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HIGHLIGHTS

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HIGHLIGHTS T&P 2020

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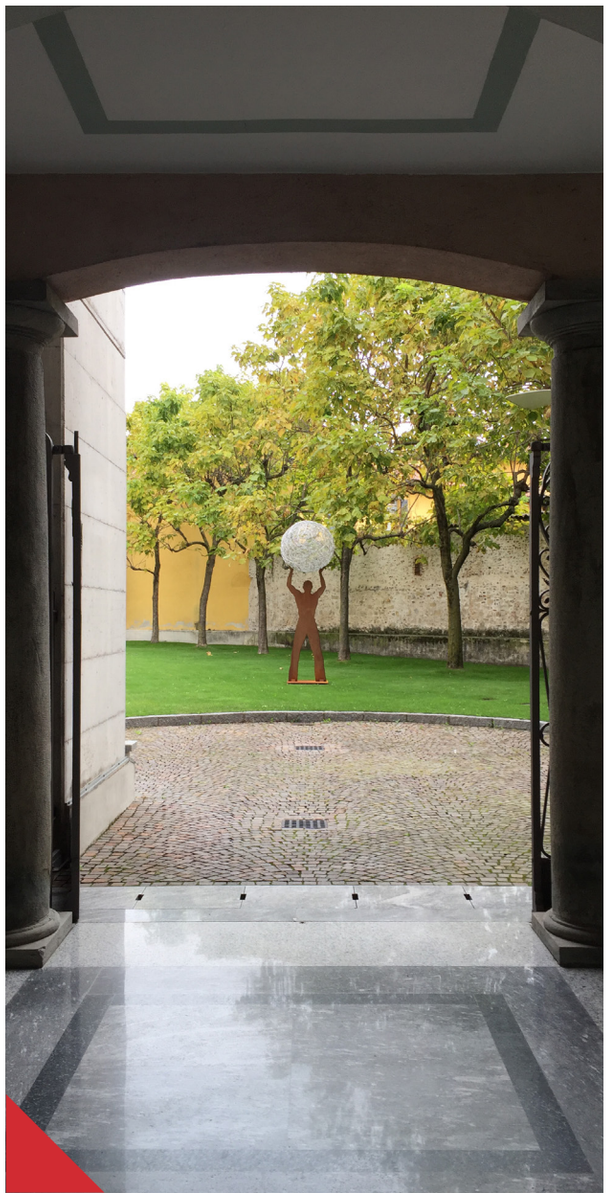


01

THE WORKERS' STATUTE, YESTERDAY AND TODAY[1]

By Salvatore Trifirò

In the 25th year following the creation of the Workers' Statute, I had the honour of being called on by the First President of the Court of Cassation to report to the Aula Magna of the Joint Divisions of the Supreme Court on how, based on my professional experience, the Workers' Statute – in its interpretation by both the trial courts and those of last instance – had affected the life and customs of the nation and enterprise, i.e., that business community in which each and every player has to work – in accordance with their reciprocal rights and duties – towards producing wealth for society as a whole. It was my testimony of how the profession of being a lawyer has influenced and continues to influence the creation of case law and how that (living law) constitutes the legal instrument for excellence in the legal profession.

Today, as then, I am honoured to celebrate the 50th anniversary of the establishment of the Statute, this time together with courageous colleagues, many of whom have journeyed with me for a significant period of their professional lives. Each of them will give their contribution on specific issues, some of which date back to the distant "difficult" years of application of the Statute, while I, as previously stated, will provide a concise overview covering these 50 years of the Statute, from its establishment to the Jobs Act and beyond.

My professional experience – which began in the 1950s at the time of the inter-confederal agreements and continued into the 1960s during the time of Law no. 604 of 15 July 1966 – starts here with a testimony from the '70s with the entry into force of the Workers' Statute, the new Labour Law which, under the impetus of a large number of court judgments, profoundly innovated industrial relations and employment agreements. The work of a lawyer was fundamental in creating that living law, an essential part of the regulation of employment in the business world. It is in fact the lawyer, who submits the concrete case as already defined by him to the scrutiny of the magistrate, which is adjudicated by the courts at the various levels of judgment through to the formation of a legal maxim by the Supreme Court. It is that legal maxim that is then used by the lawyer as a guide for personnel departments in correctly regulating employment in business organizations.

[1] Salvatore Trifirò's article was published in AIDP Lombardia "HR on line" magazine, special edition "I primi cinquant'anni dello Statuto dei Lavoratori: le principali disposizioni dello Statuto, attualità e ambiti di intervento", edited by Paola Gori.

Over the last 50 years, living law has established (and will continue to establish for years to come) some fundamental tenets in terms of individual and collective dismissals, redundancy schemes, redeployment within and outside companies, the right to strike, good faith and fair dealing clauses, and so on through to the current remote working, and created the premises for a new labour law where the concept of subordinate employment as traditionally understood is weakened and the conditions for the fully-fledged onset of new forms and methods of advanced and participatory work in the context of business organizations are established.

Some examples of concrete testimonials and experiences concerning those topics are provided below. They took place during the epic and overwhelming years between 1970 and 1980 that were characterized by a climate of incandescent industrial relations that sometimes culminated in terrorist extremism. We were on the front line when we went to hearings, facing politicized judges and the hard-left lawyers from *Soccorso Rosso*.

It was there that I discussed the first art. 28 in our history, the new, penetrating legal tool introduced by the Statute that allowed the unions to take an active part in trials and granted magistrates very extensive powers, allowing them to effectively "redress" – so they said –the injustices suffered by the working class. In front of hundreds of yelling workers raising clenched fists, an employee (of Sit-Siemens) was physically reinstated manu militari in the workplace for the first time. One morning, when a hearing concerning the dismissal of a member of the Red Brigades was ongoing, I found my car still burning. It had been set on fire overnight together with that of the Sit-Siemens HR Manager. They were the first attacks carried

out by Red Brigades terrorists in northern Italy and the situation escalated from then on. Every morning the newspapers reported chilling news of ambushes and attacks targeting personnel managers, journalists and even trade unionists.

Police Commissioner Calabresi was assassinated on the morning that a magistrate's ruling ordering the reopening of a factory that had been closed because it was irreparably insolvent was executed. Hearings were held – crowded with members of the CUB (Comitati Unitari di Base - grassroots committees) – in an atmosphere of intimidation towards the lawyers reputedly representing "employers". Finding myself at a hearing with my back literally against the wall, behind the desk of the magistrate who conducted the hearing, I complained about it to him, but he replied that I had to adapt to the times. The witnesses called by companies could not appear because they were kneecapped during the night, while HR managers paid with their lives for trying to curb vandalism and sabotage in factories, being held guilty of firing those responsible. Brave magistrates, albeit progressive, but deemed not aligned, also paid for their attachment to duty with their lives. I, too, miraculously escaped two attacks after which Corso di Porta Vittoria, the street in front of the Palazzo di Giustizia (Law Court) in Milan, was covered with posters in which I was portrayed together with the magistrates of the then Milan Court of Appeal as being the lead lawyer for Confindustria (the General Confederation of Italian Industry).

I remember the extreme case in which I represented the appellant at the Court of Milan, in a case concerning the dismissal of some militant left-wing employees of a FIAT company who absented themselves from work in order to take part in a live-fire exercise in Verbania. On that occasion, the court was invaded by around a thousand people and the police had to intervene in riot gear and fire tear gas in the corridors of the building. A Soccorso Rosso lawyer showed up at the hearing wounded and bleeding. It was pandemonium: the barriers in the courtroom were overturned, the hearing had to be interrupted and I was forced to lock myself up with the magistrates in the Chambers while a guerrilla war was carried on around us. After a few hours, when the situation moved towards normality, the hearing could be resumed, and the court confirmed the legitimacy of the dismissals.

That was the climate of those years of terrorism in which fundamental principles of law were nevertheless affirmed further to applications for findings filed by me seeking rulings declaring the illegitimacy of violent picketing, the illegitimacy of trade union meetings that concealed what were actually sit-ins in company premises, and the illegitimacy of on-off and articulated strikes on continuous cycle systems that are capable of compromising their operation. Similar applications for findings also resulted in the affirmation of the principle of law that sit-ins staged in company premises by some members of the workforce exempted the employer from fulfilling its obligation to pay the salaries of its other employees too, because an employer in that situation could not be held responsible for such employees failing to do their jobs; other such applications resulted in the phenomenon of absenteeism justified by compliant medical certificates, with peaks that reached 30% in the days before and after the weekend, being curbed.

The principle of law which made dismissals legitimate due to the excessive morbidity resulting from the disorganization caused by employees being alternately absent from and present at work was thus affirmed. By virtue of those court actions, in the factories in the north at least, rates of absenteeism returned to within physiological limits. Again on the basis of applications for findings, the legitimacy of the cancellation of national collective bargaining agreements was recognized, as well as the prevailing nature of company contracts amending national contracts, also when in pejus; the CUBs' lack of union representation was argued and recognized; applications for findings concerning the renunciation of individual rights in order to simultaneously reach unchallengeable individual conciliations (whence the genesis of today's conciliatory proceedings having a deflationary effect on legal disputes) were filed; actions for relief were brought against trade unions on the grounds of their failure to comply with industrial action truces, against company union representative bodies (RSA) and the individual representatives themselves in their capacity as promoters and participants in anomalous industrial unrest, and businesses run on a self-employed basis were created and set up (such as door-to-door sales and motorcycle courier services ... the precursors of today's gig economy).

Now we turn the page and a new story begins: that of the time of Covid-19 and the consequential resetting of yesterday's behaviour and organizational patterns. New scenarios are opening up for businesses that, in the future, will become increasingly virtual. We will have to devise and implement a new regulation of employment that must be adapted, on the one hand, to the needs of individual businesses and, on the other hand, to those of their employees: an arrangement that, having overcome the current rigidity of subordinate employment, can be more flexible and profitable for both parties, in which the result and the merit will be the amount of the fair remuneration sanctioned by article 36 of our Constitution which, due to its universal content, will always be applicable; in which human capital, which continues to be one of the fundamental assets required to run a business, can be given its rightful value, benefit from participatory tools, be "aided" but not replaced by artificial intelligence and be regulated under appropriate specific contracts, while bearing in mind, as I mentioned at the beginning, that the cause (or purpose) of those contracts must be in the interest of the business in which the employer and the worker merge in order to produce wealth for society as a whole.

02

HIGHLIGHTS WHAT'S NEW IN 2020 LEGISLATION

By Tommaso Targa and Noemi Spoleti

Much of the regulatory output of the past year has been characterized by interventions aimed at countering the emergency situation triggered by the Covid-19 pandemic.

Some of the most significant new legislation has concerned employment and social security and is aimed at providing income support tools for workers and companies. Such measures are contained in Law Decrees no. 18/2020 (the "Care Italy Decree"), no. 34/2020 (the "Relaunch Decree"), no. 104/2020 (the "August Decree"), no. 137/2020 (the "Ristori Decree") (and relating conversion laws) and, lastly, in the Budget Law no. 178/2020 for 2021.

One of the focal points of the entire emergency legislation concerning employment is undoubtedly represented by the numerous furlough schemes envisaged for workers and companies, intended to both reduce the impact of the health crisis on employment levels and counterbalance the prohibition against proceeding with individual and collective dismissals for objective reasons, as explained below.

They are, in effect, solidarity-based schemes that enable employers to make use of special social shock absorbers such as, in particular, the ordinary redundancy fund (CIGO), the ordinary allowance (FIS) and the redundancy fund in derogation (CIGS), all focused on the Covid-19 pandemic.

The emergency legislation has also introduced a wide range of relief from social security contributions for employers and provided for the payment of benefits - for the months of March, April and May 2020 only - to some specific categories of people who work on a self-employed basis and/or are not entitled to a pension.

With regard to the "freeze on redundancies", article 46 of the Care Italy Decree, as amended by article 80 of the Relaunch Decree, had initially banned individual and collective redundancies for objective reasons (and suspended any such ongoing procedures) for a total of 5 months from March 17, 2020. Subsequently, art. 14 of the August Decree extended that general prohibition until December 31, 2020, provided certain conditions were met.

Art. 12 of the Ristori Decree further extended the prohibition against dismissals until January 31, 2021 and it was lastly extended again until March 31, 2021 by the Budget Law.
With regard to fixed-term contracts, the Relaunch Decree first provided for the possibility for employers to renew and extend fixed-term contracts, provided that they were in place on February 23, 2020 and that their extension or renewal would not exceed the deadline of August 30, 2020.
The August Decree cancelled the previous condition whereby the above-mentioned contracts subject to extension or renewal had to be in force on February 23, 2020 and allowed fixed-term employment contracts in the private sector to be renewed or extended, formally in writing and on a one-off basis, for a maximum of 12 months by no later than December 31, 2020. In this case too, the cut-off date for the option to extend/renew was moved to March 31, 2021 by the Budget Law.

Another group of measures was aimed, on the one hand, at encouraging the use of agile working methods (known in Italian as smart working), due to the need to limit the spread of the epidemic, and, on the other, at granting special leave and babysitter allowances to workers whose underage children or relatives with disabilities need to be looked after at home due to the closure of nurseries, schools at all levels and other daycare services.

Given the revolutionary impact of agile working during the emergency on working practices and the very way in which work is conceived, in the years to come it will undoubtedly be necessary to reform the legislation under which agile working is currently regulated.

While, on the one hand, the emergency legislature has strongly encouraged the use of agile working methods in order to prevent contagion, on the other hand, it has been necessary to adapt the legislation on safety in the workplace to the pandemic contingencies so that jobs for which staff need to be present can still be carried out.

Initially, article 42, paragraph 2, of the Care Italy Decree confirmed that the general principle based on which infectious diseases contracted while working are considered industrial accidents for the purposes of the relating compulsory insurance applied to SARS-CoV-2 virus infections too; INAIL circular no. 13 of 2020 and, above all, INAIL circular no. 22 of 2020, then clarified the impact of that provision on employers' liability for industrial accidents.

Further to the joint Government-Confindustria Protocol regulating the measures for combating Covid-19 transmissions in the workplace dated 24 April 2020, article 29-bis of Law Decree no. 23/2020, added during the conversion of that decree by Law no. 40/2020, made express reference to said Protocol and the subsequent amendments for the purposes of full compliance with the safety obligation placed on employers by article 2087 of the Civil Code.

That provision has therefore specified the safety obligation provided for by the civil code by identifying the measures to be taken to prevent transmissions of Covid-19 in the workplace.

03

HIGHLIGHTS
LABOUR LAW CASES IN 2020

By Tommaso Targa and Federico Manfredi

1.

1) Jobs Act – Compensation basederon length of service is unconstitutional in the presence of technicalities (Constitutional Court, July 16, 2020, no. 150). By judgment no. 150/20, the Court declared that Article 4 of Legislative Decree no. 23 of March 4, 2015 was unconstitutional also where it awarded the compensation payable to employees when their dismissal is held wrongful on technicalities and/or due to procedural flaws only on the basis of their length of service. The Court observes that an employee's right to be paid compensation that is calculated only on their length of service would be a violation of the principles of equality and reasonableness, as well as those protecting jobs.

2.

Riders - Application of the rules governing subordinate employment to food-delivery workers confirmed by the Supreme Court (Supreme Court, Labour Division, January 24, 2020, no. 1663 and Supreme Court, Labour Division, October 28, 2020, no. 23768). By judgment no. 1163/20, upholding the rulings previously handed down in the "Foodora case" (Turin Court of Appeal, no. 26/2019 and Court of Turin no. 778/2018), the Supreme Court has definitively established the principle of law that, although the terms under which Riders are employed do not meet the criteria for subordinate employment, it is imperative that the rules governing subordinate employment are applied in full in order to protect this category of workers deemed to be in an economically weak position and, therefore, deserving of the same protection enjoyed by workers who are on a payroll. By applying the provisions of art. 2 of Legislative Decree no. 81/2015, Riders' employment can, in fact, be classed as a form of hetero-organized partnership that, in consequence of the Jobs Act, does not constitute an intermediate tertium genus between subordinate employment and self-employment, but a situation to which the entire set of protective rules governing subordinate employment applies.

3.

Anti-Covid PPE - Riders, being workers put on the same footing as subordinate employees, are entitled to personal protection equipment (Court of Florence, April 1, 2020, no.886 and Court of Bologna, April 14, 2020, no.2519).

In consequence of the Covid-19 pandemic, a number of emergency measures have been issued by courts that, inaudita altera parte, order employers to provide their employees and Riders with personal protection equipment to counter coronavirus transmissions, namely, protective masks, disposable gloves, disinfectant gel and alcohol-based products for cleaning backpacks, "in a quantity sufficient to cope with a large number of weekly deliveries".

4.

Meal Vouchers - The terms under which meal vouchers are provided may be changed also by an employer's unilateral decision (Supreme Court, Labour Division, July 28, 2020, no. 16135).

Following the massive recourse to agile working in Italy's economy, the recent pronouncement of the Supreme Court reiterating principles previously announced by Supreme Court no. 20087/18 and Supreme Court no. 14290/12, has assumed particular relevance. The Court has firmly established that since meal vouchers are not considered a salary component, but a benefit dependent on an employee's length of service, an employer is fully entitled to decide unilaterally to abolish it, as it is not contrary to the principle that salary cannot be reduced.

5.

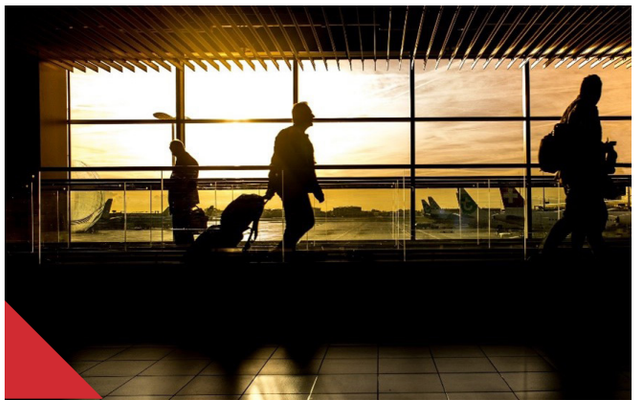
Journalism - Equivalence of professional standing of contributing editors and professional journalists for the purposes of the legitimacy of a contract to write for a newspaper on a regular basis (Joint Divisions of the Supreme Court, January 28, 2020, no. 1867).

The Joint Divisions of the Supreme Court have finally intervened to resolve the long-standing jurisprudential debate on the legitimacy of a contract to write for a newspaper that is given to someone who is not a professional journalist. In fact, by decision no. 1867/20 the Supreme Court has definitively ruled that an agreement for write for a newspaper on a regular basis is not void on grounds of its conflict with the rules of public policy, even when executed with a contributing editor, provided that they work for that newspaper on an exclusive basis.

04

UNION LAW HIGHLIGHTS 2020

By Tommaso Targa and Leonardo Calella



1. **Transferring a large proportion of employees belonging to the same union is contrary to union regulations.**

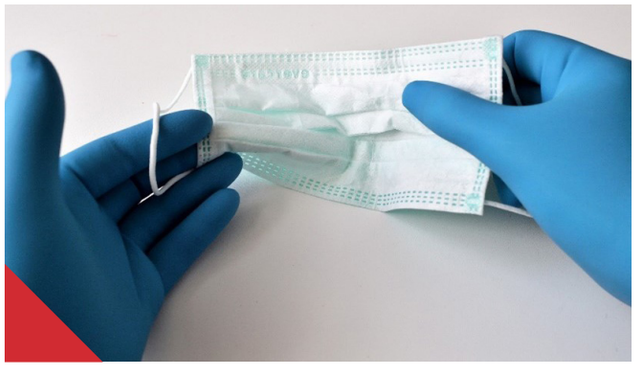
The Supreme Court found that the collective transfer of 216 workers, 76 of whom were members of the same trade union organization, is unlawful and discriminatory.

(Supreme Court, Labour Law Division, January 2, 2020, no. 1)

2. **The right to convene a union meeting is not a prerogative attributed (only) to the Rappresentanze Sindacali Unitarie ("RSU" – Unitary Trade Union Representation Bodies) as a whole.**

In this case, the Supreme Court ruled that the combined provisions of articles 4 and 5 of the Inter-Confederation Agreement of January 10, 2014 entitle each member of an RSU elected from the lists of a trade union to convene a meeting during paid working time.

(Supreme Court, Labour Law Division, February 6, 2020, n. 2862)



3. **Failing to involve trade union organizations in the formation of the Committee for the Review of the Implementation of the Covid-19 Protocol of March 14, 2020 is unlawful.**

The Treviso Court ruled that the violation by a hospital of the provisions of the Government-Social Partners Protocol is anti-union conduct.

(Treviso Court, Labour Law Division, July 2, 2020, no. 14060)

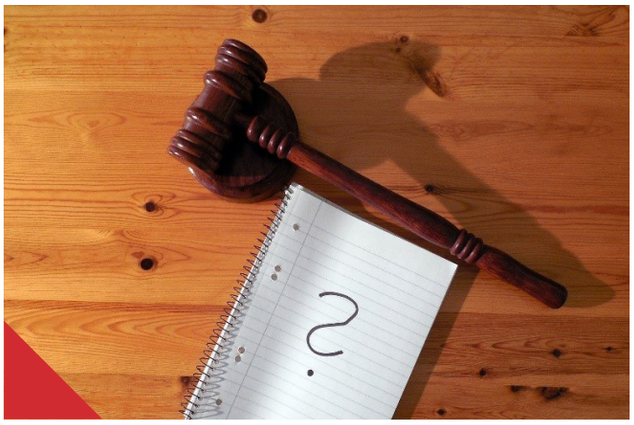
4. **A company's supplementary labour agreement is invalid if signed by a minority of the members of the RSU.**

In the case in point, the Milan Court, having ascertained that the company labour agreement (regarding a performance bonus) had been signed without expression of the will of the majority of the RSU and, in any case, by (not sanctioned) local trade union organizations, ordered that negotiations with each member of the RSU established within the company were to be reopened.

(Milan Court, Labour Law Division, July 30, 2020 no.

5. **Actions taken to limit damage resulting from strikes are legitimate, provided they do not compromise any exercise of the right to strike.** The Florence Court judged the instructions imparted by an employer, requiring an employee to take actions aimed at avoiding or mitigating the harmful effects of a strike before abstaining from work, to be anti-union conduct.

(Florence Court, Labour Law Division, October 15, 2020)



6. **The greater representativeness of historic trade unions, in terms of the number of workers they represent, is a known fact for which it is not necessary to provide proof in court.**

In the case in point, the Court of Rome ruled as legitimate the application by the Labour Inspectorate of the minimum wages awarded under the National Collective Bargaining Agreement stipulated by the most comparatively representative trade unions, in place of those paid by the employer at the company concerned.

(Rome Court, Labour Law Division, October 15, 2020)

7.

Company collective agreements are effective erga omnes vis-à-vis all the company's employees, except those who belong to a union that has refused to sign such an agreement and explicitly agree with the stance taken by their union.

The Supreme Court ruled that the lump-sum payment for overtime provided for in a company supplementary labour agreement signed by the trade unions and RSUs is applicable to all employees.

(Supreme Court, Labour Law Division, November 20, 2020, no. 26509)

8.

Disciplinary action taken against a union representative who reported breaches of the provisions to counter the Covid-19 pandemic in the workplace is anti-union conduct.

The Milan Court ruled that a hospital's precautionary suspension of a senior trade union representative who, in an interview given to a national newspaper a few days earlier, had been highly critical of his employer's organization, was retaliatory and intended to intimidate.

(Milan Court, Labour Law Division, December 9, 2020)

05

CIVIL LAW HIGHLIGHTS 2020

By Vittorio Provera and Francesco Torniamenti

In the case of joint-stock companies, actions for liability can only be taken against those directors who formally hold a senior management position.

The Supreme Court has ruled that, in general, an action for liability pursuant to article 2396 of the Civil Code can only be taken against those officers who hold senior management positions further to their formal appointment by the company's general meeting or board of directors, on the basis of a provision of the by-laws to such effect, except in cases of de facto directors.

(Supreme Court, January 13, 2020, no. 345)

Who carries the burden of proving the value of a partner's share for the purposes of liquidation?

According to the Supreme Court, when a partner in a firm leaves it, it is the directors who carry the burden of proving the liquidation value of the leaving partner's share. In the absence of such proof, the leaving partner's share can be valued ex aequo et bono by a court on the basis of the firm's financial position on the date the partnership is dissolved.

(Supreme Court, February 19, 2020, no. 4260)

Selling at a loss amounts to unfair competition only when it eliminates the competition.

Selling at a loss is against the rules on fair trading under article 2598.1 of the Civil Code only if it can be considered an offence under antitrust legislation, in that it is carried out by a firm in a dominant position and intended to be predatory. In fact, selling at a loss is, as a rule, beneficial to the consumer public and the market, at least until and unless it brings competition to an end and thus ends up by doing consumers and the market a disservice.

(Supreme Court, February 7, 2020, no. 2980)

A settlement with deferred performance may be terminated for supervening excessive onerousness.

If two parties resolve a dispute by entering into a settlement agreement to be performed at a later date, that agreement may be terminated for supervening excessive onerousness.
So, if one shareholder undertakes to buy the shares owned by another shareholder at a later date, their agreement may be terminated if the market value of those shares falls unexpectedly in the meantime.

(Supreme Court, February 20, 2020, no. 4451)

Biological damage does not comprise non-material loss.

When calculating the compensation to be awarded for a personal injury resulting from the harm caused to a constitutionally protected value/interest, non-material loss, which is an indefectible component of non-pecuniary damages, has to be considered separately.

(Supreme Court, February 18, 2020, no. 4099)

Recovery of sums unduly debited by banks and burden of proof placed on account holders.

An account holder who sues for the recovery of unduly debited sums is obliged to provide evidence of both their payment and the absence of any reason for the debit, meaning that they are required to document the movements on their account by producing all the statements of account that show the individual remittances liable to be recovered because they refer to amounts not payable.

(Supreme Court, April 17, 2020, no. 7895)

Written briefs in lieu of hearings.

At the stage of a civil hearing to which the special rules approved for the duration of the Coronavirus emergency apply, the failure to file written briefs in lieu of the hearing is tantamount to being absent from the hearing and the continuation of proceedings is consequently precluded.

(Naples Court of Appeals, June 16, 2020 no. 2151)

Testimonial evidence of a contract that must be proven in writing cannot be held inadmissible ex officio.

In accordance with the rules on the judicial protection of private interests, the inadmissibility of testimonial evidence of a contract that has to be proven in writing cannot be found ex officio but must be pleaded by the party concerned prior to the onset of the preliminary investigation stage of the case. If, notwithstanding a plea of inadmissibility, the evidence is admitted anyway, it is up to the party concerned to plead its invalidity, otherwise it shall continue to be formally admitted and it will not be possible to plead its invalidity at the appeal stage.

(Joint Divisions of the Supreme Court, August 5, 2020, no. 16723)

Liquidators are not automatically liable for uncollected taxes.

Liquidators' personal liability for the failure to pay taxes on the income of corporate entities is a civil law matter: it follows that, in order for the tax authorities to be able, in the alternative, to demand their payment by liquidators, they have to prove that the liquidator in question diverted money from the company for purposes other than paying taxes.

(Supreme Court, July 20, 2020, no. 15377)

06

INSURANCE, LEASES, LIABILITY

By Teresa Cofano

Supreme Court Case Law: Agent's commission – Unconscionable clauses

A clause entitling a real estate agent to commission even when the seller withdraws from the contract may be presumed unconscionable when such fee is not justified by the work carried out by the agent.
A clause is presumed unconscionable when an agent is entitled to retain a sum of money paid by a client who does not conclude the contract or withdraws from it and such clause does not provide for the client's right to claim back from the agent twice the amount paid if it is the agent who does not conclude the contract or withdraws from it.
(Supreme Court, Joint Divisions, decision no. 19565 of September 8, 2020)

Non-pecuniary damage

As a result of the new formulation of article 138 of the private insurance companies' code, the jurisprudential principle that moral damage is self-standing with respect to biological damage has been definitively confirmed, given that moral damage is, on the one hand, not subject to medical-legal assessment and, on the other, consists in the representation of a state of mind of inner suffering that is totally unrelated to the dynamic-relational events in the life of the injured party (even though it could influence them).
(Supreme Court, decision no. 25614 of November 12, 2020)

Insurer's recourse

An insurance company can exercise right of recourse regardless of any proceedings brought by the injured party.
(Supreme Court, decision no. 25087 of November 9, 2020)

In cases concerning third party liability insurance, the appearance in court and defense of the insured party, justified by the bringing of legal proceedings by the person who claims to have suffered damage, is also in the interests of the duly summoned insurer, since it is intended to obtain an objective and impartial finding of the existence of the indemnity obligation. So, even if no damages are awarded to the third party who brought the action, the insurer is obliged to bear the insured party's court costs, within the limits established by article 1917, paragraph 3, Civil Code.
(Supreme Court, decision no. 24409 of November 3, 2020)

Leases

With regard to leases, in order for a court to rule for termination of the contract due to the tenant's default, the court must assess

the extent of that default, also on the basis of the tenant's conduct following the filing of the related application.
(Supreme Court, Civil Law Division, decision no. 27955 of December 07, 2020)

Discharge of debt

When the cancellation of a debt is the cause of the discharge of obligations, the creditor's intent has to be expressed in an unequivocal way. That means that tacit behaviour can be considered an indication of the creditor's intent to waive the debt only when there can be no other rational justification than forgiving the debt.
(Supreme Court, Civil Law Division, decision no. 28439 of December 14, 2020)

Claw back action

A claw back action is legally justified not only by the reduction of a debtor's assets, but also measures taken to make it less easy and harder for creditors to be paid in the event of default.
(Supreme Court, Civil Law Division, decision no. 276245 of December 3, 2020)

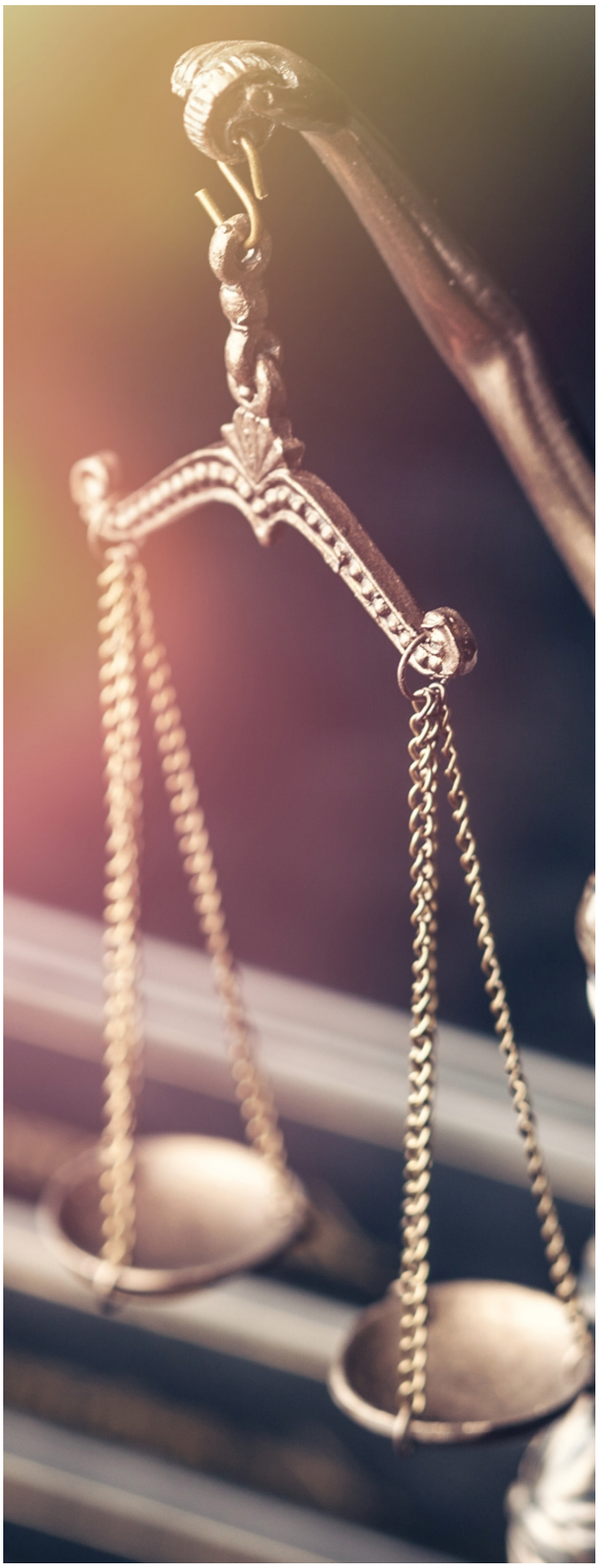
Jurisdiction - Plurality of contractual regulations containing conflicting extension clauses

The criterion of the primacy of the prorogation of jurisdiction clause, based on which the priority of decision is entrusted to the court chosen in the exclusive choice-of-court agreement (which is responsible for deciding on the validity of the agreement and its significance in the dispute pending before it), as an exception to the criterion established by art. 31, paragraph 2, of EU Regulation no. 1215/2012, does not apply (for the reasons set out in whereas clause 22 of that Regulation) when the legal relationship between the parties is governed by multiple contractual regulations, containing several prorogation clauses which conflict one another or interfere with the choice of national court, and when the chosen court has been seized first, in which case the criterion of attributing the decision on jurisdiction to the authority first seized prevails.

In such cases, the judge before whom the case has been brought has the power to decide on jurisdiction by applying the ordinary criteria for establishing jurisdiction within the framework of the proceedings pending before him in Italy, in which the preliminary regulation of jurisdiction can be proposed.
(Supreme Court, Joint Divisions, decision no. 28384 of December 14, 2020)

TRA LE NOSTRE SENTENZE

An insurance company's indirect liability for an offence committed by its sub-agent, based, pursuant to article 2049 of the Civil Code, on the necessary causal link between the sub-agent's duties and the damage suffered by the client, assumes that the harmful act was facilitated or made possible by the sub-agent's inclusion in the company's organization.
Moreover, a principal is not jointly and severally liable for the damage caused by its agent if the required causal link between the damage and the performance of the tasks entrusted to the latter is broken by the conduct of the injured party, who, disregarding the canons of prudence and the burdens of cooperation involved in making an investment, has an unusual demeanor, denoted by collusion or, at the least, conscious acquiescence to the breach of the ordinary rules on the professional relationship to be maintained with a client and on how capital to be invested is entrusted.
(Brescia Court, decision of November 26, 2020)



07

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AWARDS 2020

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Avv. Stefano Trifirò: premio lavoro e consulenza
Avv. Giacinto Favalli: diritto sindacale e previdenziale

CONFIMPRESE “Retail & Giurisprudenza novità in materia real estate, franchising, lavoro e concorrenza”

Speaker Avv. Mario Cammarata

LEGAL COMMUNITY 17.09.2020

Avv. Giacinto Favalli – Avvocato dell’anno relazioni industriali

WIRED 29.10.2019

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CLASS EDITORI migliori Avvocati e Studi Legali in Italia 2019-2020

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