims damages is based. Italy, and notably Venice, are also the place where control over the use and reproduction of the image of the object in question are exercised, without it being relevant, for the purposes of the applicability of the Regulation, whether the fact which is the subjectmatter of the dispute is characterized as an unlawful act by all the jurisdictions with respect to which it has elements of connection, since the characterization must be performed in accordance with the *lex fori* or in accordance with the applicable law according to the provisions of private international law.

4. *Corte di Cassazione, judgment of 27 January 2023 No 2635* 260

Pursuant to Article 10(4)(b) of the Italo-French double taxation bilateral Convention signed in Venice on 5 October 1989, Article 7(2) of Council

Directive 1990/435/EEC of 23 July 1990 (the so-called "parent-subsidiary" Directive) and Article 27-*bis* of Presidential Decree of 29 September 1973 No 600 implementing that Directive, the claim for reimbursement of the credit deriving from the tax on share dividends paid by a subsidiary company resident in Italy to a parent company resident in France referred to in the first provision requires a case-by-case assessment aimed at ascertaining the actual existence of double taxation notwithstanding the application of the Directive.
Such assessment must also take account of the need to prevent the parent company from being afforded, through recourse to that Convention, treatment which would not be afforded to an Italian taxpayer. This outcome applies in spite of the fact that the claim would be, in principle, admissible even where those dividends have been exempted from the application of any withholding tax by virtue of the second provision, since the application of the Directive in question does not in itself entail the elimination of double taxation, which is why Article 7(2) of that Directive is without prejudice to bilateral Conventions between Member States on the subject.

5. *Corte di Cassazione, judgment of 9 February 2023 No 3896* 262

Pursuant to Article 7(4)(f) and (f-*quinquies*) of Presidential Decree of 26 October 1972 No 633 (provisions which are applicable ratione temporis to transactions carried out before 1 January 2010), the intermediation services of car rental services acquired in Italy, in 2009, by a company resident abroad in favour of other foreign companies are deemed to be performed in Italy, and are, therefore, subject to VAT according to the territoriality principle, when the aforesaid services are supplied by the latter companies to final customers who use them in Italy.

6. *Corte di Cassazione, order of 28 February 2023 No 6074* 205

On the subject of plant variety patents, pursuant to Article 104 of the Italian Industrial Property Code – the wording of which is fully in line with the provision of Article 7 of Regulation (EC) No 2100/94 of 27 July 1994 establishing a Community system of plant variety protection and is modelled on the International Convention for the Protection of New Varieties of Plants, adopted in Paris on 2 December 1961 and last amended in Geneva on 19 March 1991 (so-called UPOV 3), to which the European Union has been a party since 2005 – among the requirements of the breeder's right is that the variety be new and distinct, *i.e.*, it must be clearly distinguishable from any "other" plant variety whose existence, on the date of filing the application, is known. If the same variety is being discussed for which the same breeder (or his predecessor) has applied abroad for the granting of the right, a defect of distinction is not at issue, since the "same" variety cannot be included in the concept of "other" variety already otherwise known and, therefore, the same variety is not relevant for the purposes of the distinction provided in accordance with the law.

7. *Corte di Cassazione, judgment of 7 March 2023 No 6723* 209

The Danish judgment by which an Italian company (which, in December 2013, had entered into a membership agreement with a trade union association for companies with workers posted abroad) was ordered to pay, in favour of the said trade union association, a fine for failure to pay social security contributions and various social charges, in relation to workers employed on a Danish building site (where the Italian company in question had won a contract to carry out construction work at a refinery), is eligible for recognition in Italy. In fact, pursuant to Regulation (EU) No 1215/2012 of 12 December 2012, that decision, as issued in a Member State, is recognised without any special procedure being required. The interested party may request that recognition be refused if it is manifestly contrary to public policy in the requestedMember State. The grounds for refusal, in so far as they are capable of hindering the circulation of the foreign judgment, are subject to restrictive interpretation, the burden of proof being placed on the party invoking them. Public policy has become an expression of the system of protections provided at a higher level than that of primary legislation, so that reference must be made to the Constitution and, after the Lisbon Treaty, to the guarantees provided by the Charter of Fundamental Rights of the European Union, elevated to the level of the founding Treaties of the European Union by Article 6 TEU. The assessment must be carried out not only on the basis of the fundamental principles of the Constitution and those enshrined in international and supranational sources, but also on the basis of the manner in which those principles have been reflected in the law and the interpretation provided by constitutional jurisprudence as well as that of the lower courts, whose work of synthesis and interpretation gives shape to the living law that cannot be disregarded in the reconstruction of the notion of public policy, as a set of founding values of the legal system at a given historical moment. The tradition, not isolated in the various national legal systems, which contemplates the possibility, in specific matters, of courts with mixed jurisdictional functions, some of which are appointed by ministers, does not conflict with the principle of the judge's impartiality, which is among those that constitute public policy within the meaning of Article 45 of Regulation (EU) No 1215/2012. In any event, it is not for the court having jurisdiction to rule on an application for refusal of recognition of a judgment delivered by a court of another Member State to investigate structural deficiencies in that system. The prohibition, laid down in Article 52 of Regulation (EU) No 1215/2012, for the court of the Member State in which enforcement is sought to review the merits of the dispute in the State of origin entails that the Italian court, as the court of the Member State in which enforcement is sought, may not – when assessing whether the judgment delivered in another Member State is manifestly contrary to public policy, including in the sense of procedural public policy – review the court of origin's failure to make a referral to the Court of Justice for a preliminary ruling on questions of interpretation strictly relating to the substance of the dispute, which are institutionally reserved to the court of the Member State of origin. The repressive and deterrent function pursued by the fines is not a sufficient condition for qualifying their nature in terms of criminal law and, consequently, as conflicting with public policy. The punitive nature, if any, of the penalty must be assessed, on the one hand, on the basis of the nature of the breach, which must be inferred both from its scope of application (since, in order to be attributable to criminal matters, the penalty must be addressed to the generality of the citizens and not to the members of a particular system) and, above all, from the purpose pursued, which must not be merely compensatory, but repressive and preventive. On the other hand, the punitive nature, if any, of the penalty must be

assessed on the basis of the nature and gravity of the penalty to which the person concerned is exposed, which must have an afflictive connotation, being capable of reaching a significant degree of severity. In the Italian system of civil liability, as regulated by law, the assessment of the relationship between the conduct that caused the damage and the amount of the damage to be liquidated (and, therefore, the assessment of a substantial sanctioning function of compensatory liability) is not abstractly incompatible with the principles of the Italian legal system, in which compensation, in addition to restoring the patrimonial sphere of the individual who has suffered the injury, also performs the function of deterrence and sanctioning in civil liability (subject to specific prerequisites under the law, as well as further requirements of foreseeability and quantification).

8. *Corte di Cassazione, order of 22 March 2023 No 8229* 518

On appeal against the decree of the territorially competent Family Court ordering, pursuant to The Hague Convention of 25 October 1980, supplemented by Regulation (EC) No 2201/2003 of 27 November 2003, the immediate return to Belgium of a minor who is staying in Italy with his mother without the consent of the father – co-holder of parental responsibility – (and in breach of an earlier Belgian judgment refusing to authorise the woman's transfer to Italy with the boy), the appeal is inadmissible when, while apparently alleging a breach or misapplication of the law, the Court of Cassation is in fact asked to make a different assessment of the facts and evidence from that made by the court on the merit, in the absence of defects in the reasoning that can be reviewed in that court. Consequently, the objection alleging that at the time of the transfer to Italy, on 10 October 2021, the child's father had not exercised his custody rights over the child since 8 September 2021 (with the consequent lack of the prerequisite of the effective exercise of custody rights required by Article 3 of the above-mentioned Convention) is inadmissible, and the transfer of the child may not be qualified as unlawful for the purposes of immediate return under Article 12. In fact, whilst it amounts to denouncing a violation of the law, such a complaint is of a purely meritorious nature, resulting in an alternative reconstruction of the facts to that made by the court, moreover on the basis of circumstances that do not emerge from the contested decree, absent the allegation of the omission of the examination of decisive facts, pursuant to Article 360(1)(5) of the Code of Civil Procedure. Therefore, the trial court's factual finding as to the effectiveness of the custody and the breach of the father's right to custody, in accordance with the judgment of the Lie'ge Court of 28 March 2018, confirmed by the Liège Court of Appeal in its judgment of 18 May 2020, may not be challenged before the Court of Cassation.
On the subject of international child abduction, Article 13 of The Hague Convention of 25 October 1980, implemented in Italy by Law No 64 of 15 January 1994, requires the judge, also in the light of Article 8 ECHR, to examine in a detailed and analytical manner the statements made, during the hearing, by a child who has the capacity of discernment. It follows that, in the event of the latter's opposition to return, the judge shall consider that will and verify all the factual circumstances capable of supporting it, the judge being precluded from taking an alternative course of action as, according to supranational legislature, it could amount to a possible cause of harm to the child's development. The possibility for the child, who is capable of discern-

ment, to express their opinion in proceedings concerning them constitutes a right that must be effective and concrete – save in exceptional cases, which must be adequately justified – and the judicial authority's obligation to take due account of the opinion thus expressed must be measured against the peculiarities of the case and the "best interests of the child". Such interests, subject to certain conditions, may also "supersede" the child's will, who may not always be fully aware of all the implications surrounding their balanced development, provided that the court gives adequate reasons, at the outcome of a thorough and accurate examination of all the aspects that come into play, bearing in mind that the primary objective can only be the protection of the child's interest in cultivating a fulfilling relationship with both parents. In this sense, the child's interest, once properly focused on, must necessarily also be"superior" to the legitimate expectations and life choices of each of the parents. Accordingly, the appeal for breach of the aforementioned Article 13 of the 1980 The Hague Convention against the decree of the Family Court which ordered the immediate return of a 14-year-old child to Belgium, where his entire ten-year history (birth, growth, family ties on both sides, including his father and siblings, school and friendship ties) is located, is unfounded. In fact, the reasons given by the judges are entirely exhaustive: such reasons, without stopping at the formal and contingent opposition of the boy to return to Belgium, sought to grasp his deepest needs, so as to fully protect the preeminent right to co-parenting, which certainly favours a more balanced development and a mature growth of the adolescent, through a maieutic work supported, on the one hand, by the assessment of the adequacy of the father's parental skills – repeatedly expressed by the Belgian judges and confirmed by the custody modalities concretely exercised – and, on the other hand, by the trust in the family, psychological and personal support paths activated in Belgium, precisely in order to mend the "tears" in the father-son relationship that have mortified the boy but that are also understandable, taking into account (in addition to the father's physical pathology) the enormous complexity of his affections, both parents having built over time multiple parallel affective legal ties.

9. *Corte di Cassazione, order of 24 March 2023 No 8462* 226

The South Korean judgment which allegedly gave "effect to a series of contracts resulting from offences" does not produce "effects contrary to public policy" within the meaning of Article 64(g) of Law of 31 May 1995 No 218. In fact, this provision does not leave the requested court any margin of appreciation as to the merits of the decision of the court of origin, since the requested court is entrusted only with the extrinsic review of the foreign judgment, limited to the holding (*decisum*), *i.e.* to the preceptive content of such judgment, even if read in the light of the reasoning, and this by reason of the rationale underlying this rule, which is designed to encourage the circulation of foreign judgments (an objective that would be adversely affected if the procedure for recognition took on the features of a review of the merits).

10. *Corte di Cassazione (plenary session), judgment of 6 April 2023 No 9479* 588

With regard to unfair terms in consumer contracts, by reason of the harmonisation brought about by Directive 93/13/EEC of 5 April 1993, the catego-

ries and institutions of domestic procedural law may maintain their scope of application intact so long as the system of judicial protection fully guarantees the effectiveness of European Union law as interpreted by the Court of Justice of the European Union, if necessary by making such adaptations to domestic law as are required by EU law in order to protect the subjective position governed by it, by means of the instruments of conforming interpretation and, where appropriate, disapplication. This relationship between legal systems is also confirmed by the interpretation of the Court of Justice according to which Articles 6 and 7 of the aforementioned Directive preclude the court of enforcement, in the case of an order for payment which has not been opposed by the debtor-consumer, from reviewing whether the terms of the contract from which the debt arises are unfair, considering, on the one hand, that the effect of that interpretation on the effectiveness of the judgment is the result of the priority accorded – by reason of values that are common to the Member States of the European Union, as expressed also in the Italian constitutional case-law – to the requirements of effectiveness of consumer protection, as a result of a balancing out with those of certainty of legal relationships, which are safeguarded by the principle of immutability of the judgment; and considering, on the other hand, that such a balancing is not such as to eliminate the importance of the national judgment, which is also to be found in European Union law in accordance with the legal traditions of the Member States, from which, nevertheless, emerges the function of the trial with respect to the enforcement of rights and its being a means and not an end. Finally, the effective remedy envisaged by the Court of Justice is rooted in principles which represent the cornerstones of the ''fair trial'' referred to in Articles 47 of the Charter of Fundamental Rights of the European Union and 6 of the ECHR and which, likewise, constitute the indefectible nucleus of the fundamental guarantees also administered by the Italian Constitution, as ''supreme principles of the Italian constitutional order''.

In a dispute relating to credit arising from a contract concluded with a consumer – where the creditor acts pursuant to Article 633 of the Code of Civil Procedure and the unfairness of the terms contained in the contract is not checked during the monitoring phase of the proceedings, nor is the injunction opposed in good time –, in order to allow such a check to be carried out, the rules on belated opposition to an injunction laid down in Article 650 of the Code of Civil Procedure must be applied, with the adjustments made to it by reason of its full conformity with European Union law as laid down in Directive 93/13/EEC, as interpreted by the Court of Justice, in so far as that interpretative option is better suited to combine, in relation to the other options proposed for the same purposes, the prevailing need for effective consumer protection – taking into account, in particular, the possibility of pursuing the remedy even before service of the order for payment, thus avoiding possible attachment, the power of the court to suspend the enforceability of the judicial decision, the definite time-limit for bringing the action, the ability to ensure full adversarial proceedings and the number of levels of proceedings – with that, also guaranteed by EU law, of giving effect, to the greatest extent possible, to the principle of the procedural autonomy of the Member States.

Where the creditor-professional party pursues, by way of interlocutory proceedings, the claim arising out of the contract concluded with the consumer, the domestic procedural rules apply, in the various procedural stages, with the adjustments necessary to ensure the effective protection of the consumer in accordance with the provisions of Directive 93/13/EEC, as interpreted by the Court of Justice; thus (i) in the monitory phase, the court must assess *ex*

officio the possible unfairness of the terms of the contract in relation to the subjectmatter of the dispute, proceeding to that end on the basis of the elements of fact and law in its possession, which can be supplemented pursuant to Article 640 of the Code of Civil Procedure. If the court finds the clause to be unfair, it shall draw the consequences as to the rejection or partial acceptance of the appeal, while, if the check on the unfairness of the clauses has a negative outcome, the court shall issue a reasoned decree also in relation to the aforementioned examination. The injunction must contain the express warning that, in the absence of opposition, the consumer-debtor will no longer be able to rely on the possible unfairness of the terms of the contract and the unopposed decree will become irrevocable; (ii) at the enforcement stage, in the absence of a statement of reasons for the injunction with reference to the unfairness of the terms, the enforcement court has the duty to assess *ex officio* for the presence of any unfair terms that affect the existence and/or the extent of the claim that is the subject of the injunction, if necessary by carrying out a summary investigation; the court must then inform the parties of the outcome of this assessment – advising the debtor that, within 40 days, they may file an objection to the injunction pursuant to Article 650 of the Code of Civil Procedure in order to have only the unfairness of the clauses ascertained, with effects on the issued injunction decree – and postpone the sale or assignment of the asset or credit until the determination of the judge of the opposition to the injunction decree pursuant to Article 649 of the Code of Civil Procedure. Further, if in order to ascertain the unfairness of the clauses the debtor has lodged an opposition to execution pursuant to Article 615(1) of the Code of Civil Procedure, the court must reclassify it as a belated opposition pursuant to Article 650 of the Code of Civil Procedure and refer the decision to the Article of such opposition (*translatio iudicii*); if, on the other hand, the debtor has lodged an opposition to execution pursuant to Article 615(2) of the Code of Civil Procedure, the court will give a term of 40 days to file the belated objection and will not proceed with the sale or assignment of the property or the claim until a ruling is issued on the debtor-consumer's petition pursuant to Article 649 of the Code of Civil Procedure; (iii) at the cognitive phase, the court hearing the belated opposition aimed exclusively at asserting the unfairness of the contractual terms, has the power to suspend the enforceability of the injunction order, in whole or in part, pursuant to Article Article 649 of the Code of Civil Proceedings, depending on the effects that the finding on the unfairness of the terms might have on the judicial title.

11. *Corte di Cassazione, order of 17 April 2023 No 10178* 599

In an action for damages for the delay of a Moscow-Bologna flight brought against a Russian airline by two passengers, there is a right for the latter to obtain compensation for pecuniary and non-pecuniary damage, since Articles 19 and 23 of the Warsaw Convention of [12 October] 1929 provide, respectively, for the liability of the carrier for damage arising from delays in the carriage of passengers, baggage and cargo and the invalidity of the clause, allegedly included in the general conditions of the contract, aimed at excluding compliance with the "timetables indicated in the schedules" from the carrier's obligations. This is also supported by the fact that, by virtue of Article 20 of the 1929 Warsaw Convention, such liability may be excluded only where the carrier succeeds in proving that it was unable to prevent the

event notwithstanding the adoption of every suitable measure to ensure the timely performance of the carriage, since the Convention does not affect the criteria for the allocation of the burden of proof under Article 2697 of the Civil Code (which requires the creditor to prove only the source, whether negotiated or legal, of its right and the relevant due date, while placing on the debtor the burden of proof of the extinction of the other party's claim). Finally, it should be noted that, with reference to the financial aspects of the damage, pursuant to Article 1223 of the Civil Code there is a legal causal link between the carrier's delay (and the consequent forced delay at the airport) and the expenses for the purchase of food and beverages by passengers – irrespective of the fact that such expenditure was intended to meet subsistence needs that would have existed even if the carrier had fulfilled its obligation correctly, since the forced delay at the airport affected the way in which those needs were dealt with. Furthermore, with reference to non-financial aspects, the constitutionally oriented reading of Article 2059 of the Civil Code requires that the non-financial damage be considered indemnifiable, apart from the cases expressly provided for by law, whenever the wrongful act gives rise to a serious violation of the inviolable rights of the person, a pre-condition which is satisfied in the present case, since the conduct of the airline – in particular, forcing passengers to spend the night at a hotel without the possibility of being put on another flight of a different company; preventing them from leaving the establishment without the possibility of using the common areas, the services offered by the same and the means of communicating with third parties; as well as making available only one breakfast basket for the entire duration of their stay, without taking into account any food allergies or intolerances of the passengers – amounts to an infringement of the inviolable rights of the individual protected by Articles 13, 15 and 16 of the Italian Constitution which exceeds the minimum threshold of tolerability.

12. *Corte di Cassazione (plenary session), order of 16 May 2023 No 13438* 525

In the case brought in Italy by an Italian national resident there against the husband of his ex-wife – who has been, since 2020, the primary caregiver of the applicant's and woman's daughter by virtue of a temporary injunction issued by a United States court in the context of proceedings brought by the woman, once she had discovered the serious illness that had struck her –, in order to have custody of the daughter (already exclusively entrusted to the woman at the time of the divorce, with recognition of visitation rights to her father), pursuant to Articles 1(2) and 3(1)(a) and (b) of The Hague Convention of 19 October 1996 on the Protection of Children (implemented in Italy with Law No 101 of 18 June 2015 and as well as in the United States of America), the application to establish that the sole parent exercising parental responsibility is the applicant father and, consequently, to restore the exercise of parental responsibility by him falls within the scope of disputes concerning "the attribution, exercise and restriction of parental responsibility in whole or in part", covered by the aforementioned Convention. In fact, Article 1(2) of the Convention, which specifies the meaning of the term "parental responsibility" within the meaning of the Convention, refers to the responsibility over the child and their property and, more generally, to the legal representation of the child, in the different forms that it may take and regardless of the name of the legal institution applicable from time to time: parental responsibility, parental authority, guardianship, legal administration, custody. The rights

and obligations which this responsibility entails belong as a rule to the father and mother, but may also be exercised in whole or in part by third parties, according to the conditions provided for by national law, in the event of the death, incapacity, unfitness or unworthiness of the parents or in the event of the abandonment of the child by them. However, pursuant to Article 5 of the same Convention, which gives to the authorities of the child's habitual place of residence jurisdiction over all measures of protection concerning the child, Italian courts do not have jurisdiction over the above application, since the child, born in Italy in 2007, has been habitually resident in Texas since 2009, with the father's consent and without interruption. The fact that the child has sometimes spent summer holidays with her father in Italy is irrelevant for the purposes of identifying the child's habitual place of residence. The same provision also rules out the possibility of the coexistence of two orders, one of which issued by an Italian court, in the interest of the child who is an Italian national and of the father, who is also an Italian national, to guarantee the legitimate exercise of parental responsibility, given that the main objective of the 1996 Convention was to overcome the difficulties that had arisen in the application of the earlier 1961 Convention (which provided for concurrent jurisdiction of the court of the child's habitual residence and the court of the State of nationality, with the latter taking precedence in the event of conflict) by adopting the criterion of the child's habitual residence, in order to minimise the possibility of concurrent jurisdiction of the courts of different States. Finally, even independently of the application of the 1996 The Hague Convention, the establishment of Italian jurisdiction in the proceedings brought by the father-appellant against his daughter's primary caregiver has no legal basis, if one considers that the latter is a U.S. citizen, neither domiciled nor resident in Italy, in the absence of any prerequisite for establishing jurisdiction in Italy.

13. *Corte di Cassazione (plenary session), order of 17 May 2023 No 13504* 529

In an action on the infringement of industrial property rights, brought by an Italian company against a German company based in Germany, Italian courts have jurisdiction only over the application for a declaration of invalidity of the Italian portion of the defendant's international design pursuant to Article 24(4) of Regulation (EU) No 1215/2012 of 12 December 2012, according to which the courts of the Member State in whose territory the filing or registration took place have exclusive jurisdiction in matters of design validity. On the other hand, Italian courts do not have jurisdiction over negative declaratory relief relating to the non-infringement of industrial property rights in terms of infringement and imitation of designs and products, unfair competition, and breach of contract and non-contractual obligations, either pursuant to Article 4(1) of Regulation (EU) No 1215/2012, since the defendant is domiciled in Germany, or pursuant to the subsequent Article 7 [no. 2] of the same Regulation, according to which, as reiterated by the Court of Justice of the European Union, the "place where the harmful event occurred or may occur" is identified both with the place where the harmful conduct took place and with the place where the damage materialised, so that the defendant may be sued, at the plaintiff's choice, before the courts of either of those Member States. It should be borne in mind, in fact, that the place where the damage occurred must be considered to be the place where the "initial damage" occurred: therefore, the criterion of the *locus commissi delicti* cannot be

expanded to include any place where the negative consequences of damage occurring elsewhere can be felt, nor can that place coincide with the domicile of the injured party, when the harmful conduct took place elsewhere; the expression ''the place where the harmful event occurred or may occur'' does not refer to the place of the plaintiff's domicile, where the main centre of their assets is located, on the sole ground that they suffered financial loss there as a result of the loss of elements of their assets which occurred and was suffered in another Member State. In trade mark matters, there is no reason not to apply the same principle in an instance such as the one in this case, where an international design is at issue, for the German portion. Finally, the Court of Justice has decisively stated that ''both the objective of foreseeability and that of sound administration of justice militate in favour of conferring jurisdiction, in respect of the damage occurred, on the courts of the Member State in which the right at issue is protected''. In the present case, the defendant warned the German trade mark applicant against marketing the product, in Germany, in infringement of its design, for the German portion: consequently, the hypothetical *locus commissi delicti* is to be located in Germany, with reference to the negative assessment of the out-of-court claim made. Nor do Italian courts have jurisdiction within the meaning of Article 8 of the same Regulation, since, in addition to the German company, a company governed by Italian law with the German defendant as sole shareholder has also been sued: provided that the qualified link between the claims contemplated by Article 8 – which attaches importance to subjective cumulation for the purposes of establishing jurisdiction ''provided that there is such a close connection between the claims that it is appropriate to hear and determine them together in order to avoid the risk of arriving at irreconcilable judgments resulting from separate proceedings'' – is not satisfied when it comes to assessing the infringement of different national portions of the same industrial property right, since those portions must be considered to be independent and therefore assessable separately on the basis of each national law, without the risk of conflicting decisions, the proposed action for negative declaratory relief is justified in so far as it relates to the extrajudicial claim actually asserted by the German defendant, which has complained of the infringement in Germany of the German portion of the industrial property right belonging to it, a portion to which the company incorporated under Italian law with the German defendant as sole shareholder is extraneous and, in fact, disinterested, since it remained completely silent before the proceedings were brought against it.

14. *Corte di Cassazione, order of 23 May 2023 No 14186* 536

In a dispute relating to a contract for the international carriage of goods brought by a Dutch sender company against a Dutch carrier company seeking compensation for damage resulting from the removal of goods during carriage, the ruling (in a petition on jurisdiction) by which the Italian court, seised pursuant to Article 31(1)(b) of the Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956 (CMR), declared that it lacked jurisdiction by reason of an arbitration clause included in the contract of carriage, which referred the settlement of disputes to Dutch arbitrators, is inadmissible. In fact, since the arbitration defence must remain in its own right among the procedural defences, and therefore, according to the combined provisions of Articles 4(2) and 11 of Law No 218

of 31 May 1995 and Article 41 of the Code of Civil Procedure, it can be submitted to the Court of Cassation by way of reference for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*), the judgment that upholds the aforementioned defence must be challenged with the appeal, and not, instead, with the reference for a preliminary ruling on jurisdiction – permitted pursuant to Article 819-*ter* of the Code of Civil Procedure only if the judge affirms or denies their own jurisdiction in relation to an arbitration agreement that provides for an Italian arbitrator.

15. *Corte di Cassazione, judgment of 25 May 2023 No 14624* 230

European Union law precludes a national court from being bound by a national procedural rule in accordance to which it must follow the assessments made by a higher court where those assessments are contrary to European Union law as interpreted by the Court of Justice of the European Union (CJEU). It follows that a principle of law enunciated by the Court of Cassation under Article 384(2) of the Italian Code of Civil Procedure is not binding on the referring court in the face of subsequent conflicting rulings of the CJEU having immediate effect in Italian law as *jus superveniens*. In this case, too, the national court shall verify on its own motion the compatibility between national law and European Union law, provided that the application of national law is still the subject of a dispute, raised by grounds of appeal. In the matter of tax on share dividends paid by a subsidiary, resident in Italy, to its parent company, resident in the United Kingdom, according to the interpretation of the CJEU (Case C-389/18 of 19 December 2019, *Brussels Securities*), the tax credit provided for by Article 10(4)(b) of the Convention for the avoidance of double taxation and prevention of fiscal evasion, concluded between Italy and Great Britain on 21 October 1988, is not excluded from the recognition of the benefits provided for by Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, because such recognition does not necessarily eliminate the risk of economic double taxation or of breach of the principle of fiscal neutrality. Since two sources of legislation are not mutually alternative, it is permissible for the parent company, which originally did not have dividends withheld in Italy under Directive 90/435/EEC, to subsequently opt for the application of Article 10(4)(b) of the Convention.

16. *Corte di Cassazione (plenary session), order of 29 May 2023 No 14939* 539

In the context of a reference for a preliminary ruling on jurisdiction – brought, by an Italian province against an Italian company, in connection with an action concerning a consultancy contract, linked to the subsequent conclusion of an interest rate swap contract, in the presence of several claims made in the alternative –, jurisdiction is determined on the basis of the main claim (in the present case, on the basis of the two alternative claims relating respectively to a declaration of breach of the advisory agreement due to breach of the duty to provide information and to offer adequate contracts, and to compensation for damages due to breach of the duty of fair dealing during negotiations), and not on the basis of the claims formulated in the alternative (in particular, with respect to the claim for nullity of the swap

contract). In the event that there is no connecting factor between the two claims within the meaning of Article 276 of the Code of Civil Procedure, the plaintiff remains free to choose which of them to put forward as the main claim and which as the subordinate claim, and such a choice – being an expression of the right of defence – cannot be censured or reviewed by the Court of Cassation. Italian courts have jurisdiction over that dispute, given that the agreement to extend the jurisdiction of the British court provided for in clause 13 of the ISDA clause, governing the swap contract, concerned disputes relating to the latter contract and not disputes concerning the non-performance of the different consultancy contract on which, in the present case, the principal claim was based. On the other hand, the fact that the decision of the High Court of Justice of London was handed down in the course of the proceedings is irrelevant; it will, in fact, be for the court on the merits to establish whether the case brought before the English court is the same as the case brought before the Italian court, and what effects, if any, that judgment may have on the merits of the dispute. The effect of the foreign judgment on the "substance" of the matter cannot, in fact, be ascertained by the Plenary Session in the context of the regulation of jurisdiction, because such an investigation involves the examination of questions other than those specifically contemplated by Article 41 of the Code of Civil Procedure and requires the use of investigative means that are incompatible with the structure and characteristics of the judgment of cassation.

17. *Corte di Cassazione (plenary session), order of 8 June 2023 No 16288* 544

In the case of a principal residing abroad, the burden of providing the contrary proof necessary to overcome the presumption of the issuance in Italy of the power of attorney *ad litem* affixed to a court document without indication of the place of signature and authenticated by an Italian lawyer, falls on the party opposing the one whose signature is at issue. Moreover, the power of attorney pursuant to Articles 83(3) and 365 of the Code of Civil Procedure, if incorporated in the notice of appeal, is presumed to have been issued prior to service of the document containing it.
According to Article 3 of Regulation (EC) No 2201/2003 of 27 November 2003 – applicable in legal separation proceedings between spouses who are both British nationals, since this Regulation also applies to nationals of non-EU States who have sufficiently strong links with the territory of one of the Member States in accordance with the grounds of jurisdiction laid down in the Regulation, which, according to recital 12 of Regulation No 1347/2000, are based on the principle that there must be a real link between the interested party and the Member State exercising jurisdiction –, Italian courts have jurisdiction over the husband when he has his habitual residence in the territory of the Member State, to be understood as the place of the concrete and continuous pursuit of his personal and possibly working life on the date the application is made, as shown by the fact that he hired a professional studio to assist him obtain a residence permit in Italy and the conclusion, at a time prior to the commencement of the proceedings, of a lease with a four-year term. Pursuant to Article 3 of Regulation (EC) No 4/2009 of 18 December 2008 – applicable in proceedings concerning the maintenance of a wife and minor children residing with their mother in Scotland against a defendant who is a British national (since, as is clear from recital 15, the provisions of the Regulation operate even where there is a connection bet-

ween the defendant and a non-Member State, since, first, the habitual residence of the creditor and that of the debtor are, for the purposes of the Regulation, connecting factors capable of establishing the jurisdiction of a Member State, irrespective of whether or not those persons are citizens of the European Union, and, second, they are exhaustive, precluding the possibility of a reference to the rules of jurisdiction provided by national law) – Italian courts have jurisdiction where the defendant is habitually resident in Italy, even if proceedings concerning parental responsibility over the same children have been commenced in the United Kingdom, since a court having jurisdiction under the Regulation and duly seised does not have the power to decline jurisdiction in favour of a court which would, in its view, be better placed to hear the case. If a court seised of an action relating to maintenance obligations in respect of a child does not have jurisdiction to hear an action relating to parental responsibility in respect of that child, it is first necessary to ascertain whether that court has jurisdiction to rule otherwise under Regulation No 4/2009, since, in accordance with its purpose – which is to safeguard the interests of the maintenance creditor, considered to be the weaker party in an action relating to a maintenance obligation –, Regulation No 4/2009 provides for alternative, non-hierarchical grounds of jurisdiction favouring the plaintiff's choice.

18. *Milan Tribunal (company division), judgment of 8 June 2023* 850

In a liability action brought by the sole director and shareholder of a company incorporated under Tanzanian law, Italian courts have jurisdiction pursuant to Article 3(1) of Law 31 May 1995 No 218 where the defendant resides in Italy. Without prejudice to the application – pursuant to Article 12 of Law 218 of 1995 – of the *lex fori* to the proceedings, in the absence of specific conventions with Tanzania pursuant to Article 25(e) of the same Law, the substantive law of Tanzania (in particular, the Companies Act 2002) is applicable to the same action, since the company in question was incorporated in Tanzania where the resort management business is also carried out, while the elements alleged by the parties with regard to the location in Italy of the place of management are not unambiguous, since regard is to be had to the substantive and actual situation and not limitedly to the formal or apparent situation. The proof of the actual location of the company's place of management must be provided by the party claiming the application of Italian law and must be extremely rigorous, since the identification of the regime regulating the life of the entity in a legal system different from that of its incorporation is potentially fraught with consequences on the company's current operations. In particular, the place where the administrative body takes decisions on the management and direction of the company (*e.g.*, the place where the board of directors' meeting is held or where instructions and directives are given to the management or where the company's contracts are concluded) and where the administrative activity is materially carried out (*e.g.*, the drafting and keeping of accounting records, the performance of tax and social security obligations, personnel management) must be proven by means of unambiguous evidence.

19. *Corte di Cassazione, judgment of 21 June 2023 No 17777* 550

In an action seeking the termination of a contract of sale, as well as the establishment of a claim and an order for payment thereof, brought by an Italian creditor against a German company, which is subject in Germany to insolvency proceedings opened after the commencement of the proceedings in question, the court may not declare the claim to be inadmissible, pursuant to Articles 43, 52 and 93 *et seq.* of the Italian bankruptcy law. Conversely, pursuant to Article 4 of Regulation (EC) No 1346/2000 of 29 May 2000, which is applicable *ratione temporis* to determine the effects of insolvency proceedings on individual legal actions in cross-border insolvency proceedings – *i.e.*, proceedings opened against persons with assets situated within the territory of different Member States of the European Union, or involving creditors who are not resident in the State of the opening of proceedings – the court shall apply the law of the Member State in which the insolvency proceedings have been opened and, where that law does not prejudice the jurisdiction of the ordinary courts, it must rule on the substance of the case. The phrase concerning the preservation of pending proceedings contained in the same provision must, in fact, be understood as meaning that such proceedings may, where appropriate, continue, subject to the rules of the law applicable to the insolvency proceedings.

20. *Corte di Cassazione (plenary session), judgment of 26 June 2023 No 18199* 236

In proceedings seeking recognition of a judgment delivered by a court of the Russian Federation assigning custody of two minors to their mother (while establishing the children's residence in Russia at the mother's residence), and also ruling on the father's right of access, the substantive conditions are laid down neither in Regulation (EC) No 2201/2003 of 27 November 2003 nor in Article 64(1)(a) of Law 31 May 1995 No 218 (according to which recognition takes place when the court that delivered the judgment could hear the case in accordance with the principles of jurisdiction under Italian law), read in conjunction with Article 4(1) of the same Law (which would allow the tacit acceptance of Italian jurisdiction by the fact that the defendant appeared in the proceedings without challenging jurisdiction in the first defense document), as a result of the father's failure to challenge jurisdiction before the court of the Russian Federation in the first defense document. Instead, The Hague Convention of 18 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children is applicable as a multilateral convention ratified by both the Russian Federation and Italy (to which Article 42 of Law 218/1995 must be understood to refer, as the source that succeeded to the Convention of 5 October 1961 concerning the jurisdiction of authorities and the law applicable in matters of the protection of minors, consistent with the general rule in Article 2 of Law No 218/1995). Italian law, on the other hand, finds application before the Italian court pursuant to Article 24 of the 1996 Hague Convention, but only as regards the recognition procedure and, in particular, the summary proceedings, establishing jurisdiction with the Court of Appeal of the place of enforcement of the foreign judgment. Consequently, the judgment of the Russian court cannot be recognised in Italy because it was issued by an authority which lacked jurisdiction: in fact, the Russian Federation was not the State of the children's habitual residence within the meaning of Article 23(2)(a) of the 1996 Hague Convention, which provides, as one of the conditions precluding recognition, that the

measure was taken by an authority whose jurisdiction was not founded on the provisions of the Convention, and in particular Article 5, according to which the court of the Contracting State of the child's habitual residence has jurisdiction, subject to the possibility of the child's transfer of their habitual residence to another Contracting State provided for in the second paragraph of that Article. In fact, the Italian Court of Appeal found that transfer of habitual residence did not occur as the children's two-month stay in Russia for the summer holidays could not be considered to trigger such transfer. That finding of fact remains firm because, although Article 25 of the 1996 Hague Convention provides that "[t]he authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction", the appellant has not challenged the order of the territorial court on the grounds that it infringes that rule.

21. *Corte di Cassazione (plenary session), order of 4 July 2023 No 18847* 555

According to the provisions of Article 67 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, in an action for payment of the remuneration for the asset, tax and corporate consultancy services provided by a legal person with a registered office and representative offices in Italy in favour of the defendant, a natural person domiciled in London but having their property interests in Italy, brought after 31 December 2020 (the date on which the transitional period provided for in Article 126 of the Agreement ended), Regulation (EU) No 1215/2012 of 12 December 2012 does not apply. In relation to that judgment, pursuant to Article 5(1) of the Brussels Convention of 27 September 1968 – which establishes, for contractual matters, the jurisdiction of the authorities of the place where the obligation in question was or should have been performed and which, by virtue of the reference made to it and its subsequent amendments by Article 3(2) of Law No 218 of 31 May 1995, is applicable also to relations with defendants domiciled in non-EU Member States – Italian courts have jurisdiction. In fact, this is an action aimed at obtaining the payment for a professional activity entirely carried out and to be remunerated in Italy, taking into account the fact that, in the instant case, the rules that, in the aforementioned Convention, regulate jurisdiction over consumer contracts cannot be applied, since the contractual relationship in question falls within the framework of the professional activities carried out by the defendant.

22. *Corte di Cassazione (plenary session), order of 10 July 2023 No 19571* 563

For the purposes of ruling on the effectiveness in Italy of a judgment delivered by the Court of São Paulo in Brazil on contractual obligations, pursuant to the Treaty between Italy and Brazil on judicial assistance and the recognition and enforcement of judgments in civil matters, signed in Rome on 17 October 1989 – according to whose Article 18 the recognition of a judgment given in the other Contracting Party is subject, *inter alia*, to the condition that it does not concern a matter falling within the exclusive jurisdiction of the requested State – pursuant to Articles 64 and 65 of Law 31 May 1995 No 218 (providing for the automatic recognition of the foreign *res iudicata*, consistent with the principles of the Italian legal order), it is first necessary to ascertain

whether the Brazilian judicial authority had jurisdiction in the light of the provisions of Article 3 of Law 218 of 1995 and its reference to the Brussels Convention of 27 September 1968. Following the so-called "communitarisation" of judicial cooperation in civil matters [introduced with the Treaty of Amsterdam], such reference is to be understood as a reference to the subsequent EC and EU Regulations. Therefore, such ascertainment shall be performed on the basis of the criteria established at Article 7 of Regulation (EU) No 1215/2012 of 12 December 2012, without prejudice to a different agreement on jurisdiction between the parties, pursuant to Article 25 of the same Regulation. Consequently, in the presence of a contractual agreement attributing exclusive jurisdiction to the Court of Milan, on the basis of the consolidated orientation according to which a jurisdiction agreement in favour of a specific court in a State is normally capable of conferring exclusive jurisdiction on the courts of that State, the request for recognition must be rejected, given that the Court of São Paulo of Brazil did not have jurisdiction to hear the case, which falls within the exclusive jurisdiction of Italy.

23. *Court of Cassation, judgment of 12 July 2023 No 19900* 859

Pursuant to Articles 123 [and 369] of the Code of Civil Procedure, a special power of attorney for cassation appeals issued abroad, drafted in English and bearing an apostille, is valid, even if produced without a certified translation, since – as concerns procedural documents (*e.g.*, documents conferring power of attorney: appointment of procedural representatives, authorisations to stand trial and related certifications), drafted in a language other than Italian – it follows from the principle of expert translation into Italian that the production of a translation into Italian is not a requirement for the validity of the document, where the court is able to carry out the translation itself.
An order issued by a Florida court declaring a holographic will null and void, without the document instituting proceedings under Chapter 731.301 of the Florida Probate Code having been served on a third party claiming to be an heir under a different will, the existence of which had been communicated to the administrator of the estate after the recognition order was issued, may be recognised in Italy pursuant to Article 64(1)(b) of Law 31 May 1995 No 218, there being no breach of the right to be heard, since at the time the proceedings were instituted it could not reasonably have been expected that the third party would be the addressee of the effects of the measure to be issued. Pursuant to Article 67 of Law No 218 of 1995 and Article 30 of Legislative Decree No 150 of 1 September 2011, in proceedings for the recognition of foreign judgments in Italy, the court of appeal must limit itself to ascertaining, in order to issue an order of recognition, only the existence of the requirements for automatic recognition under Article 64 of Law No 218 of 1995, any other question of merit remaining outside the scope of the same judgment, even as an object of only incidental ascertainment. In particular, the court may not either issue a new ruling on the substantive relationship brought before the foreign court, or ascertain or rule on questions unrelated to the mere ascertainment of the requirements for recognition.

24. *Constitutional Court, judgment of 21 July 2023 No 159* 170

The question of the constitutionality of Article 43(3) of Law Decree of 30 April 2022 No 36, converted with amendments with Law 29 June 2022 No

79, raised in relation to Articles 2 and 24 of the Italian Constitution is unfounded. According to Article 43(3) of Law Decree No 36/2022, in view of the establishment of the special Reparation Fund, executive proceedings may not be commenced or continued (and any execution judgments that may be brought are extinguished) based on titles having as their object the liquidation of damages suffered by victims of war crimes and crimes against humanity for the violation of fundamental rights, perpetrated on Italian territory or, in any case, to the detriment of Italian citizens by the forces of the Third Reich in the period between 1 September 1939 and 8 May 1945. On the one hand, unlike the restricted jurisdictional immunity in the light of the Italian Constitutional Court's judgment No 238/2014, the restricted immunity from enforcement, as interpreted by the International Court of Justice in its judgment of 3 February 2012, has entered into the Italian legal system pursuant to Article 10(1) of the Constitution. In this framework, there are no counter-limits, since the provision operates with reference not to jurisdiction, but to the individual assets subject to enforcement, such assets being distinguished based on whether they are intended for public functions (*i.e.*, *iure imperii* activities) – and for this reason they are covered by immunity – or for private functions (*i.e.*, *iure gestionis* activities) – which may, on the contrary, be subject to ordinary attachment. It follows that the right of access to justice – which also applies at the enforcement stage, all the more so when a fundamental right is infringed – is, in any event, guaranteed, even if tempered by the operation of the customary rule in question. Hence, the aforesaid judgment of the International Court of Justice has to be implemented in this part. On the other hand – although Article 43(3) of Law Decree No 36/2022 does not distinguish between goods covered and not covered by immunity – such provision strikes a not unreasonable balance between the right of access to justice and the compliance with Italy's international obligations, such as in particular those arising from the Italo-German agreement made in Bonn on 2 June 1961 concerning compensation in favour of Italian citizens affected by National Socialist persecution measures. In fact, it establishes that the claim for compensation against Germany is to be replaced by a claim of similar content on the Fund, thus providing an adequate alternative protection to that achievable by enforcement against the German State: consequently, it offsets the extinction *ex lege* of the judgments in the enforcement proceedings, to which, in any event, the restricted immunity of States as regards attachable assets would apply, with the protection recognised against the Fund (such protection being of the same amount and indeed being apt to satisfy the creditors' expectations to a greater extent since there is no uncertainty connected with the operation of the aforementioned restricted immunity).

The question of constitutionality raised in relation to Articles 3 and 111 of the Italian Constitution with reference to 43(3) of Law Decree No 36/2022 for failure to respect the principles of sovereign equality between States and equality of the parties in the proceedings is also unfounded. The absolute peculiarity of the case, which sees the need to balance the obligation to respect the Bonn Agreement of 2 June 1961 and the judicial protection of the victims of the aforesaid war crimes, constitutes sufficient justification for a differentiated and exceptional discipline, which strikes a not unreasonable point of balance in the complex matter of indemnities and compensation for war crimes.

Equally, the question of constitutionality raised in relation to Article 3 of the Italian Constitution alone, with reference to 43(3) of Law Decree No 36/2022, is unfounded on the ground of unequal treatment between enforcement

proceedings commenced on the basis of orders issued by the Italian judicial authority and those commenced on the basis of orders issued by a foreign court and duly recognised by the aforesaid authority. In fact, following the amendment made to this provision by conversion Law No 79/2022, the latter cannot be commenced or continued (and the related proceedings shall be extinguished) in accordance with what had already been originally provided by the rule at hand with reference to the former.

25. *Corte di Cassazione (plenary session), order of 24 July 2023 No 22113* 570

The presence in Italy of a ''branch'' of a German company carrying on insurance business does not in itself determine the existence of a legal entity under Italian law, different and distinct from the foreign one, since a commercial company acquires legal personality under Italian law with the conclusion of a public deed and registration in the company registry.
In a dispute between companies engaged in the insurance business, in the cassation proceedings against the judgment declaring lack of jurisdiction of Italian courts in light of the prorogation clause in favour of the German court contained in the contract concluded between the plaintiff company and the defendant German company, the ground of appeal alleging infringement of Article 345 of the Code of Civil Procedure for failure to examine, during the appeal, documents not produced at first instance because they were drawn up or acquired after the appeal was lodged, is inadmissible for lack of decisiveness, where such documents are not capable of proving the existence of a third company, based in Italy, to which the action would also be directed and, therefore, of determining a different outcome of the dispute on the question of jurisdiction.
Consequently, also inadmissible is the ground of appeal, against the same judgment, alleging infringement of Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012, on the basis of the alleged inapplicability of the prorogation clause in favour of the German court, contained in the contract concluded with the defendant company established in Germany, to another defendant, since no evidence was provided of the existence of the latter as a separate and autonomous entity under Italian law.

26. *Court of Cassation, judgment of 24 July 2023 No 22022* 865

For the purposes of the operation of the system of protection introduced by The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, according to a settled interpretation of the Italian Supreme Court, consistent with the case law of the Court of Justice of the European Union, pursuant to Article 3 thereof, habitual residence identifies 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, by virtue of a durable and stable permanence, the child has consolidated their network of affections and relationships, without any significance being attached to mere residence in the registry office or to any contingent or temporary transfer. Moreover, the assessment of habitual residence should be carried out based on the prospect of the fullest satisfaction of the child's interests, rather than on the basis of a static interpretation of the data existing at the time of the judgment. To that end, a series of circum-

stances in relation to the particular features of the case should be assessed, such as 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, to which must be added, with particular significance in the case of a young child, the propensity of that residence to be stable.

Habitual residence constitutes a factual situation the ascertainment of which is reserved to the appreciation of the court on the merits, which may not be challenged if congruously and logically motivated.

With regard to the existence of conditions preventing return to the place of habitual residence, Article 13(1)(b) of The Hague Convention of 1980 does not allow the court seised with an application for the return to the State of residence of a child wrongfully retained by a parent to assess inconveniences connected with the envisaged return, which do not reach the degree of physical or psychological harm or otherwise place the child in an intolerable situation. In fact, only the latter are considered relevant, pursuant to the Convention, with a view to precluding the child's return. Moreover, the assessment of the application for return is not meant to identify the best possible accommodation for the child: in fact, the application may be rejected, in the best interests of the child, only subject to the circumstances set out in Articles 12, 13 and 20 of the Convention, which do not include any contraindications of a comparative nature that do not rise to the level of a real risk, arising from the return, of exposure to the above-mentioned risks. In essence, the court must adhere to a criterion of strict interpretation of the scope of the conditions precluding return, so that it cannot give weight to mere psychological trauma or mere moral suffering caused by the separation from the abducting parent, unless such inconveniences reach the degree, required by the abovementioned rule, of psychological harm or otherwise place the child in an intolerable situation.

While it is true that in the context of the proceedings intended to take place before the Family Court, pursuant to Article 7 of Law 15 January 1994 No 64, the burden of alleging and proving the facts preventing the return is, as a general rule, pursuant to Article 13 of the Convention, on the person opposing it, it is no less true that the procedure in question cannot be said to be fully governed, in particular as regards the assessment of such impeding circumstances, by the principle of the burden of proof. On the contrary, the court has the power to order on its own motion investigations pursuant to Article 738(3) of the Code of Civil Procedure, without being bound by the decisions of the court of the child's State of residence, in the light of the child's prevailing interest in relation to the protection provided by Article 24(2) and (3) CFREU and Article 8 ECHR. On this point, the European Court of Human Rights has clarified that the return of a child cannot be ordered automatically or mechanically when the 1980 The Hague Convention is applicable, taking into account Articles 12, 13 and 20 thereof, it being necessary that the assessments, entrusted to the national court with a certain margin of appreciation (in any event subject to review under the ECHR), relate specifically to the child and their environment, in order to ensure the child's best interests. The ascertainment of the only conditions considered relevant and obstructive to the child's return pursuant to Article 13(1)(b) of The Hague Convention of 1980 amounts to a question of fact (and, accordingly, it is exempt from the review on the law) – insofar as it is related to the assessment of evidence – if the reasoning of the court on the merits is supported by a motivation devoid of logical and legal defects. It follows that the order by which an Italian Family Court ordered the return to England of a

child resident there since his birth in 2017, subsequently brought to Italy in 2019 by his mother, an Italian citizen, and retained there without the consent of his father, an English citizen, is in full compliance with the canons of interpretation set out in Article 13 of the 1980 The Hague Convention, also read in the light of Article 8 ECHR. The Family Court carried out a wide-ranging investigation, in full harmony with the case law of the European Court of Human Rights, having examined, in a detailed and analytical manner, all the factual circumstances capable of establishing that the return of the child could not cause any harm or otherwise place the child in an intolerable situation, including weighing the child's interests against his return to England after a long period spent in Italy with his mother, dating as of 7 June 2019, and having consequently ruled out any possible harm in the event of the child's return to England, a country from which the child was wrongfully removed by his mother without the father's consent, considering the father is fully fit to receive the child. Such an investigation, precisely because of the thorough and complete examination carried out by the court, cannot be questioned in any way in the appeal for cassation, being fully consistent with the case law of the European Court of Human Rights, which laid out the margin of appreciation reserved to the national authority in relation to the situation, upstream, of the wrongful removal of the child and, downstream, of the absence of harm for the child in the event of return.

27. *Corte di Cassazione, judgment of 16 August 2023 No 24664* 604

In an action brought by an Italian company against the Ministry of Economic Development (*Ministero dello Sviluppo Economico*) and the Ministry of Economic and Financial Affairs (*Ministero dell'Economia e delle Finanze*) seeking a declaration that the fixing of the term of validity of export licences for processed maize products and the enforcement of a bank guarantee following the non-utilisation of those licences were unlawful, Regulation (EC) No 1214/2000 of 8 June 2000 limiting the term of validity of export licences for certain processed cereal products must be interpreted, despite the typos in Article 1, in the light of the objective pursued by that Regulation. That objective, which may be inferred from the recitals in the preamble (which, although not binding, are an aid to the interpreter in the case of provisions which are not immediately intelligible), is that of laying down a peremptory time-limit for the validity of export licences for products processed from maize and the completion of the relevant export operations within that time-limit.

28. *Corte di Cassazione, order of 29 August 2023 No 25436* 573

In the case of a child born as a result of the use, by a same-sex couple, of medically assisted procreation techniques carried out abroad, adoption in special cases may be allowed, in the hypothesis governed by Article 44(d) of Law 4 May 1983 No 184, even if the biological parent has withdrawn their consent as a result of the loss of an emotional relationship with the other member of the couple. The obstructive effect of the dissent must in fact be assessed exclusively from the point of view of the interest of the child, who has the right to preserve their existing affective relationships, provided they are suited to provide a central contribution to the child's growth and deve-

lopment, as well as to the child's identity deriving from their being part of the adoptive parent's family environment.

29. *Court of Cassation, judgment of 1 September 2023 No 25633* 874

Pursuant to Article 107 TFEU, a national court's decision recognising the right to obtain State aid contrary to EU law is to be set aside in relation to the Commission's decision finding that such aid is contrary to EU law, whether before or after the Commission's decision, in so far as, in either case, it was made in breach of the rules, binding on the domestic legal systems of the Member States, which confer on the Commission exclusive competence to assess the compatibility of aid measures or an aid scheme with the common market. Such setting aside, however, is not expressed in the sense of an impermissible modification or elimination of the judgment as a title *per se* existing and persisting in the legal order, but is expressed only in terms of its inability to produce effects, in accordance with EU law. Accordingly, any questions concerning enforcement, in particular as to whether or not the judgment precludes the recovery of the unlawful advantage and as to whether or not it can be used as a basis for enforcement, may be addressed only in the context of compliance.

30. *Court of Cassation, order of 18 September 2023 No 26741* 884

In relation to an action for the ascertainment of the existence of a domestic employment relationship, carried out in Italy, between a foreign worker and an Italian citizen, pursuant to Article 36 of the Italian Constitution the right of the foreign worker to remuneration commensurate with the work performed and their personal and family needs, as well as to rest and holidays, is not derogated from as a result of Article 16 of the Preliminary Provisions of the Civil Code (according to which the foreigner is admitted to enjoy the civil rights attributable to Italian citizens on condition of reciprocity). On the one hand, Article 36 of the Constitution is applicable only in relation to nonfundamental rights – since the fundamental rights and freedoms that the Constitution and the international Charters attribute to each individual cannot be limited by that provision, have the predicate of indivisibility, and are due to individuals not as participants in a given political community, but as human beings. On the other hand, Article 16 of the Preliminary Provisions of the Civil Code must be interpreted in a constitutionally proper manner, in the light of Article 2 of the Constitution, which ensures full protection of inviolable rights, so that the foreigner, whether or not they are resident in Italy, is always entitled to seise Italian courts for compensation of pecuniary and nonpecuniary damage resulting from the violation, occurring in Italy, of inviolable personal rights, including those falling within the scope of Article 36 of the Constitution.

31. *Corte di Cassazione (plenary session), order of 22 September 2023 No 27177* 576

The legal situation alleged in the lawsuit – having as its object the ascertainment of the silence-failure to act of the Commission for International Adop-

tions at the Presidency of the Council of Ministers of the Republic of Italy (*Commissione per le adozioni internazionali presso la Presidenza del Consiglio dei ministri della Repubblica Italiana* – CAI) resulting from the failure to issue the updated list of Italian citizens aspiring to adopt Belarusian minors, accompanied by the letter of guarantee on the welfare of the adopting children, addressed to the President of the Republic of Belarus and signed by the leadership of the Republic of Italy, which is necessary to proceed with the adoption of children of Belarusian nationality pursuant to Article 9 of the Protocol of Cooperation of 30 November 2017 between the CAI and the Ministry of Education of the Republic of Belarus on the adoption of minor citizens of the Republic of Belarus by Italian citizens, and forming part of the procedural conditions for international adoptions regulated by Article 15 of The Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption (which provides that the Central Authority of the receiving State, if it considers that the applicants are qualified and suitable for adoption, shall draw up a report containing information on their identity, legal capacity and suitability for adoption, their personal family and health situation, their social environment, their motives, their aptitude for intercountry adoption, and the characteristics of the children they would be able to take in) – does not fall within the perimeter of absolute lack of jurisdiction, but qualifying as an administrative measure, is in the abstract justiciable. The mere signing of the letter of guarantee under Article 9 of the Protocol of Cooperation by the President of the Council of Ministers or the Minister for Family Policies is not capable of characterising it as a political act, since it does not relate to the supreme general direction of the State considered in its unity and in its fundamental institutions and does not represent a political act (*i.e.*, an act free in its purpose), as such attributable to supreme choices dictated by political criteria concerning the establishment, the safeguarding or the functioning of the public powers in their organic structure and in their coordinated application. On the contrary, it is an act that expresses a procedural function of cooperation and communication between the Central Authorities of the two countries, which is expressed in the substantiation that the adoptive spouses meet all the requirements prescribed for intercountry adoption by the laws in force, including the availability and suitability of the child, and in the validation that the child's placement in the new family complies with the fundamental principles established by The Hague Convention of 29 May 1993 and is therefore suitable to ensure the child's best interests. It follows that such a letter of guarantee is an act intended to ensure the protection of the adoptee and their fundamental rights in the concrete situation, in accordance with their needs and necessities, and taking into account its underlying goal of establishing a parental relationship, which must be capable of offering an environment of serenity, affection and understanding for the child's development, without further trauma to the personality of the orphaned or abandoned child.

Nor can the non-justiciability of inaction be based on the observation that the activity contemplated by Article 9 of the Cooperation Protocol of 30 November 2017 would be destined to reflect and exhaust its direct effects on the side of relations between States and at the level of the system of international law alone, without giving rise, in the national system, to subjective rights or legitimate interests enforceable by means of a judicial action brought by individuals. In fact, the provision of Article 9 of the said Protocol does not only produce international obligations for States, but can be invoked to its own advantage by persons – spouses or authorised entities – who aspire to hold legal positions protected by the legal system, and bearers of qualified

interests in the positive and legitimate conclusion of procedures aimed at intercountry adoptions, without needing to be transposed in domestic legislation in order to give rise to subjective positions in the event of failure to comply or inertia detrimental to qualified interests. Finally, the political motivations related to the situation that has arisen between the Member States of the European Union, on the one hand, and the Republic of Belarus, on the other hand, following the resolution of the European Parliament of 17 September 2020 – which came to the decision not to recognise Alexander Lukashenko as the President of Belarus – do not alter the substance of a procedural fulfilment aimed at cooperation between CAI and the Belarusian counterpart, within the framework of the fundamental principles of The Hague Convention of 29 May 1993.

32. *Corte di Cassazione, order of 22 September 2023 No 27189* 245

In a dispute concerning the processing carried out by an Italian food delivery company, wholly owned by a company established in Spain, with reference to the personal data of its riders operating in Italy, the allegedly "cross-border" nature of the processing – as defined in Article 4 No 23 of Regulation (EU) 679/2016 of 27 April 2016 – does not, *per se*, exclude the competence of the Italian Data Protection Authority (*Garante per la protezione dei dati personali*) to sanction the infringement of that Regulation. In fact, although Article 56 of Regulation (EU) 679/2016 attributes to the supervisory authority of the Member State in which the main establishment is located the competence – as lead supervisory authority – over cross-border processing operations, that provision does not, however, preclude the application of Article 55 of the Regulation. Notably, Article 55 grounds the competence of the single national supervisory authorities in relation to data processing operations carried out on national territory by persons established there who, in respect of such processing operations, act in full and direct autonomy of decision, a circumstance which presupposes an assessment of the facts and which, therefore, must be ascertained at the stage of the action on the merits.

33. *Court of Cassation, order of 13 November 2023 No 31470* 889

Pursuant to Article 13(2) of The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in return proceedings the hearing of the child and the consideration of their views are a pre-condition for the lawfulness of the return decree pursuant to Article 315-*bis* of the Civil Code, Articles 3 and 6 of the Strasbourg Convention of 25 January 1996 and Article 11 of Regulation (EC) No 2201/2003 of 22 November 2003, not only from the point of view of formal compliance but also for the substantive purpose of giving dignity and legal relevance to the child's determinations and choices when expressed with discernment. In particular, the court is not obliged to carry out the hearing when the minors are at a tender age at the time of the institution of these proceedings and, therefore, certainly outside the hypothesis of reaching an age and maturity such as to justify respect for their opinion and the verification of their possible opposition to the transfer. In these proceedings, for the purposes of identifying the child's habitual residence – a vital concept to assess wrongful removal pursuant to Article 3 of The Hague Convention of 25 October 1980 and Regulation (EC) No 2201/

2003, applicable in cases confined to the territory of the European Union and thus also to the United Kingdom for proceedings brought before the end of the transitional period provided for by 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, *i.e.*, on 31st December 2020 – reference must be made to the social and family environment and to the circle of persons on whom the child is dependent and which shares, as the case law of the European Union has established. For the purposes of determining habitual residence, account must be taken of the fact that the parents, in the instant case, had, by mutual agreement, left the United Kingdom (where the father continues to own property) in view of a parental plan to move to Spain, which took the form of acts agreed and shared by both parents, carried out months before the alleged wrongful removal (cancellation of the lease for the family home, withdrawal of the children from the school they attended, and placement in storage all the furniture and furnishings, with a view to their future shipment and installation in a flat located in a non-EU State). This entailed, already at a time prior to the alleged wrongful removal, the severing of the link with the United Kingdom (where the children, with their parents, had lived until the ages of five and two, respectively), with the result that the children's retention in Italy, against the will of one of the parents, did not lead to their immediate return to the United Kingdom as their last place of habitual residence.

34. *Court of Cassation, order of 17 November 2023 No 31980* 930

In a case of opposition to an injunction issued by the Ministry of Agricultural Policy in the event of undue support under the common agricultural policy, the Ministry cannot be regarded as having no interest under Article 100 Code of Civil Procedure in recovering funds granted by the European Union. On the one hand, pursuant to Council Regulation (EC) No 1290/2005 of 21 June 2005, which places the Ministry under an obligation to recover such funds directly, the Ministry has the necessary authority, regardless of any imposition by the Commission, which is required only in the case of State aid. On the other hand, in the light of Recital 25 [*rectius*: 37] of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy, the Member States are subject to "partial charging... of the sums lost as a result of irregularities and not recovered within a reasonable period", so much so that "in certain cases of negligence by the Member State, it is also right to charge the full sum to the Member State concerned".

35. *Court of Cassation, order of 20 November 2023 No 32166* 933

In the matter of the international carriage of goods by road, for the purposes of the application of the unlimited liability regime provided pursuant to Article 29 of the Geneva Convention of 19 May 1956, the existence of the carrier's willful miscunduct, which arises where extraordinary and inexcusable recklessness and failure to exercise even the slightest care on the part of the carrier or its servants or agents is established, must be proven *in concreto*, since there is no legal presumption in that regard.

36. *Court of Cassation, judgment of 23 November 2023 No 32526* 899

Pursuant to Article 3 of The Hague Convention of 25 October 1980 on the Civil Aspects of Child Abduction, with regard to the requirement of custody of the child at the time of the wrongful removal, a Florida citizen, residing there, has legal standing to request the return to the United States of the child, born in the same State, in September 2021, from a relationship between the applicant and a British citizen (residing there at the time of the facts), given that in November 2022, when the applicant initiated the action for the return of the child, brought in Italy by her mother without the appellant's consent (and in violation of an order of the Florida court which had denied permission to transfer the child to Italy), on the grounds that he is the father according to a public deed (Parenting Plan) signed by him and the child's mother in January 2022 before a public notary in the State of Florida – a deed that amounted to an agreement between the parties and had not been incorporated in a court order, probably because it had been considered sufficient, under the law of the State of Florida, for the purposes of attributing paternity (so much so that the court proceedings aimed at establishing paternity were declared closed in December of that same year). The fact that the annotation of the appellant's name as father of the child, recognised at birth by the mother alone, was not entered on the child's birth certificate until later, in April 2023, does not exclude the father's legal standing, since the mother had consented to it as early as January 2022, and therefore prior to the filing of the petition for return, consenting to the child's acquisition of the father's and mother's double surnames.

As regards, on the other hand, the other requirement laid down by Article 3 of the 1980 The Hague Convention – *i.e.*, that of the effective exercise of the right of custody, deriving from the law, from a court decision or from the consent of the parties – even though the Parenting Plan was not sufficient on its own (since it emerged from it that, although parental responsibility was openly shared by the parents, they did not live together, so that the child lived with the mother and the father had a right of visitation), nevertheless the intention to give custody rights also to the father, precisely by that agreement, is indicated by the agreement, whereby it was established that a written covenant (or a petition to the court) would be necessary to take the child more than 50 miles away from her habitual place of residence.

It follows that, in order to ascertain that requirement, the Family Court, hearing the return proceedings, should have ascertained that the applicant had actually exercised his custody rights, prior to the mother's departure for Italy with the child. In this respect, the Family Court should not have relied exclusively on the measure adopted by the United States court in October 2022, which assigned the exclusive custody of the child to the father, but only after the alleged wrongful removal.

With regard to habitual residence, a concept functional to the objective pursued by the 1980 The Hague Convention of restoring the *status quo* in relation to the child, to be determined taking into account all the factual circumstances specific to each case, according to a principle of law affirmed by European case law and the Italian Court of Cassation, in case of the international abduction of a child who, at the time the application is made, is only a few months old and is being cared for by its mother in a Member State other than the one in which the father habitually resides and from which the mother has absconded with the child for the purposes of determining the child's habitual residence, it is necessary to ascertain – having regard to the

child's total dependence on the mother – the reasons for, the duration of and the actual residence of the latter in the territory of the first State, in particular whether that residence denotes substantial integration of the mother into the social environment, in which the child also participates, even though the other parent, with whom the child maintains regular contact, cannot be disregarded. Consequently, the Family Court erred when, in order to exclude that principle, it gave sole weight to the act by which, in January 2022, the parties had agreed to establish the habitual residence of the child, a U.S. citizen, in the USA, without taking into account that the mother, a British citizen, had been residing in the USA since 2017, with a permit/visa that expired in 2021, pending the immigration petition for a new residence permit, and that she, having received in June 2022, a notice of rejection of the aforementioned petition, was obliged to leave the USA by the end of July 2022, which constituted a supervening fact capable of justifying a revision of the January 2022 Parenting Plan.

Finally, with regard to the voluntary nature of the removal, the Family Court was equally wrong in failing to take into account that, in August 2022, the child's mother – who, in any event, had been able to leave for Italy with the child, since, according to the documents, the applicant did not yet appear on the child's birth certificate at the time – had stated that she had no intention of wrongfully removing or retaining the child, lacking any psychological element as to her intention to move ''definitively'' to Italy, at least until she was denied the possibility of returning to the USA with her daughter, such denial having been notified to her in March 2023. In any event, the Family Court failed to consider that the mother's return to the United States was precluded, by U.S. law, for a period of nine years: as it turned out, she had been denied a new immigration permit due to the bankruptcy of the business started by her own father and the fact that she had been unlawfully staying in the USA for eighteen months. Absent an examination of whether this fact constituted a *force majeure* case, there was no wrongful removal or retention.

In relation to possible grounds for refusal of return, Article 13(1)(b) of the 1980 The Hague Convention, the scope of which must be narrowly construed by the court, does not allow the court seised with an application for return to the State of residence of a child wrongfully retained abroad to assess inconveniences connected with the sought return which do not reach the degree of physical or psychological harm or otherwise place the child in an intolerable situation, since these, and only these, are the elements considered by the Convention to be relevant and obstructive to return. Furthermore, the judgment on the application for return does not affect the merits of the dispute concerning the child's ''best possible accommodation'', so that such an application may be rejected, in the best interests of the child, only in the presence of one of the obstacles set out in Articles 12, 13 and 20 of the Convention. In order to assess the existence of the conditions preventing the child's return to the State where the child is habitually resident, as provided in Article 13 of the 1980 The Hague Convention, it is not sufficient that the competent authorities of the child's State of habitual residence carry out their own (albeit in-depth) assessments. To the contrary, further enquiries (including by means of technical investigation) must be carried out by the Italian court, which, in its capacity as the court hearing the international child abduction proceedings, is not bound by the decisions of the court of the child's State of residence. Consequently, the Italian Family Court erred in merely referring to the decision of the U.S. court assigning exclusive custody of the child to the father, on the grounds that such decision had become final, without carefully assessing the existence of any impediments to the child's

return to the USA. For instance, the Court did not adequately consider that, as a result of the child's return to the United States, the child, who is only two years old (ten months old at the time of the alleged wrongful removal), would be separated for a prolonged period of time from her mother, as a result of the mother's preclusion from re-entering the USA for a period of ten years and that, since the child's birth, the mother has represented the child's prevailing (if not exclusive) point of reference. Moreover – with the child's return to the United States – the *status quo* existing before the child's departure from the USA cannot be guaranteed (given that, also while in the USA, the child lived with her mother and her mother's family, and all these relatives had to leave the USA). Accordingly, in light of the likelihood that the return would expose the child to physical or psychological harm, the Family Court should have carried out a more thorough investigation in order to rule out such a grave risk.

37. *Court of Cassation, order of 23 November 2023 No 32527* 916

The recognition of a Spanish judgment on the full adoption of a minor, who is the biological child of one of the partners of a same-sex couple formed by two Italian citizens married abroad, by the other partner, must be carried out in accordance with Articles 64 *et seq.* of Law 31 May 1995 No 218, referred to in Article 41(1) of the same Law, since the rules on international adoption, laid down in Law 4 May 1983 No 184, whose applicability is ensured by Article 41(2) for the cases governed by that Law, do not apply in the instant case. It follows that the Court of Appeal, and not the Family Court, has jurisdiction to rule on the recognition. Nor can the dispute be traced back to Articles 95 and 96 of Presidential Decree No 396 of 2000, given that the registration concerns a deed drawn up abroad, and not in Italy, in relation to which the conditions for the recognition of its effectiveness in the Italian system (as opposed to the formal dimension of the same or the scope of the powers and competences of the registrar) are relevant. The dispute arising from the refusal to register the foreign court order establishing the filiation relationship is therefore subject to the procedure laid down at Article 67 of Law No 218 of 1995, in accordance to which it falls within the jurisdiction of the Court of Appeal.

This judgment is not contrary to public policy within the meaning of Article 64(1)(g) of Law No 218 of 1995. On the one hand, on the subject of the recognition of foreign judgments, international public policy plays both a preclusive function, as a mechanism for safeguarding the internal harmony of the requested State's legal order against the entry of values incompatible with its guiding principles, and a positive function, aimed at promoting the dissemination of the values protected, in connection with those recognised at the international and supranational level, in the context of which the principle of the "best interest of the child" contributes to forming the public policy. In this way, such principle tends to promote the entry of new parental relationships, thus mitigating the connection to the traditional model of filiation. On the other hand, the child born abroad via surrogacy has a fundamental right to recognition, including legal recognition, of the bond created by virtue of the emotional relationship established and experienced with the intended parent, a need that is guaranteed through the institution of adoption in special cases, pursuant to Article 44(1)(d) Law 4 May 1983 No 184. Such a provision, at the current state of the development of the Italian legal system, is

the instrument that makes it possible, on the one hand, to establish the filiation status and, on the other, to legally recognise the child's *de facto* bond with the partner of the genetic parent who has participated in the procreative design by contributing to the child's care from its birth, all the more so where, even in the absence of a biological bond, the intended parent has nevertheless given consent to her partner's use of medically assisted procreation techniques, even though recourse to such techniques in such a context would not be permitted in accordance with Italian law.

38. *Court of Appeal of Catanzaro, order of 28 November 2023* 1259

Pursuant to Articles 41(1) and 65 of Law 31 May 1995 No 218, the recognition in Italy of a German decree of full adoption of a minor, the biological child of one of the spouses of a same-sex couple formed by two Italian citizens married abroad, does not conflict with public policy. The fact that the family nucleus is same-sex does not constitute an obstacle to the adoption, provided a pre-existing gestation agreement was not the basis for the filiation and that the foreign court has ascertained that the adoption is fully in the child's best interests. Therefore, such a decree shall be recorded in the register of birth certificates pursuant to Article 67(2) of Law No 218/1995.

39. *Court of Cassation, order of 4 December 2023 No 33680* 934

The refinancing of a public intervention aimed at providing a supplementary monetary indemnity to economic operators who have suffered losses compensable under provisions of domestic law qualifies as a substantial (as opposed to a merely formal or administrative) modification of the public intervention having the same objective and whose compatibility with European Union law on State aid was originally assessed by the European Commission (Articles 107, 108 TFEU). Therefore, since the refinancing is to be treated as new aid, prior notification to the European Commission is necessary with the consequent obligation on the Member State to refrain from implementing the internal rule before a final decision of the Commission itself. It is for the national court to interpret the notion of State aid from the sole point of view of the factual verification of the conditions for exemption from the State aid rules provided, in the instant case, in Regulation (EU) No 1408/2013 and Regulation (EU) No 702/2014.

40. *Court of Cassation, order of 12 December 2023 No 34776* 922

In an action for compensation of damage suffered by a passenger following the loss of his baggage during a multi-leg flight from Aktu, Kazakhstan, to Palermo, with stopovers in Moscow and Rome, brought against a Russian airline, which did not carry out the last leg of the flight, neither the Montreal Convention of 28 May 1999, to which the Russian Federation is not a contracting party, nor Regulation (EC) No 261/2004 of 11 February 2004, since the Russian Federation is not a Member State of the European Union, are applicable. Article 22 of the Warsaw Convention of 12 October 1929 is applicable, instead.

41. *Court of Cassation (plenary session), order of 13 December 2023 No 34981* 923

Pursuant to Article 12(1) of Legislative Decree No 149/2012 of 14 August 2012 and Directive 2010/24/EU, Italian courts have jurisdiction over an objection against the enforcement of a claim for the recovery of a tax debt claimed by another Member State of the European Union in which the debtor does not challenge the claim or its title or even raise a question of time-limits, but merely challenges the applicability of that domestic legislation.
Pursuant to Articles 12(1) of Legislative Decree No 149/2012, 18(2) of Directive 2010/24/EU, 24 and 3 of the Italian Constitution and 22(2) of the Strasbourg Convention of 25 January 1988 on Mutual Assistance in Tax Matters, concluded between the Member States of the Council of Europe and the Member States of the OECD, the lapse of a five-year period between the date on which the tax claim became due in the requesting Member State and the date on which the latter submits any request for cooperation – even if only subsequently followed by the necessary documentary integration including, possibly, even of the Uniform Instrument Permitting Enforcement (UIPE) – merely removes the obligation of the requested State to provide that assistance, but does not prevent it from deciding, in its own discretion, to assist, in any event, the foreign State, without that choice being open to challenge by the debtor in order to prevent recovery of the claim at issue. In fact, the five-year time-limit in question is not time-barred, except in the case of a tax claim lasting more than ten years, in which case such assistance would, on the other hand, be contrary to generally accepted principles of taxation and thus to public policy.

42. *Court of Cassation, order of 13 December 2023 No 34992* 1264

For the purposes of conferring Italian citizenship by marriage, pursuant to Article 5 of Law 5 February 1992 No 91, a previous judgment rendered on the basis of a plea-bargaining agreement, in accordance with Article 445 of the Code of Criminal Procedure, against the applicant, a foreign national married to an Italian citizen, may not produce the preclusive effect that Article 6(1)(b) of Law No 91/1992 attaches to a conviction for a non-culpable offence punishable by a maximum sentence of no less than three years' imprisonment. In the first place, this conclusion is based on the literal interpretation of the law, since the aforementioned Article 6(1)(b) – which is a provision subject to a narrow interpretation, since it sets exceptions and limitations – makes express reference to the conviction, a definition within which the plea-bargaining sentence cannot fall. In fact, Article 445 of the Code of Criminal Procedure, although equating a judgment based on a plea-bargaining agreement to a conviction within the scope of criminal jurisdiction, excludes the possibility of it producing effects in civil and administrative proceedings. Secondly, this conclusion is based on a logical systematic criterion and on the rationale of the provision, which can be identified in the negative assessment of the civil and moral character that the legislature associates with the applicant's criminal conviction, given that this 'negative assessment' presumes the affirmation of responsibility for the offence, which is precisely what is absent in the judgment rendered on the basis of a plea-bargaining agreement.

43. *Court of Cassation, judgment of 19 December 2023 No 35437* 1267

The Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption does not apply to the recognition of a U.S. judgment on the adoption of a child who is a U.S. citizen in favour of two Italian citizens naturalised in the United States, since the one at hand is a foreign adoption and not an intercountry adoption. It follows that Article 41(1) of Law 31 May 1995 No 218 applies, instead. Furthermore, the instant case does not entail a case of mandatory application of Law 4 May 1983 No 184, since the rationale behind the Hague Convention and its implementing provisions, as set forth in Articles 29 *et seq.* of the aforementioned Law, is absent. In fact, the recognition of the instant foreign adoption does not entail the uprooting of the minor from their country of origin and cannot be considered akin to adoptions of convenience obtained in a foreign Sate with the purpose of circumventing the stricter domestic regulations. Such a judgment may be recognised in Italy pursuant to Articles 41(1) and 65 of Law No 218/1995, since the lack of a conjugal bond between the adoptive parents does not translate into a manifest breach of public policy, which would prevent its automatic recognition. This conclusion stands also irrespective of the concrete assessment of whether the foreign court order fully corresponds to the child's best interests.

44. *Court of Cassation (plenary session), judgment of 8 January 2024 No 613* 1273

The plea of inadmissibility of the Cassation appeal for lack of clarity and conciseness must be dismissed where it is not possible to detect, in the development of the court's reasoning, a deficit of those characteristics such as to determine the violation of the content-form requirements prescribed by Article 366 of the Code of Civil Procedure. Such requirements are satisfied only if the intangibility of the complaints against the contested decision is irreparably affected, since these requirements must be read in a manner compatible with the fundamental right of access to justice in accordance with Article 6 ECHR.

When ruling on a question of jurisdiction pursuant to Article 382(1) of the Code of Civil Procedure, the Court of Cassation identifies – in the light of the relief sought, to be identified above all on the basis of the grounds for the action and, therefore, on the basis of the facts alleged by the plaintiff – the court with jurisdiction in relation to the specific dispute, substituting, where it finds the alleged defect, its ruling for the decision that has been set aside and proceeding to a direct application of the procedural law, also by examining the documents in the case.

The application of Regulation (EU) No 1215/2012 of 12 December 2012 in place of the Brussels Convention of 27 September 1968, by virtue of the reference in Article 3(2) first part of Law 31 May 1995 No 218, is the result of the most recent orientation of the Court of Cassation and enhances both the dynamic scope of Article 68 of the Regulation and the characteristics of the Italian rule of reference, aimed at implementing a process of standardisation of Community [*rectius*: EU] law also for cross-border disputes connected with third States. The reference made to the 1968 Brussels Convention in the first part of Article 3(2) of Law No 218/1995 concerns all the matters included in the scope of application of the Convention and, now, of Regulation (EU) No 1215/2012. It follows that the reference to 'excluded matters' in

the second part of the same paragraph must be understood as referring to those matters listed in Articles 1 of the Convention and of the Regulation, respectively. Therefore, the reference does not include the action under warranty brought on the basis of a contract for the provision of tourist services, which is unquestionably a case in 'civil and commercial matters'. It follows that Italian courts do not have jurisdiction in relation to a warranty action brought, on the basis of a contract for the provision of tourist services, by a tour operator established in Italy against a tour operator established in Hong Kong – in which the plaintiff seeks to be indemnified from the possible consequences of an action for damages brought in Italy against it by a tourist in relation to an accident which occurred in Laos in the context of a transport operation forming part of the services purchased by the Asian company and entrusted to it – because Article 8(2) of Regulation (EU) No 1215/2012 – to which reference is made by Article 3(2), first part of Law No 218/1995, according to which, in the event of a call for indemnity or another third-party claim, the said third party can be brought before the court where the main claim has been filed – does not apply when an action on a warranty or guarantee is brought independently. The distinction between a proper or improper guarantee and, therefore, the alleged classification as a 'recourse' within the meaning of Article 43 of Legislative Decree of 23 May 2011 No 79 (the so-called 'tourism code'), in the text preceding the 2018 amendment applicable *ratione temporis*, is irrelevant for jurisdiction purposes. Furthermore, a question of unconstitutionality may not arise on the grounds of breach of Article 25 of the Italian Constitution, with reference to the different establishment of jurisdiction for, respectively, the guarantee call and the autonomous guarantee action, given that the discretion left to the court of Article 269(2) of the Code of Civil Procedure in assessing the admissibility of the former does not undermine the principle of the natural judge pre-established by law and, on the contrary, it is aimed at preventing said call from having the sole purpose of removing the third party from its natural judge.

45. *Lecco Tribunal, judgment of 9 January 2024* 253

Pursuant to Article 4 of Regulation (EU) No 650/2012 of 4 July 2012, Italian courts do not have jurisdiction over an action seeking a declaration of invalidity of testamentary dispositions adversely affecting a person's reserved share and an order for payment of legacies brought by the children and grandchildren of the testator – an Italian citizen with assets located in Italy and Portugal – against his surviving wife, his universal heir. In fact, the testator's habitual residence at the time of his death – understood as the place where the permanent and habitual center of a person's interests and relationships is located with a stable character, on the basis of a substantive and not merely formal and registry-based assessment of the relevant circumstances – was located in Portugal, *i.e.*, in the country in which he had been a registered resident for more than three years prior to his death, had actually lived with his wife, had transferred a large part of his financial assets, had purchased a property to reside in, received his pension, paid his taxes, had chosen as his place of health treatment and had asked for his ashes to be kept. The fact that he periodically returned to Italy, was an Italian citizen and had relatives and friends in Italy does not prevail in the face of such clear factual indications. On the other hand, in light of their subsidiary character, the grounds of jurisdiction provided at Article 10 of Regulation 650/2012 are applicable only

where, at the time of death, the deceased was not habitually resident in a Member State.

46. *Court of Cassation, judgment of 6 February 2024 No 3448* 1286

In relation to a claim for damages for loss of parental relationship suffered as a result of an unlawful act which took place in Albania, whether compensation is due and its amount must be determined on the basis of the criteria and parameters for the implementation of equitable compensation under Albanian law, to which Article 62 of Law 31 May 1995 No 218 (applicable *ratione temporis*) refers. In fact, there are no doubts as to the compatibility of the Albanian legislation – acquired by the court *ex officio* and interpreted in accordance with the provisions of Articles 14 and 15 of Law No 218/1995 – with international public policy, which, in any case, cannot be considered violated on the mere grounds that compensation, under Albanian law, is not awarded to the same extent as would it would be pursuant to Italian law. Therefore, pursuant to and for the purposes of Article 360(1)(3) of the Code of Civil Procedure, the judgment on the merits in which, while recognising the applicability of Albanian law to the case, a parameter of Italian law was in fact applied when quantifying non-pecuniary damage, is flawed by a breach and/or false application of Articles 14 and 62 of Law No 218/1995.

47. *Court of Cassation (plenary session), order of 3 April 2024 No 8800* 1296

Pursuant to Article 111(8) of the Italian Constitution, an appeal may, in principle, be filed in Cassation against a judgment of the 'Consiglio di Stato' (Council of State, the highest Italian court for administrative matters) that has failed to submit a reference for a preliminary ruling to the Court of Justice of the European Union on a question of validity of a EU act. In fact, it is within the exclusive jurisdiction of the Court of Justice to decide on the validity of acts of EU secondary law. On the other hand, an appeal on a point of law against a partial judgment of the Consiglio di Stato which, in interpreting a EU directive, dismissed the appeal on the merits and made a reference to the Court of Justice for a preliminary ruling solely for the purpose of determining costs is inadmissible, since the complaint alleging excess of jurisdiction on the part of the national court in the event of breach of the obligation, under Article 267 TFEU, to refer to the Court of Justice questions concerning the interpretation of EU provisions does not constitute a 'ground of jurisdiction' within the meaning of Article 111(8) of the Constitution: a) either according to a static interpretation of jurisdiction – understood as an allocation of adjudicating powers between judicial authorities – because the rules on the allocation of jurisdiction, which are typical and exclusive of the Italian national system, do not include the Court of Justice among the addressees of such an allocation; b) or according to a dynamic interpretation of jurisdiction, to be understood as a means of settling a dispute, through the application of the legal provision, because the Court of Justice, in the exercise of its power of interpretation under Article 267 TFEU, does not act as the judge of the specific case, but rather as the interpreter of provisions considered relevant for the purposes of the decision by the national court, which retains exclusive jurisdiction. The non-reviewability by the Court of Cassation of the failure by the Consiglio di Stato to make a preliminary reference does not, in itself,

constitute a violation of the principle of equivalence (since the limited challenge to the decisions of the Consiglio di Stato pursuant to Article 111(8) of the Constitution is independent of whether those appeals are based on provisions of national law or on provisions of European Union law) and of the right to an effective judicial remedy (Article 47 of the Charter of Fundamental Rights), since this could, if anything, be exhausted only in the context of the proceedings before that Court and, therefore, be remedied elsewhere (for example, in the individual's ability to rely on the Member State's liability for damages).

48. *Court of Cassation, judgment of 9 April 2024 No 9429* 1308

In an action for annulment of a partial arbitration award and a final arbitration award, rendered in Italy between an American company, plaintiff, and an Italian businesswoman, defendant, at the end of a dispute concerning the infringement of intellectual property rights in the field of plant varieties, for the purposes of assessing, pursuant to Article 829(3) of the Italian Code of Civil Procedure, whether the above-mentioned awards are contrary to public policy, the judgment of the Court of Justice of the European Union, rendered in a different case, on a reference for a preliminary ruling on the interpretation of the same provisions of Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, which are at issue in the above-mentioned dispute, is relevant. It follows that a contractual clause – which confers on the holder of intellectual property rights on patented cultivars the power to identify the persons who alone will be entitled to distribute the fruit obtained by the producer previously authorised to use the varietal constituents of the protected variety from which that fruit was produced, where the latter are unusable as propagating material – is contrary to public policy, on the ground that it infringes the principles of the protection of competition and the safeguarding of agricultural production. In fact, only an error on the law entailing the infringement of a principle which is an expression of an essential value of the legal system is relevant in such a context.

49. *Court of Cassation, order of 15 May 2024 No 13368* 1330

Pursuant to Article 3 of Regulation (EU) No 2015/848 of 20 May 2015, Italian courts have jurisdiction over a bankruptcy petition brought against an Italian company which resolved to transfer its registered office to Bulgaria in the three months preceding the date on which the bankruptcy petition was lodged, where the relevant resolution to transfer the registered office was entered in the Bulgarian commercial register before that date and in the Italian commercial register after that date. On the one hand, since the procedure intended to make the transfer of the registered office abroad known to third parties has not yet been completed, the presumption laid down in Article 3(2) of Regulation No 2015/848, which, until proof to the contrary, identifies the centre of the debtor's main interests ("COMI") with the place where the registered office is situated, does not apply. On the other hand, for the purposes of identifying jurisdiction in the area excluded from the rebuttable presumption of coincidence of the COMI with the debtor's registered office, the debtor's burden of proof lies not so much and not only in the actuality of the transfer from the point of view of the internal organisational

measures taken, as in the habitual character and recognisability by third parties of the place where the debtor manages their interests.

50. *Court of Cassation, judgment of 22 May 2024 No 14194* 1336

As concerns the application for Italian citizenship by descent (*iure sanguinis*) submitted by a woman born in Brazil as the descendant of an Italian citizen who emigrated to Brazil in the second half of the 19th century, pursuant to Articles 33 and 35 of Law 31 May 1995 No 218 the national law of the latter or, if more favourable, that of the State of which one of her parents was a citizen at the time of her birth, applies for the purposes of ascertaining the filiation status, with the result that the (disputed) question of ascertaining the filiation relationship between the applicant's great-great-grandfather (an Italian citizen who emigrated to Brazil) and his son (the applicant's great-grandfather, born in Brazil), is governed by Italian law, which favours the recognition of filiation, and not by Brazilian law (applicable according to the Court of Appeal, which had rejected the appeal against the civil registrar's negative decision).
With regard to the question of status, Article 236 of the Civil Code provides that filiation is proved by the birth certificate recorded in the civil status registers or, in the absence of such a title, by the continuous possession of the filiation status, resulting from a series of facts – of which Article 237(2) of the Civil Code indicates the indispensable ones – that, considered together, serve to prove the filiation and kinship relations between a person and the family to which the person claims to belong. It follows that, in the case of a child born out of wedlock, whose birth certificate – devoid of information on the parents, absent a contextual recognition of the child – documents only the birth and not the filiation status, what the applicant has put on record (in particular, what the Brazilian registrar documented in the subsequent marriage certificate of the great-great-grandparents concerning the birth of the appellant's great-grandfather, and, subsequently, in the latter's death certificate, where it was attested that he was, in fact, the legitimate son of the said great-great-grandparents), should have been specifically considered by the Court of Appeal as theoretically capable of proving continuous possession of the filiation status.

51. *Court of Cassation, judgment of 22 May 2024 No 14342* 1339

For the purposes of Articles 4 *et seq.* of Regulation (EC) No 1393/2007 of 13 November 2007, applicable *ratione temporis* to the instant case, service of an appeal in Cassation on a natural person residing in the United Kingdom is to be regarded as completed if the standard form in Annex I, provided for in Article 10 of Regulation No1393/2007 to attest that service has been effected, has been filled out by the receiving agency and bears the stamp of that agency, stating that the judicial document was served in person. This is because the information given at the bottom of the form concerning the place, date of completion, and the 'Signature and/or stamp', respectively, of the official 'and/or' of the office of the receiving agency that effected service must be regarded as sufficient evidence of the service. Pursuant to Article 8 of Regulation No 1393/2007, a refusal by an addressee residing in the United Kingdom to receive the document drafted in Italian on the

grounds that it was not accompanied by a translation into English is unjustified where, irrespective of the possession of Italian nationality, there is evidence in the file – the text of a certified electronic communication in which the person writes in Italian – that the addressee understands Italian. On the one hand, in fact, for the addressee of the document to be able to effectively exercise their right of defence, it is essential that the document in question be drafted in a language understood by the person concerned. On the other hand, the applicant must not suffer the negative consequences of a purely dilatory and manifestly abusive refusal to receive an untranslated document where it can be proven that the addressee of that document understands the language in which it was written. It is therefore up to the court before which the dispute is pending in the Member State of transmission to preserve the best interests of each of the parties, in particular by examining all the convincing factual and evidentiary elements that demonstrate the language knowledge of the addressee. Pursuant to Article 9(2) of Regulation No 1393/2007, where a document must be served within a specified period, the date to be taken into account for service is the date fixed by the law of the transmitting State. The rationale of this rule is to guarantee the effectiveness of service with regard to the serving party, who is thus relieved of the risk of any malfunctioning on the part of the authorities entrusted with its execution. Cross-border service, like domestic service, also conforms to the principle, established in the Italian procedural system, of the subjective splitting of the effects of service, according to which the serving party does not have to bear the consequences of the delay of the postal service or the negligence of the foreign official. It follows that, with reference to a document renewing the appeal to be served on a necessary joinder party residing in the United Kingdom (then a Member State of the European Union), served both by international registered letter with return receipt and pursuant to Article 4 of Regulation No 1393/2007, where both the return postcard signed by the addressee and the order for renewal of service through the central authority (which occurred with within the prescribed time limit but the central authority did not return the standard form in Annex I) are in the file, the Italian court shall relate the timeliness of the service to the moment service was perfected for the serving party, to be identified in the transmission to the receiving agency of the document to be served. The serving party shall, on the other hand, take action and inquire with the central authority about the reasons why the certificate of service was not returned.

52. *Court of Cassation, interlocutory order of 5 June 2024 No 15772* 1346

The service of a judicial document on a person residing in the Principality of Monaco, a country that has acceded to The Hague Convention of 15 November 1965 on the Service Abroad of Judicial Documents designating the Directorate of Judicial Services as the central authority, is non-existent (and not null and void). It follows that its absence cannot be remedied pursuant to Article 156(3) of the Code of Civil Procedure, if, although there is evidence in the file of the transmission of the application to the Directorate of Judicial Services, the form provided for in Article 6 of that Convention – which constitutes the certificate of the authority of the State addressed acknowledging service and indicating the form, place and date of service and the person to whom the document was delivered – was not submitted. In fact, such form performs the same function as the service report provided for in Article 148

of the Code of Civil Procedure, making it full proof, up to the point of a false claim, of the completion of the service procedure. Its absence not only prevents the final outcome of service from being known, but it even precludes from knowing whether service was at least attempted by the central authority of the Principality of Monaco. Therefore, in such a framework the form is to be regarded as omitted.

*EU CASE LAW**

Access to justice: 3, 8, 39.
Companies: 10.
Competition: 2.
Consumer protection: 3, 13, 30.
Contracts: 9, 12.
Co-operation in criminal matters: 17.
EC Regulation No 44/2001: 33, 42.
EC Regulation No 2201/2003: 29, 38, 40.
EC Regulation No 805/2004: 18.
EC Regulation No 864/2007: 32, 49.
EC Regulation No 593/2008: 44, 45, 49.
EU Regulation No 650/2012: 20, 22, 41, 47.
EU Regulation No 1215/2012: 11, 21, 25, 43, 45, 46, 48, 50, 55.
EU Regulation No 655/2014: 24.
EU citizenship: 26, 35, 36.
EU law: 1, 4, 5, 15, 16, 19, 24, 37, 39, 41.
Freedom of movement of workers: 14.
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Right of residence and establishment: 56.
Social security: 6, 10.
Treaties and general international rules: 23.

1. *Court of Justice, 18 January 2022 case C-261/20, Thelen Technopark Berlin GmbH v. MN* 282

EU law must be interpreted as meaning that a national court, when hearing a dispute which is exclusively between private individuals, is not required, solely on the basis of EU law, to disapply a piece of national legislation which,

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

in breach of Article 15(1), (2)(g) and (3) of Directive 2006/123/EC of 12 December 2006 on services in the internal market, sets minimum rates for fees for services provided by architects and engineers and which renders invalid agreements derogating from that legislation, without prejudice, however, to, first, the possibility for that court to disapply that legislation on the basis of domestic law in the context of such a dispute, and, second, the right of a party which has been harmed as a result of national law not being in conformity with EU law to claim compensation for the ensuing loss or damage sustained by that party.

2. *Court of Justice, 22 March 2022 case C-151/20, Bundeswettbewerbsbehörde v. Nordzucker AG et al.* 281

Article 50 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding an undertaking from having proceedings brought against it by the competition authority of a Member State and, as the case may be, fined for an infringement of Article 101 TFEU and the corresponding provisions of the national competition law, on the basis of conduct which has had an anticompetitive object or effect in the territory of that Member State, even though that conduct has already been referred to by a competition authority of another Member State, in a final decision adopted by that authority in respect of that undertaking following infringement proceedings under Article 101 TFEU and the corresponding provisions of the competition law of that other Member State, provided that that decision is not based on a finding of an anticompetitive object or effect in the territory of the first Member State.
Article 50 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that proceedings for the enforcement of competition law, in which, owing to the participation of the party concerned in the national leniency programme, only a declaration of the infringement of that law can be made, are liable to be covered by the *non bis in idem* principle *(see also paras. 44-48)*.

3. *Court of Justice, 29 March 2022 case C-132/20, BN et al. v. Getin Noble Bank S.A., with Rzecznik Praw Obywatelskich intervening* 286

The second subparagraph of Article 19(1) TEU, Article 47 of the Charter of Fundamental Rights of the European Union and Article 7(1) and (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the circumstance that a judge's initial appointment in a Member State to such a position or subsequent appointment to a higher court resulted from a decision adopted by a body of an undemocratic regime in place in that Member State prior to its accession to the European Union, including where that judge's appointments to courts after the regime ended were based, *inter alia*, on the length of service acquired by that judge when that regime was in place or where the judge took a judicial oath only when first appointed to judicial office by a body of that regime, is not capable *per se* of giving rise to legitimate and serious doubts, in the minds of individuals, as to the independence and impartiality of that judge or, consequently, of calling into question the status as an independent and

impartial tribunal previously established by law of a court formation which includes that judge.
The second paragraph of Article 19(1) TEU, Article 47 of the Charter of Fundamental Rights and Article 7(1) and (2) of Directive 93/13 must be interpreted as not precluding the formation of a court of a Member State which includes a judge whose initial appointment as a judge or subsequent appointment to a higher court was made either following that judge's selection as a candidate for a judicial position by a body composed on the basis of legislative provisions subsequently declared unconstitutional by the constitutional court of that Member State or following that judge's selection as a candidate for a judicial position by a body properly composed but following a procedure that was neither transparent nor public nor open to challenge before the courts, provided that such irregularities are not of such a kind and of such gravity as to create a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process and thus give rise to serious and legitimate doubts, in the minds of individuals, as to the independence and impartiality of the judge concerned, from being considered to be an independent and impartial tribunal previously established by law.

4. *Court of Justice, 28 April 2022 case C-319/20, Meta Platforms Ireland Limited v. Bundesverband der Verbraucherzen-tralen und Verbraucherverbände – Verbraucherzentrale Bundesverband e. V.* 286

Article 80(2) of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) must be interpreted as not precluding national legislation which allows a consumer protection association to bring legal proceedings, in the absence of a mandate conferred on it for that purpose and independently of the infringement of specific rights of the data subjects, against the person allegedly responsible for an infringement of the laws protecting personal data, on the basis of the infringement of the prohibition of unfair commercial practices, a breach of a consumer protection law or the prohibition of the use of invalid general terms and conditions, where the data processing concerned is liable to affect the rights that identified or identifiable natural persons derive from that Regulation.

5. *Court of Justice, 5 May 2022 case C-410/20, Banco Santander SA v. J.A.C. et al.* 284

The combined provisions of Article 34(1)(a), Article 53(1) and (3), and Article 60(2), first subparagraph, points (b) and (c) of Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, must be interpreted as precluding, following a total write-down of shares in the capital stock of a credit institution or investment firm subject to a resolution procedure, persons having acquired shares, in the context of a public offer to subscribe issued by that institution or firm, before the opening of such a resolution procedure, from bringing, against that institution or firm or its successor entity, an action for

damages on the basis of the information provided in the prospectus, as provided for in Article 6 of Directive 2003/71/EC 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, or an action for a declaration of nullity of the purchase contract for such shares, which, given its retroactive effect, results in the restitution of the value of said shares, plus interest from the date of conclusion of the contract.

6. *Court of Justice, 19 May 2022 case C-33/21, Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL) and Istituto nazionale della previdenza sociale (INPS) v. Ryanair DAC* 285

Article 14(2)(a)(i) of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 631/2004 of 31 March 2004, Article 13(1)(a) and Article 87(8) of Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of 16 September 2009, and subsequently by Regulation (EU) No 465/2012 of 22 May 2012, and Article 11(5) of Regulation No 883/2004, as amended by Regulation No 465/2012 must be interpreted as meaning that the social security legislation applicable to the flight and cabin crew of an airline, established in a Member State, which crew is not covered by E101 certificates and which work for 45 minutes per day in premises intended to be used by staff, known as the 'crew room', which that airline has in the territory of another Member State in which that flight and cabin crew reside and, which for the remaining working time, are on board that airline's aircraft is the legislation of the latter Member State.

7. *Court of Justice, 28 June 2022 case C-278/20, European Commission v. Kingdom of Spain* 284

By adopting and maintaining in force Article 32(3) to (6) and the second subparagraph of Article 34(1) of Ley 40/2015 de Régimen Jurídico del Sector Público (Law 40/2015 on the legal system governing the public sector) of 1 October 2015 and the third subparagraph of Article 67(1) of Ley 39/2015 del Procedimiento Administrativo Común de las Administraciones Públicas (Law 39/2015 on the common administrative procedure of the public authorities) of 1 October 2015, the Kingdom of Spain has failed to fulfil its obligations under the principle of effectiveness, in that those provisions make compensation for the loss or harm caused to individuals by the Spanish legislature as a result of an infringement of EU law subject to: the condition that there is a decision of the Court of Justice declaring that the statutory provision applied is incompatible with EU law; the condition that the individual harmed has obtained, before any court, a final decision dismissing an action brought against the administrative act which caused the loss or harm, without providing for an exception for cases in which the loss or harm stems directly from an act or omission on the part of the legislature, contrary to EU law, without there being any administrative act open to challenge; a limitation period of

one year from the publication in the Official Journal of the European Union of the decision of the Court of Justice declaring that the statutory provision applied is incompatible with EU law, without covering cases in which such a decision does not exist, and the condition that compensation may be awarded only in respect of loss or harm which occurred within five years preceding the date of that publication, unless otherwise provided for in that decision.

8. *Court of Justice, 7 July 2022 case C-261/21, F. Hoffmann-La Roche Ltd et al. v. Autorità garante della concorrenza e del mercato, with Società Oftalmologica Italiana (SOI) – Associazione Medici Oculisti Italiani (AMOI) et al. Intervening* 287

Article 4(3) and Article 19(1) TEU and Article 267 TFEU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding provisions of procedural law of a Member State which, while observing the principle of equivalence, have the effect that, where the supreme court of the administrative system of that Member State gives a decision settling a dispute in which it had made a request to the Court of Justice for a preliminary ruling under Article 267 TFEU, the parties to that dispute may not seek a revision of that decision of the national court based on the contention that the latter disregarded the interpretation of EU law provided by the Court of Justice in response to that request.

9. *Court of Justice, 6 October 2022 case C-436/21, flightright GmbH v. American Airlines Inc* 625

Article 2(h) of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as meaning that the concept of a 'connecting flight' covers a transport operation made up of a number of flights operated by separate operating air carriers which do not have a specific legal relationship, where those flights have been combined by a travel agency which has charged an overall price and issued a single ticket for that operation, with the result that a passenger departing from an airport located in the territory of a Member State who suffers a long delay to the arrival at the destination of the last flight may rely on the right to compensation pursuant to Article 7 of that Regulation.

10. *Court of Justice, 18 October 2022 case C-677/20, Industriegewerkschaft Metall (IG Metall), ver.di – Vereinte Dienstleistungsgewerkschaft v. SAP SE, SE-Betriebsrat der SAP SE, with Konzernbetriebsrat der SAP SE et al. Intervening* 625

Article 4(4) of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees must be interpreted as meaning that: the agreement on arrangements for the involvement of employees applicable to a European company (SE) established by means of transformation, as referred to in that provision, must provide for a separate ballot with a view to electing, as employees' representatives within the SE's Supervisory Board, a certain proportion of

candidates nominated by the trade unions, where the applicable national law requires such a separate ballot as regards the composition of the Supervisory Board of the company to be transformed into an SE, and it is necessary to ensure that, in the context of that ballot, the employees of that SE, of its subsidiaries and of its establishments are treated equally and that the trade unions represented therein are treated equally.

11. *Court of Justice, 20 October 2022 case C-604/20, ROI Land Investments Ltd v. FD* 275

Article 21(1)(b)(i) and (2) 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 an employee may bring proceedings before the courts for the last place where or from where he or she habitually carried out his or her work, against a person, whether or not domiciled in a Member State, with whom he or she does not have a formal employment contract but who is, under a letter of comfort which was a prerequisite for conclusion of the contract of employment with a third party, directly liable to that employee for performance of the obligations of that third party, provided there is a hierarchical relationship between that person and the employee.
Article 6(1) of Regulation No 1215/2012 must be interpreted as meaning that the reservation in respect of the application of Article 21(2) of that Regulation precludes a court of a Member State from relying on the rules of jurisdiction of that State where the conditions for Article 21(2) of that Regulation to apply are satisfied, even where those rules would be more favourable to the employee. In contrast, where the conditions for either Article 21(2) or any other of the provisions set out in Article 6(1) of that Regulation to apply are not satisfied, under Article 6(1) a court of a Member State is at liberty to apply those rules in order to determine jurisdiction.
Article 17(1) of Regulation No 1215/2012 and Article 6(1) of Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations ('Rome I') must be interpreted as meaning that the concept of 'trade or profession' includes not only self-employed activities but also paid employment. Furthermore, an agreement concluded between the employee and a third party other than the employer referred to in the contract of employment, under which that third party is directly liable to the employee for the obligations of that employer under the contract of employment, does not, for the purposes of applying those provisions, constitute a contract concluded outside and independently of any trade or professional activity or purpose *(see also paras. 25-27, 30-36, 38-48, 53-58).*

12. *Court of Justice, 20 October 2022 case C-111/21, BT v. Laudamotion GmbH* 626

Article 17(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that a psychological injury caused to a passenger by an 'accident', within the meaning of that

provision, which is not linked to 'bodily injury', within the meaning of that provision, must be compensated in the same way as such a bodily injury, provided that the aggrieved passenger demonstrates the existence of an adverse effect on his or her psychological integrity of such gravity or intensity that it affects his or her general state of health and that it cannot be resolved without medical treatment.

13. *Court of Justice, 27 October 2022 case C-485/21, 'S.V.' OOD v. E. Ts. D.* 624

Article 1(1) and Article 2(b) and (c) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that: a natural person who owns an apartment in a building in co-ownership must be regarded as a 'consumer', within the meaning of that Directive, where that person enters into a contract with a managing agent for the purpose of managing and maintaining the communal areas of that building, provided that he or she does not use that apartment for purposes which fall exclusively within his or her trade, business or profession. The fact that some of the services provided by that managing agent under that contract are the result of the need to comply with specific requirements relating to safety and town and country planning laid down by national law is not such as to remove that contract from the scope of that Directive, where a contract relating to the management and maintenance of the communal areas of a building in co-ownership is entered into between the managing agent and the general meeting of the property owners or owners' association of that building, a natural person who owns an apartment in that building may be regarded as a 'consumer', within the meaning of Directive 93/13, in so far as that person may be classified as a 'party' to that contract and does not use that apartment exclusively for purposes which fall within his or her trade, business or profession.

14. *Court of Justice, 8 December 2022 case C-731/21, GV v. Caisse nationale d'assurance pension* 623

Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union, as amended by Regulation (EU) 2016/589 of 13 April 2016, must be interpreted as precluding legislation of a host Member State which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another Member State, of a survivor's pension due on account of the exercise, in the first Member State, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.

15. *Court of Justice, 15 December 2022 case C-577/21, LM, NO v. HUK-COBURG-Allgemeine Versicherung AG* 622

The fourth paragraph of Article 3 of Directive 2009/103/EC of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability

must be interpreted as not precluding national legislation which makes compensation, by an insurer against civil liability in respect of the use of motor vehicles, for non-material damage suffered by close family members of victims of road traffic accidents subject to the condition that that harm entailed pathological damage to the health of such close family members.

16. *Court of Justice, 12 January 2023 case C-132/21, BE v. Nemzeti Adatvédelmi és Információszabadság Hatóság, Budapesti Elektromos Muvek Zrt intervening* ... 960

Article 77(1), Article 78(1) and Article 79(1) of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as permitting the remedies provided for in Article 77(1) and Article 78(1) of that Regulation, on the one hand, and Article 79(1) thereof, on the other, to be exercised concurrently with and independently of each other. It is for the Member States, in accordance with the principle of procedural autonomy, to lay down detailed rules as regards the relationship between those remedies in order to ensure the effective protection of the rights guaranteed by that Regulation and the consistent and homogeneous application of its provisions, as well as the right to an effective remedy before a court or tribunal as referred to in Article 47 of the Charter of Fundamental Rights *(see also paras. 45-57)*.

17. *Court of Justice, 31 January 2023 case C-158/21, Criminal proceedings against Puig Gordi et al.* 951

Article 1(1) and (2) and Article 6(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the executing judicial authority may not verify whether a European arrest warrant has been issued by a judicial authority which had jurisdiction for that purpose and refuse to execute that European arrest warrant where it considers that that is not the case.

Article 1(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the executing judicial authority called upon to decide on the surrender of a person for whom a European arrest warrant has been issued may not refuse to execute that warrant on the ground that that person is at risk, following his or her surrender to the issuing Member State, of being tried by a court which lacks jurisdiction for that purpose unless, first, that judicial authority has objective, reliable, specific and properly updated information showing that there are systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs, in the light of the requirement for a tribunal established by law, which means that the individuals concerned are generally deprived, in that Member State, of an effective legal remedy enabling a review of the jurisdiction of the criminal court called upon to try them,

and secondly, that judicial authority finds that, in the particular circumstances of the case in question, there are substantial grounds for believing that, taking into account, *inter alia*, the information that is provided by the person for whom that European arrest warrant has been issued and that relates to his or her personal situation, to the nature of the offence for which that person is prosecuted, to the factual context in which that European arrest warrant was issued or to any other relevant circumstance, the court which is likely to be called upon to hear the proceedings to which that person will be subject in the issuing Member State manifestly lacks jurisdiction for that purpose. The fact that the person concerned was able, before the courts of the issuing Member State, to rely on his or her fundamental rights in order to challenge the jurisdiction of the issuing judicial authority and the European arrest warrant issued for him or her is of no decisive importance in that regard. Article 15(2) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as precluding the executing judicial authority from refusing to execute a European arrest warrant on the ground that the person for whom that warrant has been issued is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, without having first requested that the issuing judicial authority provides supplementary information *(see also paras. 88-89, 93-97, 114-116, 131-134).*

18. *Court of Justice, 16 February 2023 case C-393/21, in the proceedings brought by Lufthansa Technik AERO Alzey GmbH, with Arik Air Limited et al. intervening* 268

Article 23(c) of Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that the concept of 'exceptional circumstances' contained in that provision covers a situation in which continued enforcement proceedings in respect of a judgment certified as a European Enforcement Order, where the debtor has challenged that judgment or has brought an application for the rectification or withdrawal of the European Enforcement Order certificate in the Member State of origin, would expose the debtor to a real risk of particularly serious harm, the reparation of which would prove impossible or extremely difficult if that judgment were to be annulled or the European Enforcement Order certificate were to be rectified or withdrawn. That concept does not refer to circumstances connected with the judicial proceedings brought in the Member State of origin against the judgment certified as a European Enforcement Order or against the European Enforcement Order certificate.
Article 23 of Regulation No 805/2004 must be interpreted as permitting the simultaneous application of the measures limiting the enforcement proceedings and requiring the provision of security laid down in subparagraphs (a) and (b), but not the simultaneous application of either one of those two measures and that staying the enforcement proceedings under subparagraph (c).
Article 6(2) of Regulation No 805/2004, read in conjunction with Article 11, must be interpreted as meaning that, where the enforceability of a judgment certified as a European Enforcement Order has been suspended in the Member State of origin and the certificate referred to in Article 6(2) has been produced before the court of the Member State of enforcement, that court is required to stay, on the basis of that judgment, the enforcement proceedings initiated in the latter State *(see also paras. 30-32, 34, 36-39, 42-46, 48-53, 59-64).*

19. *Court of Justice, 16 February 2023 case C-710/21, IEF Service GmbH v. HB* 959

Article 9(1) of Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that in order to determine which Member State's guarantee institution is responsible for meeting employees' outstanding claims, it must be considered that an employer in a state of insolvency does not carry out activities in the territories of at least two Member States, within the meaning of that provision, where the employment contract of the worker in question provides that his or her primary and habitual place of employment is in the territory of the Member State in which the employer has its registered office, but during an equal proportion of his or her working time that worker performs his or her duties remotely from another Member State where his or her main place of residence is situated *(see also paras. 40-46)*.

20. *Court of Justice, 9 March 2023 case C-354/21, R.J.R. v. Registrų centras VĮ* 271

Article 1(2)(l), Articles 68(l) and 69(5) of Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that they do not preclude legislation of a Member State which provides that an application for registration of immovable property in the land register of that Member State may be rejected where the only document submitted in support of that application is a European Certificate of Succession which does not identify that immovable property *(see also paras. 37-39, 41-53)*.

21. *Court of Justice, 9 March 2023 case C-177/22, JA v. Wurth Automotive GmbH* 278

Article 17(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, in order to determine whether a person who concluded a contract falling under point (c) of that provision may be classified as a 'consumer', within the meaning of that provision, account must be taken of the current and future purposes of the conclusion of that contract, irrespective of the nature of the activity pursued by that person as an employed or self-employed person.
Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that, in order to determine whether a person who has concluded a contract falling under point (c) of that provision can be classified as a 'consumer', within the meaning of that provision, account may be taken of the impression created by that person's conduct on the part of the other contracting party, consisting, in particular, in a lack of a reaction on the part of the person relying on the status of consumer to the terms of the contract designating him or her as a trader, where that person has concluded that contract through an intermediary, pursuing professional activities in the field covered by that contract, who, after signing that same contract, questioned the other party about the possibility of stating the value added tax on the relevant invoice or

even where that person sold the goods covered by the contract shortly after its conclusion and potentially made a profit.
Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that, where it proves impossible to determine to the requisite legal standard, in the context of the overall assessment of the information that is available to a national court, certain circumstances surrounding the conclusion of a contract, as regards, in particular, the information in that contract or the involvement of an intermediary at the time of its conclusion, that court must assess the probative value of the information available to it in accordance with the rules of national law, including whether the benefit of the doubt must be given to the person relying on the status of 'consumer', within the meaning of that provision *(see also paras. 21-28, 30-41, 45-48)*.

22. *Court of Justice, 30 March 2023 case C-651/21, in the proceedings brought by M. Ya. M.* 273

Article 13 of Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, must be interpreted as not precluding, after an heir has already had registered with a court of the Member State in which he or she is habitually resident his or her declaration of acceptance or of waiver of the succession of a deceased person whose habitual residence was, at the time of his or her death, in another Member State, another heir from applying for a subsequent registration of that declaration with the court of the latter Member State having jurisdiction *(see also paras. 42-55)*.

23. *Court of Justice, 30 March 2023 case C-343/22, PT v. VB* 264

Article 34(2) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that the statement of claim in an action for repayment under Swiss law, which was brought after a Swiss order for payment had been issued previously and which did not include an application for dismissal of the objection lodged against that order for payment, constitutes the document which instituted the proceedings, within the meaning of that provision *(see also paras. 27-30, 32-40)*.

24. *Court of Justice, 20 April 2023 case C-291/21, in the proceedings brought by Starkinvest SRL* 620

Article 7(2) of Regulation (EU) No 655/2014 of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters must be interpreted as meaning that a judgment that orders a debtor to make a penalty payment in the event of a future breach of a prohibitory order and that therefore does not defini-

tively set the amount of that penalty payment does not constitute a judgment requiring the debtor to pay the creditor's claim, within the meaning of that provision, such that the creditor who requests a European Account Preservation Order is not exempt from the obligation to provide sufficient evidence to satisfy the court before which an application for that order is brought that he or she is likely to succeed on the substance of his or her claim against the debtor *(see also paras. 36-56)*.

25. *Court of Justice, 27 April 2023 case C-352/21, A1, A2 v. I* 617

Article 15(5) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 16(5) thereof, must be interpreted as meaning that a hull insurance contract relating to a pleasure craft not used for commercial purposes does not fall under Article 15(5) of that Regulation *(see also paras. 26-28, 30-53, 55)*.

26. *Court of Justice, 27 April 2023 case C-528/21, M.D. v. Országos Idegenrendészeti Foigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága* 950

Article 20 TFEU must be interpreted as precluding a Member State from adopting a decision banning entry into the territory of the European Union in respect of a third-country national, who is a family member of a Union citizen, a national of that Member State who has never exercised his or her right to free movement, without having examined beforehand whether there is, between those persons, a relationship of dependency which would *de facto* compel that Union citizen to leave the territory of the European Union altogether in order to go with that family member and, if so, whether the grounds on which that decision was adopted allow a derogation from the derived right of residence of that third-country national.

27. *Court of Justice, 27 April 2023 case C-686/21, VW v SW et al., Legea s.r.l. v. VW et al.* 623

First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trademarks and Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that the question of whether the grant or the termination of a licence to use a national trade mark or an EU trade mark held in joint proprietorship requires a unanimous decision by the joint proprietors or a decision by a majority of them comes within the scope of the applicable national law *(see also paras. 31-38)*.

28. *Court of Justice, 27 April 2023 case C-104/22, Lännen MCE Oy v. Berky GmbH and Senwatec GmbH & Co. KG.* 954

Article 125(5) of Regulation (EU) 2017/1001 of 14 June 2017 on the Euro-

pean Union trade mark must be interpreted as meaning that the proprietor of an EU trade mark who considers that he or she has been prejudiced by the use, without his or her consent, by a third party, of a sign identical with that mark in online advertisements and offers for sale in respect of goods identical with, or similar to, those for which that mark is registered, may bring an infringement action against that third party before an EU trade mark court of the Member State in which consumers and traders targeted by those advertisements or offers for sale are located, notwithstanding the fact that the third party does not expressly and unambiguously list that Member State among the territories to which a supply of the goods in question might be made, if that third party has made use of that sign by means of paid referencing on a search engine website which uses a national top-level domain name of that Member State. By contrast, that is not the case simply because the third party concerned has used the natural referencing of images of its goods on an online photo-sharing service under a generic top-level domain, having recourse to meta tags using the trade mark concerned as a keyword *(see also paras. 25-26, 29-39, 45-52, 54)*.

29. *Court of Justice, 27 April 2023 case C-372/22, CM v. DN* 265

Article 9(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 must be interpreted as meaning that the three-month period during which, by way of derogation from Article 8(1) of Regulation No 2201/2003, the courts of the Member State of the child's former habitual residence retain jurisdiction to hear an application for modification of a final judgment concerning rights of access, begins on the day following that on which that child actually moved to the Member State of his or her new habitual residence.
Regulation No 2201/2003 must be interpreted as meaning that the court of the Member State of the child's former habitual residence, which has jurisdiction as to the substance of the matter under Article 9 of that Regulation, may exercise the option of transferral, set out in Article 15 of that Regulation, to the court of the Member State of that child's new habitual residence provided that the conditions laid down in Article 15 are satisfied *(see also paras. 21-23, 29-33, 35-42, 44)*.

30. *Court of Justice, 4 May 2023 case C-200/21, TU and SU v. BRD Groupe Société Générale SA and Next Capital Solutions Ltd* 1364

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding a provision of national law that does not allow the court which is responsible for the enforcement proceedings and which hears, outside the fifteen-day period laid down by that provision, an objection to the enforcement of a contract that is concluded between a consumer and a seller or supplier and constitutes an enforceable instrument, to assess, of its own motion or at the request of the consumer, the unfairness of the terms of that contract, when that consumer also has an action on the merits which enables him or her to request the court hearing that action to carry out such a review and to order the suspension of the enforcement pending the outcome of that action, in accordance with another

provision of that national law, where that suspension is possible only by way of payment of a security the amount of which is likely to dissuade the consumer from bringing and continuing such an action, which it is for the referring court to verify. Where it is not possible to interpret and apply the national legislation in a manner that is consistent with the requirements of that Directive, the national court hearing an objection to the enforcement of such a contract is obliged to examine of its own motion whether the terms of that contract are unfair, and, where necessary, is required to disapply any national provisions precluding such an examination.

31. *Court of Justice, 4 May 2023 case C-300/21, UI v. Österreichische Post AG* 1364

Article 82(1) of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) must be interpreted as meaning that the mere infringement of the provisions of that Regulation is not sufficient to confer a right to compensation.
Article 82(1) of Regulation 2016/679 must be interpreted as precluding a national rule or practice which makes compensation for non-material damage, within the meaning of that provision, subject to the condition that the damage suffered by the individual concerned has reached a certain degree of seriousness.
Article 82 of Regulation 2016/679 must be interpreted as meaning that for the purposes of determining the amount of damages payable under the right to compensation enshrined in that Article, national courts must apply the domestic rules of each Member State relating to the extent of financial compensation, provided that the principles of equivalence and effectiveness of EU law are complied with *(see also paras. 30, 32-34, 42, 47-51, 54, 57-59).*

32. *Court of Justice, 17 May 2023 case C-264/22, Fonds de Garantie des Victimes des Actes de Terrorisme et d'Autres Infractions (FGTI) v. Victoria Seguros SA* 615

Article 4(1), Article 15(h) and Article 19 of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that the law which governs the action of a third party subrogated to the rights of an injured party against the person who caused the damage and which determines, in particular, the rules on limitation in respect of that action is, in principle, that of the country in which that damage occurs *(see also paras. 18-24, 26-32).*

33. *Court of Justice, 8 June 2023 case C-567/21, BNP Paribas SA v. TR* 607

Article 33 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 36 thereof, must be interpreted as precluding the recognition, in the Member State addressed, of a judgment concerning an employment contract, given in the Member State of origin, from resulting in the inadmissibility of claims brought before

a court of the Member State addressed on the ground that the legislation of the Member State of origin lays down a procedural rule for the centralisation of all claims relating to that employment contract, without prejudice to the procedural rules of the Member State addressed which are liable to apply once that recognition has occurred *(see also paras. 42, 48-55)*.

34. *Court of Justice, 8 June 2023 case C-654/21, LM v. KP* 957

Article 124(d) of Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trade mark, read in conjunction with Article 128(1) thereof, must be interpreted as meaning that a counterclaim for a declaration of invalidity of an EU trade mark may relate to all the rights which the proprietor of that mark derives from its registration and that the subject matter of that counterclaim is not restricted by the scope of the dispute as defined by the action for infringement.

35. *Court of Justice, 15 June 2023 case C-499/21 P, Silver et al. v. Council of the European Union* 958

Article 50(1) TEU provides that any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements. The decision to withdraw is for that Member State alone to take, in accordance with its constitutional requirements, and therefore depends solely on its sovereign choice. Furthermore, since possession of the nationality of a Member State constitutes, in accordance with Article 9 TEU and Article 20(1) TFEU, an essential condition for a person to be able to acquire and retain the status of citizen of the European Union and to benefit fully from the rights attaching to that status, the loss of that nationality therefore entails, for the person concerned, the loss of that status and of those rights. Accordingly, the loss of the status of citizen of the European Union, and consequently the loss of the rights attached to that status, is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, by virtue of Article 50(1) TEU, and not of the Withdrawal Agreement. It follows that an action directed against the Withdrawal Agreement on the ground that it allegedly entailed the loss for the appellants of the status of EU citizen and of the rights attaching to that status, whereas that loss results solely from the United Kingdom's sovereign decision to withdraw from the European Union, pursuant to Article 50(1) TEU, must be dismissed.

36. *Court of Justice, 22 June 2023 case C-459/20, X v. Staatssecretaris van Justitie en Veiligheid* 1358

Article 20 TFEU must be interpreted as meaning that a situation in which a minor child, a EU citizen, who has the nationality of a Member State and who, since birth, has lived outside the territory of that Member State and has never resided in the territory of the European Union, does not preclude one of his or her parents, who is a third-country national, upon whom that child is dependent, from benefiting from the derived right of residence under that

Article, provided that it is established that such a child will enter and reside in the territory of that Member State of which he or she has the nationality together with the same parent.
Article 20 TFEU must be interpreted as meaning that a Member State seised of an application for a derived right of residence by a third-country national upon whom a minor child, who is a citizen of the EU and who has the nationality of that Member State, is dependent, and that child has lived since birth in that third country without ever having resided in the territory of the EU, may not reject that application on the ground that moving to that Member State – which the exercise by that child of his or her rights as a Union citizen presupposes – is not in the real or plausible interests of that child.
Article 20 TFEU must be interpreted as meaning that, for the purposes of assessing whether a minor child, who is a European Union citizen, is dependent on his or her third-country national parent, the Member State concerned is required to take into account all the relevant circumstances, without it being regarded as decisive either that the third-country national parent has not always assumed day-to-day care of that child but now has sole care of that child, or that the other parent, who is a EU citizen, could assume the actual day-to-day care of that child *(see also paras. 29-31, 33-38, 43-45, 48-55, 58-61).*

37. *Court of Justice, 4 July 2023 case C-252/21, Meta Platforms Inc. et al. v. Bundeskartellamt, with Verbraucherzentrale Bundesverband eV intervening* 961

Article 51 *et seq.* of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as well as Article 4(3) TEU must be interpreted as meaning that, subject to compliance with its duty of sincere cooperation with the supervisory authorities, a competition authority of a Member State can find, in the context of the examination of an abuse of a dominant position by an undertaking within the meaning of Article 102 TFEU, that that undertaking's general terms of use relating to the processing of personal data and the implementation thereof are not consistent with that Regulation, where that finding is necessary to establish the existence of such an abuse. In view of this duty of sincere cooperation, the national competition authority cannot depart from a decision by the competent national supervisory authority or the competent lead supervisory authority concerning those general terms or similar general terms. Where it has doubts as to the scope of such a decision, where those terms or similar terms are, simultaneously, under examination by those authorities, or where, in the absence of an investigation or decision by those authorities, the competition authority takes the view that the terms in question are not consistent with Regulation 2016/679, it must consult and seek the cooperation of those supervisory authorities in order to dispel its doubts or to determine whether it must wait for them to take a decision before starting its own assessment. In the absence of any objection on their part or of any reply within a reasonable time, the national competition authority may continue its own investigation.

38. *Court of Justice, 6 July 2023 case C-462/22, BM v. LO* 608

The sixth indent of Article 3(1)(a) of Council Regulation (EC) No 2201/2003

of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that that provision makes the jurisdiction of the court of a Member State to hear an application for the dissolution of matrimonial ties subject to the condition that the applicant, who is a national of that Member State, provides evidence that he or she has acquired a habitual residence in that Member State for at least six months immediately prior to the submission of his or her application *(see also paras. 18-21, 23-24, 26-36, 38)*.

39. *Court of Justice, 13 July 2023 joined cases C-615/20 and C-671/20, criminal proceedings against YP et al. and M.M., Prokuratura Okręgowa w Warszawie et al. intervening* 282

The second subparagraph of Article 19(1) TEU must be interpreted as precluding national provisions which confer on a body, whose independence and impartiality are not guaranteed, jurisdiction to authorise the initiation of criminal proceedings against judges of the ordinary courts and, where such authorisation is issued, to suspend the judges concerned from their duties and to reduce their remuneration during that suspension.
The second subparagraph of Article 19(1) TEU, the principle of the primacy of EU law and the principle of sincere cooperation laid down in Article 4(3) TEU must be interpreted as meaning: first, that a formation of a national court, seised of a case and composed of a single Judge – against whom a body, whose independence and impartiality are not guaranteed, has adopted a resolution authorising the initiation of criminal proceedings and ordering that that judge be suspended from his or her duties and that his or her remuneration be reduced – is justified in disapplying such a resolution which precludes the exercise of its jurisdiction in that case and, secondly, that the judicial bodies which have power to designate and modify the composition of the formations of that national court must also disapply that resolution which precludes the exercise of that jurisdiction by that court formation. The second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and of sincere cooperation must be interpreted as meaning: first, that a formation of a national court, to which a case which hitherto had been assigned to another formation of that court has been re-assigned – as a result of a resolution adopted by a body whose independence and impartiality are not guaranteed and which authorised the initiation of criminal proceedings against the single Judge comprising the latter formation and ordered his or her suspension from duties and a reduction in his or her remuneration – and which has decided to suspend the handling of that case pending a decision by the Court of Justice on a preliminary ruling, must disapply that resolution and refrain from continuing to examine that case and, secondly, that the judicial bodies which have power to designate and modify the composition of the formations of that national court are required, in such a situation, to assign that case back to the formation initially hearing it.
The second subparagraph of Article 19(1) TEU and the principles of the primacy of EU law and of sincere cooperation must be interpreted as precluding: first, national provisions which prohibit a national court, subject to disciplinary sanctions being imposed on the judges who make up that court, from examining whether an act adopted by a body whose independence and impartiality are not guaranteed and which has authorised the initiation of

criminal proceedings against a judge and ordered his or her suspension from duties and a reduction in his or her remuneration is binding and, if necessary, from disapplying that act and, secondly, case-law of a constitutional court under which the acts appointing judges cannot be the subject of judicial review, inasmuch as that case-law is liable to preclude that examination.

40. *Court of Justice, 13 July 2023 case C-87/22, TT v. AK* 610

Article 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that the court of a Member State, which has jurisdiction to rule on the substance of a case on the matter of parental responsibility under Article 10 of that Regulation, may exceptionally request the transfer of that case, provided for by Article 15(1)(b) of the Regulation, to a court of the Member State to which the child has been wrongfully removed by one of his or her parents.
Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the only conditions to which the possibility for the court of a Member State with jurisdiction as to the substance of a case in matters of parental responsibility to request that that case be transferred to a court of another Member State is subject are those expressly set out in that provision. When examining those conditions in respect of, first, the existence in the latter Member State of a court better placed to hear the case and, second, the best interests of the child, the court of the first Member State must take into consideration the existence of proceedings for the return of that child which have been instituted pursuant to the first paragraph and point (f) of the third paragraph of Article 8 of the Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980 and in which a final decision has not yet been delivered in the Member State to which that child was wrongfully removed by one of his or her parents *(see also paras. 40-45, 53, 55, 58-59, 61-70).*

41. *Court of Justice, order of 17 July 2023 case C-55/23, PA v. MO* 941

Article 10(1)(a) of Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that the rule of subsidiary jurisdiction laid down by that provision applies only where the habitual residence of the deceased at the time of death was located in a Member State not bound by that Regulation or in a third State. EU law, in particular Article 267 TFEU, must be interpreted as precluding a national court, ruling following the setting aside by a higher court of a decision which it delivered, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those rulings are inconsistent with EU law, as interpreted by the Court *(see also paras 23-28, 32, 35-39, 41).*

42. *Court of Justice, 7 September 2023 case C-590/21, Charles Taylor Adjusting Ltd et al. v. Starlight Shipping Co. et al.* 937

Article 34(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 45(1) thereof, must be interpreted as meaning that a court or tribunal of a Member State may refuse to recognise and enforce a judgment of a court or tribunal of another Member State on the ground that it is contrary to public policy, where that judgment impedes the continuation of proceedings pending before another court or tribunal of the former Member State, in that it grants one of the parties provisional damages in respect of the costs borne by that party on account of its bringing those proceedings on the grounds that, first, the subject matter of those proceedings is covered by a settlement agreement, lawfully concluded and ratified by the court or tribunal of the Member State which gave that judgment and, second, the court of the former Member State, before which the proceedings at issue were brought, does not have jurisdiction on account of a clause conferring exclusive jurisdiction *(see also paras. 24-29, 35-41).*

43. *Court of Justice, 7 September 2023 case C-832/21, Beverage City & Lifestyle GmbH et al. v. Advance Magazine Publishers Inc.* 943

Article 8(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 a number of defendants, domiciled in different Member States, may be sued in the courts for the place where one of them is domiciled before which, in the context of an infringement action, claims have been brought against all of those defendants by the proprietor of an EU trade mark where they are each accused of having committed a materially identical infringement of that trade mark and they are connected by an exclusive distribution agreement *(see also paras. 24-31, 34-46).*

44. *Court of Justice, 14 September 2023 case C-632/21, JF et al. v. Diamond Resorts Europe Limited (Sucursal en España) et al.* 939

The provisions of Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) are applicable, in the context of a dispute before a court of a Member State, to contracts the two parties of which are United Kingdom nationals, to the extent that those contracts have a foreign element.
Article 6(2) of Regulation No 593/2008 must be interpreted as meaning that:
- where a consumer contract fulfils the requirements laid down in Article 6(1) of that Regulation, the parties to that contract may, in accordance with Article 3 of that same Regulation, choose the law applicable to that contract, provided, however, that that choice does not result in depriving the consumer concerned of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of Article 6(1), which pro-

vides that such a contract is to be governed by the law of the country where the consumer has his or her habitual residence;
- in view of the mandatory and exhaustive nature of that same Article 6(2), it is not possible to derogate from that provision for the benefit of legislation allegedly more favourable to the consumer *(see also paras. 50-52, 56, 61, 63, 70-77)*.

45. *Court of Justice, 14 September 2023 case C-821/21, NM v. Club La Costa (UK) plc, sucursal en España et al.* 945

Article 18(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 expression 'other party to a contract', in that provision, must be understood as referring only to the natural or legal person who is a party to the contract in question and not to other persons, not parties to that contract, even if they are connected with that person.
Article 63(1) and (2) of Regulation No 1215/2012 must be interpreted as meaning that the determination, in accordance with that provision, of the domicile of the 'other party to a contract', within the meaning of Article 18(1) of that Regulation, does not constitute a limitation of the choice which the consumer may make under that Article 18(1). In that regard, the clarifications provided in Article 63(2) concerning the concept of 'statutory seat' constitute autonomous definitions.
Article 3 of Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as not precluding a choice-of-law clause in the general terms and conditions of a contract or in a separate document to which that contract refers and which has been provided to the consumer, provided that that clause informs the consumer that he or she enjoys, in any event, under Article 6(2) of that Regulation, the protection afforded to him or her by the mandatory provisions of the law of the country in which he or she has his or her habitual residence.
Article 6(1) of Regulation No 593/2008 must be interpreted as meaning that where a consumer contract fulfils the requirements set out in that provision and in the absence of a valid choice of law applicable to that contract, that law must be determined in accordance with that provision, which may be relied on by both parties to that contract, including the professional, notwithstanding the fact that the law applicable to the contract in accordance with Articles 3 and 4 of that Regulation may be more favourable to the consumer *(see also paras. 46, 48-53, 55-58, 62-67, 69-74, 76, 78-88)*.

46. *Court of Justice, 14 September 2023 case C-393/22, EXTÉRIA s.r.o. v. Spravime, s.r.o.* 949

Article 7(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 a contract to enter into a future contract relating to the future conclusion of a franchise agreement which provides for an obligation to pay a contractual penalty based on

non-performance of that contract to enter into a future contract, the breach of which serves as a basis for a claim, does not fall within the concept of a contract for the 'provision of services' within the meaning of that provision. In such a case, jurisdiction over a claim on which that obligation serves as a basis is determined, in accordance with Article 7(1)(a) of that Regulation, by reference to the place of performance of that obligation *(see also paras. 30, 34-44)*.

47. *Court of Justice, 12 October 2023 case C-21/22, OP v. Notariusz Justyna Gawlica* 1350

Article 22 of Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that a third-country national residing in a Member State of the European Union may choose the law of that third State as the law governing his or her succession as a whole.
Article 75 of Regulation No 650/2012, read in conjunction with Article 22 of that Regulation, must be interpreted as not precluding – where a Member State of the European Union has concluded, before the adoption of that Regulation, a bilateral agreement with a third State which designates the law applicable to succession and does not expressly provide for the possibility of choosing another law – a national of that third State, residing in the Member State in question, from not being able to choose the law of that third State to govern his or her succession as a whole *(see also paras. 17-24, 26-29, 33-38)*.

48. *Court of Justice, 16 November 2023 case C-497/22, EM v. Roompot Service BV* 1352

The first subparagraph of Article 24(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 a contract concluded between an individual and a tourism professional by which the latter lets for short-term personal use holiday accommodation situated in a holiday park operated by that professional and including, in addition to the letting of that accommodation, the performance of a range of services in return for a lump sum, does not come within the concept of 'tenancies of immovable property' within the meaning of that provision *(see also paras. 25, 27-46)*.

49. *Court of Justice, order of 27 November 2023 case C-310/23, Groupama Asigurări SA v. Asigurarea Românească – Asirom Vienna Insurance Group SA and GE.* 1349

Article 267(1)(b) TFEU must be interpreted as meaning that a national court, which has doubts as to the interpretation of the grounds of a preliminary ruling judgment issued by the Court of Justice following a request for a

preliminary ruling lodged by another national court, may seize the Court with a request for a preliminary ruling concerning the interpretation of those grounds.
Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), and Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that in the context of a recourse action brought by the insurer of a towing vehicle, which compensated the victim of an accident caused by the driver of that vehicle, against the insurer of a semi-trailer which, at the time of the accident, was attached to said towing vehicle, it is necessary, firstly, to establish, in accordance with the applicable law under Articles 4 *et seq.* of Regulation No 864/2007, whether and to what extent the damages and interests to be paid to the victim must be distributed, where applicable in equal shares, between, on the one hand, the driver and the holder of the towing vehicle concerned and, on the other hand, the holder of the semi-trailer which was attached to the vehicle, and therefore between the respective insurers of the vehicle and the semi-trailer. Secondly, it is necessary to determine whether, in accordance with the applicable law under Article 7 of Regulation No 593/2008 to the insurance contract in question, the insurer of the towing vehicle, which compensated the victim, may, by subrogation, exercise the rights of the latter against the insurer of the semi-trailer, as recognized by the applicable law under Articles 4 *et seq.* of Regulation No 864/2007 *(see also paras. 18-19, 21-22)*.

50. *Court of Justice, order of 13 December 2023 case C-319/23, in the proceedings brought by P.G.* 1355

Article 7(1)(b), second indent, 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 a court of a Member State seized of an action seeking compensation on the basis of Regulation (EC) No 261/2004 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 assess both its international and territorial jurisdiction under that provision, notwithstanding the possible existence of other competent fora in favor of consumers under national legislation *(see also paras. 25-30)*.

51. *Court of Justice, 14 December 2023 case C-340/21, VB v. Natsionalna agentsia za prihodite* 1366

The principle of accountability of the controller, set out in Article 5(2) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and given expression in Article 24 thereof, must be interpreted as meaning that, in an action for damages under Article 82 of that Regulation, the controller in question bears the burden of proving that the security measures implemented by it are appropriate pursuant to Article 32 of that Regulation.

Article 82(3) of Regulation 2016/679 must be interpreted as meaning that the controller cannot be exempt from its obligation to pay compensation for the damage suffered by a data subject, under Article 82(1) and (2) of that Regulation, solely because that damage is a result of unauthorised disclosure of, or access to, personal data by a 'third party', within the meaning of Article 4(10) of that Regulation, in which case that controller must then prove that it is in no way responsible for the event that gave rise to the damage concerned. Article 82(1) of Regulation 2016/679 must be interpreted as meaning that the fear experienced by a data subject with regard to a possible misuse of his or her personal data by third parties as a result of an infringement of that Regulation is capable, in itself, of constituting 'non-material damage' within the meaning of that provision.

52. *Court of Justice, 14 December 2023 case C-456/22, VX and AT v. Gemeinde Ummendorf* 1366

Article 82(1) of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), must be interpreted as precluding national legislation or a national practice which sets a '*de minimis* threshold' in order to establish non-material damage caused by an infringement of that Regulation. The data subject is required to show that the consequences of the infringement which he or she claims to have suffered constitute damage which differs from the mere infringement of the provisions of that Regulation *(see also paras. 14-17)*.

53. *Court of Justice, 21 December 2023 case C-667/21, ZQ v. Medizinischer Dienst der Krankenversicherung Nordrhein, Körperschaft des öffentlichen Rechts* 1367

Article 82(1) of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) must be interpreted as meaning that the right to compensation provided for in that provision fulfils a compensatory function, in that financial compensation based on that provision must allow the damage actually suffered as a result of the infringement of that Regulation to be compensated in its entirety, and not a dissuasive or punitive function.
Article 82 of Regulation 2016/679 must be interpreted as meaning that first, the establishment of liability on the part of the controller is subject to the existence of a fault committed by the controller, which is presumed unless the controller proves that the event giving rise to the damage is in no way attributable to it and, secondly, Article 82 of that Regulation does not require the degree of seriousness of that fault to be taken into account when determining the amount of damages awarded as compensation for non-material damage on the basis of that provision *(see also paras. 85-87, 90-95, 98-100, 102)*.

54. *Court of Justice, 25 January 2024 case C-687/21, BL v. MediaMarktSaturn Hagen-Iserlohn GmbH, formerly known as Saturn Electro-Handelsgesellschaft mbH Hagen* 1369

Article 82(1) of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) must be interpreted as meaning that the right to compensation laid down in that provision, in particular in the case of non-material damage, fulfils a compensatory function, in that financial compensation based on that provision must allow the damage actually suffered as a result of the infringement of that Regulation to be compensated in full, and not a punitive function.
Article 82 of Regulation 2016/679 must be interpreted as meaning that such a provision does not require that the severity of the infringement made by the controller be taken into consideration for the purposes of compensation under the same provision.
Article 82(1) of Regulation 2016/679 must be interpreted as meaning that the person seeking compensation by way of that provision is required to establish not only the infringement of provisions of that Regulation, but also that that infringement caused him or her material or non-material damage.
Article 82(1) of Regulation 2016/679 must be interpreted as meaning that if a document containing personal data was provided to an unauthorised third party and it was established that that person did not become aware of those personal data, 'non-material damage', within the meaning of that provision, does not exist due to the mere fact that the person concerned fears that, following that communication having made possible the making of a copy of that document before its recovery, a dissemination, even an abuse, of those data may occur in the future *(see also paras. 67-68)*.

55. *Court of Justice, 8 February 2024 case C-566/22, Inkreal s.r.o. v. Dúha reality s.r.o.* 1356

Article 25(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 an agreement conferring jurisdiction by which the parties to a contract who are established in the same Member State agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract is covered under that provision, even if that contract has no other connection with that other Member State *(see also paras. 17-25, 28-39)*.

56. *Court of Justice, 25 April 2024 case C-276/22, Edil Work 2 Srl and S.T. Srl v. STE Sàrl, CM intervening* 1361

Articles 49 and 54 TFEU must be interpreted as precluding legislation of a Member State which provides generally for its national law to apply to the acts of management of a company established in another Member State but carrying on the main part of its activities in the first Member State. In particular, the fact that either the registered office or real head office of a company was established in accordance with the legislation of a Member State for the purpose of enjoying the benefit of more favourable legislation does not, in itself, constitute abuse. Moreover, the mere fact that a company, while having its registered office in a Member State, carries on the main part

of its activities in another Member State, cannot be the basis for a general presumption of fraud and cannot justify a measure that adversely affects the exercise of a fundamental freedom guaranteed by the Treaty *(see also paras. 18-21, 26-28, 30-34, 39-43, 45-50)*.

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