

# Rivista di diritto internazionale privato e processuale (RDIPP) No 4/2023: Abstracts

The fourth issue of 2023 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

*Cristina Campiglio*, Professor at the University of Pavia, **Giurisdizione e legge applicabile in materia di responsabilità medica (ovvero a proposito di conflitti di qualificazioni)** [Jurisdiction and Applicable Law in Matters of Medical Liability (Namely, on the Issue of Conflicts of Characterisation); in Italian]

An attempt has been made to give an account of the conflicts of qualification that characterise the healthcare sector, starting with the contractual or non-contractual nature of civil liability for malpractice. We then looked at the nature of the healthcare contract to assess whether patients can fall into the category of consumers and consequently enjoy the protection reserved to them. Finally, reference was made to the qualification of the patient's self-determination as an expression of the right to privacy rather than the right to physical integrity. Research on the nature of civil liability in a field – the health sector, as said – where many activities are potentially harmful to the physical integrity of the patient so that the health-care operator might be held accountable of culpable personal injury or even of manslaughter, provided an opportunity to analyse the practice of the Court of Justice relating to the qualification of “contractual matters” and indirectly of the non-contractual matter of culpable “tort”; and to note how the Court, in recent years, on the one hand has openly espoused an extensive interpretation of “contractual matters”, and on the other hand has missed the chance to speak out on hypotheses of non-contractual liability in contractual contexts, or of concurrence of contractual and non-contractual liability. It is to be hoped that the European Union will become aware of the need to provide *ad hoc* rules on the liability of healthcare personnel who engage in activities that are intrinsically hazardous to patients' health: if not

substantive rules or guidelines, at least rules on jurisdictional competence and applicable law.

*Olivia Lopes Pegna*, Professor at the University of Florence, **Continuità interpretativa e novità funzionali alla tutela dell'interesse del minore nel regolamento Bruxelles II-ter** (Continuity in Interpretation and Novelties Functional to the Protection of the Interest of the Child in the Brussels IIb Regulation; in Italian)

This article aims at illustrating the main innovations introduced in the Brussels regime on parental responsibility and protection of children with the Recast: i.e., Regulation (EU) No 2019/1111 ("Brussels II-ter"). While, on the one side, interpretation and application of the Recast Regulation mandate continuity with the jurisprudence of the Court of Justice of the European Union, on the other side the novelties introduced with the Recast show an increased penchant towards flexibility in order to achieve the protection of the actual and concrete best interests of the child.

*Edoardo Benvenuti*, Research Fellow at the University of Milan, **Climate change litigation e diritto internazionale privato dell'Unione europea: quale spazio per la tutela collettiva?** (Climate Change Litigation and EU Private International Law: Is There Room for Collective Redress?; in Italian)

With the worsening of the climate crisis, the EU is adopting a number of measures – both in the public and private sector – in order to counter such phenomenon. The layering of substantive norms and standards goes hand in hand with the growing interest towards procedural tools suitable to make the application of such rules effective through private enforcement. Against this background, and given the collective and the ubiquitous dimension of the consequences of climate change, the present article explores the phenomenon of collective redress in the field of climate change litigation. After introducing the definitions and the characteristic features of climate change litigation and collective redress, the article examines the role of Regulations (EU) No 1215/2012 and (CE) No 864/2007, in order to evaluate their ability to address the private international law issues arising from collective and climate change litigation. In doing so, the article focuses on the relevant case-law (both national and of the CJEU), as well as on Directive (EU) 2020/1828 on consumers' representative actions, which provides a

number of propositions that can be applied also in the context of climate change litigation. Once the main critical aspects have been identified, the article puts forth some reform suggestions to strengthen EU private international law mechanisms in the context of environmental mass torts.

This issue also comprises the following comment:

*Ginevra Greco*, Researcher at the University of Milan, **Il c.d. uso alternativo del rinvio pregiudiziale di interpretazione** (The So-Called Alternative Use of the Referral for a Preliminary Ruling on Interpretation; in Italian)

This article endeavours to show that, contrary to popular opinion, the interpretative judgments of the Court of Justice of the European Union, which use the terms “precludes” or “does not preclude”, are genuine judgments on the conformity of a national act or measure with EU law. This article also aims to illustrate the compatibility of those judgments with the model of Article 267 TFEU. This conclusion is supported not by the fact that such judgments are devoid of application profiles, but because they remain within the scope of the interpretative function of the Court of Justice, understood not as abstract interpretation, but as an interpretation which contributes to the resolution of the concrete case pending before the referring court.

Furthermore, in the *Chronicles* section, this issue includes:

*Anna Facchinetti*, Researcher at the University of Milan, **Immunità degli Stati ed exequatur di sentenze straniere in materia di terrorismo: una recente pronuncia della Corte di Cassazione francese** (State Immunity and Exequatur of Foreign Judgments on Terrorism: A Recent Ruling by the French Court of Cassation; in Italian).

Finally, the following book review by *Fausto Pocar*, Emeritus Professor at the University of Milan, is featured: **Albert Venn DICEY, John Humphrey Carlile MORRIS, Lawrence COLLINS, *Dicey, Morris & Collins on The Conflict of Laws***, 16th ed., Sweet & Maxwell, London, 2022, 2 voll., pp. cdxli-2476-LXXI; Companion vol., *EU Withdrawal Transition Issues*, pp. li-162.