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Violation of Public Policy as a Ground for Non-Recognition of Foreign Judgments – The Case of Judgments Preceded by a Mareva-Type Freezing Order

Note to: Corte di Cassazione (Sez. I civile), Credit Suisse Trust v. P.M., H.M.S., H.S.E., 16 September 2021, No. 25064

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Abstract

This note examines a ruling by the *Corte di Cassazione* concerning procedural public policy as a ground for non-recognition of foreign judgments. The *Corte di Cassazione* held that a foreign judgment may not be denied recognition in Italy on the sole ground that the court of origin previously granted an *in personam* interim measure restraining the respondent from dealing with its assets, whereas, under Italian law, asset preservation measures necessarily operate *in rem*. According to the Court, the public policy defence can only succeed if the proceedings before the court of origin, considered as a whole, were tainted by a serious violation of fundamental procedural rights. Having found no evidence of such a violation in the circumstances, the Court concluded that the foreign judgment concerned was eligible for recognition. The ruling of the *Corte di Cassazione* confirms of the restrictive approach to public policy which the Court itself developed throughout its previous case law, and will plausibly serve as a model for future decisions regarding procedural public policy.

Keywords

recognition of foreign judgments – public policy – fair trial – worldwide freezing orders – Mareva injunctions

Abstract of the Decision

By a Judgment of 18 November 2011, the Royal Court of Guernsey awarded damages to Credit Suisse Trust Ltd for the negligent performance by N.G. and others of their obligations under a contract for professional services.

Credit Suisse Trust filed an application with the *Corte d'Appello di Roma* (Court of Appeal of Rome) to have the judgment enforced in Italy. The Court, however, dismissed the request on the ground that the judgment failed to meet the requirements for recognition set out in Article 64(b) and (g) of the Italian Statute on Private International Law.¹ Article 64(b) provides that a foreign judgment may not be recognized in Italy if the act instituting the proceedings was not served upon the defendant in conformity with the law of the State of origin and if the basic rights of defence (“i diritti essenziali della difesa”) were violated in the proceedings in that State. Article 64(g), for its part, stipulates that a foreign judgment may not be given effect in Italy if doing so would contravene public policy.

The *Corte d'Appello* came to this conclusion based on the fact that, on 26 January 2011, upon a request by Credit Suisse Trust, the Royal Court of Guernsey had granted a freezing order which restrained N.G. from dealing with his assets, whether located in Guernsey or anywhere else in the world, under penalty of contempt of court. The order belonged to the kind of interim measures that English courts used to refer to as *Mareva* injunctions.² The *Corte d'Appello* stressed in its judgment that the measure in question was an *in personam* freezing injunction, whereas, under Italian law, a freezing order cannot operate otherwise than *in rem*, meaning that it necessarily refers to one or more particular assets, specified in the order itself. Additionally, the *Corte d'Appello* noted that the Guernsey Court had ordered that the respondent disclose his most valuable assets, and do so within days, again under penalty of contempt, whereas Italian law courts are generally not permitted to impose a duty of disclosure of this kind, let alone one requiring such a prompt reaction,

1 Law No. 218 of 31 May 1995, *Riforma del sistema italiano di diritto internazionale privato*, Reform of the Italian System of Private International Law. For an English translation of the statute, by MONTANARI and NARCISI, see BASEDOW et al. (eds.), *Encyclopedia of Private International Law*, Edward Elgar, 2017, p. 3329 ff.

2 The law of Guernsey, including as regards civil procedure, is largely based on English law: see generally GREENFIELD, “Guernsey”, in KAWALEY, BOLTON and MAYOR (eds.), *Cross-Border Judicial Cooperation in Offshore Litigation*, London, 2016, p. 197 ff. The conditions for granting a (worldwide) freezing injunction basically correspond to those currently contemplated in Part 23 of the English Civil Procedure Rules, available at: <<https://www.justice.gov.uk/courts/procedure-rules/civil/rules>>.

in connection with an asset preservation order. All in all, according to the *Corte d'Appello*, the Royal Court of Guernsey had in fact undermined, by granting a freezing injunction with the described characteristics, the ability of N.G. to present his case, and had significantly limited N.G.'s right to deal with his assets. The result, the *Corte d'Appello* added, was all the more objectionable since the orders of the Royal Court of Guernsey apparently failed to put any burden on the other party in the proceedings and its assets. In the view of the *Corte d'Appello*, all this substantiated a violation of the principle of the equality of arms, as well as of the principle whereby all parties should be given an opportunity to effectively present their case, which implies the right to adequate time and facilities to prepare a defence.

Credit Suisse Trust sought to have the ruling of the *Corte d'Appello* quashed by the *Corte di Cassazione*. The move proved successful.

The *Corte di Cassazione* held that the fact that the order was of a kind unknown to Italian law does not entail, as such, that the proceedings were unfair, let alone that the resulting judgment should be barred from recognition. The public policy defence, taken in its procedural limb, can only succeed, the *Corte di Cassazione* reasoned, where it clearly appears that the proceedings before the court of origin were tainted by a serious violation of basic procedural rights. Thus, a judgment on the substance of the case may not be refused recognition on grounds of public policy for reasons relating to an interim measure given in the course of the proceedings in the State of origin, unless it is established that, by granting such a measure, the court of origin violated the procedural rights of the party concerned in such a fundamental way as to undermine the fairness of the whole proceedings. The *Corte di Cassazione*, however, found no evidence of such a violation in the circumstances. In fact, the Court considered that the freezing order and the disclosure order came with appropriate safeguards and concluded that the Guernsey judgment fulfilled the conditions for recognition in Italy.

Key Passages from the Ruling

(Paragraph 16). "Freezing injunctions, as known in English law and the law of Guernsey, are somewhat similar, in terms of function, to asset preservation measures available under Italian law ("sequestri conservativi"). However, unlike Italian "sequestri", which operate *in rem*, English freezing injunctions operate *in personam*.

The structural difference between the two types of measures has significant implications on their functioning.

The effectiveness of Italian preservation orders is ensured, in principle, by the particular measures – outlined in Articles 678 and 679 of the Italian code

of civil procedure – whereby the orders in question are enforced. The latter measures entail that the targeted assets may not be validly dealt with. Instead, English freezing injunctions, which do not result as such in a similar constraint, presuppose some form of compulsion upon the addressee. This is done by providing that a failure to observe the injunction amounts to a contempt of court, the penalty for which may be as harsh as imprisonment. In addition, English freezing injunctions may be coupled with a separate order – this, too, was given by the Court of Guernsey in the instant case – whereby the addressee is required to disclose his assets, again under penalty of contempt of court”.

(Paragraph 17). “The *Corte d’Appello* erred in asserting that the freezing injunction given in Guernsey, combined with the disclosure order and the threat of incurring in contempt of court, was inconsistent with procedural public policy or involved a breach of the “basic rights of defence” of N.G”.

(Paragraph 17.1). “To begin with, the *Corte d’Appello di Roma* erred where it denied recognition to the Guernsey judgment on the substance of the case (which the *Corte d’Appello* in fact disregarded) on the ground that the Royal Court of Guernsey had given an interim measure, namely a freezing injunction and a disclosure order. Article 64(g) of the Italian Statute on Private International Law precludes the recognition of a “judgment” whenever such recognition would be at odds with public policy. The *Corte d’Appello* omitted to explain why the granting of a provisional measure, the purpose of which is simply to preserve the effectiveness of the court’s contemplated ruling on the merits, entails that the resulting judgment runs counter public policy. One cannot exclude that a foreign judgment should be denied recognition on grounds of public policy for reasons relating to the interim orders given in the course of the proceedings. In no case, however, a finding to that effect can be regarded as an obvious and automatic implication of the granting of a provisional measure”.

(Paragraph 17.2). “Secondly, in assessing whether the recognition of the Guernsey judgment would in fact offend the procedural public policy of Italy, the *Corte d’Appello* departed from the relevant standards that clearly emerge from the case law of the *Corte di Cassazione*. The public policy defence, taken in its procedural limb, represents an exceptional remedy and is only available where the recognition of a judgment would contravene the fundamental principles of the Italian legal order (*Corte di Cassazione*, 8 January 2017, No. 1239). This means that a breach of the procedural rules aimed at ensuring a party’s active participation in the proceedings is not enough to substantiate a violation of public policy. For such a violation to exist, the breach occurred must be so significant that it undermined the right of defence as regards the proceedings considered as a whole, having regard to the basic principles on fair trial (*Corte di Cassazione*, 3 September 2015, No. 17519).

As regards freezing injunctions, it is worth recalling the ruling given by the Court of Justice of the European Union, on 2 April 2009, in the *Gambazzi* case (C-394/2007). The *Corte d'Appello* itself mentioned the latter ruling in its decision, although it failed to fully grasp the significance of the ruling for the case at issue. The ruling of the Court of Justice, put shortly, concerned a freezing order given by an English court, in conjunction with a disclosure order. Mr Gambazzi failed to comply with those orders and was accordingly found to be in contempt of court. Being debarred from defending, the English court ruled on the merits of the case against Gambazzi and ordered the latter to pay a sum of about EUR 300 million. Well, even though the case arguably featured the most serious restriction possible on the rights of the defence, the English judgment on the substance of the matter was eventually recognized in Italy (*Corte di Cassazione*, 9 May 2013, No. 11021). Recognition occurred in accordance with the standards that the Court of Justice itself laid down in its judgment, namely that: freezing and disclosure orders are meant to ensure the proper administration of justice and the effectiveness of decisions, but – since they entail a broad limitation on the rights of defence – they must come with appropriate safeguards so that they do not result in a manifest and disproportionate infringement of the addressee's right to be heard; whether the safeguards adopted were in fact appropriate must be assessed on a case-by-case basis, having regard, in particular, to the remedies available to the addressee in the circumstances.

The judgments concerning the case of Mr Gambazzi – i.e. the ruling of the Court of Justice and the subsequent judgment of the *Corte di Cassazione* on the recognition of the English ruling – have been the object of criticism. The objections raised, however, do not seem to consider that, due to the increased volume of international exchanges, there is a vital need to ensure the swift circulation of judgments across borders, especially in Europe. Such a need should not be sacrificed unless – to put it like the Court of Justice – the rights of the party concerned were infringed in the State of origin in a manifest and disproportionate manner. This occurs where the infringement complained of is particularly evident and its impact on the final ruling is so vast and meaningful that it ultimately proves intolerable [...].

(Paragraph 17.3). “Against this backdrop, one cannot exclude as a matter of principle that a failure by the court of origin to ensure respect for the principle of equality of arms in connection with a provisional measure could result in a “manifest and disproportionate” violation of the right of defence. But in no case such a finding may be made on the mere basis that the rules applied in the court of origin – the rules on *in personam* freezing injunctions – differ from those governing the “sequestri conservativi” in Italy. To put it with Benjamin

Cardozo in *Loucks et al. v. Standard Oil Co. of New York*, 224 N.Y. 99, 120 N.E. (1918), “we are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home”.

The *Corte d'Appello*, instead, stressed that the freezing injunction granted in Guernsey had the effect of undermining the ability of the addressee to present his case and deprived the latter of adequate time for preparing his defence. The *Corte d'Appello* further observed that, while the addressee of the order was so hit, the Royal Court of Guernsey failed to give analogous measures affecting the assets of the party which requested the order, or its ability to actively take part in the proceedings.

The assertion, however, rests on a wrong understanding of what the equality of arms stands for. In fact, it is as if one would see a violation of the latter principle in a judgment that ruled against one party (on the ground that that party's claims were ill-founded) and failed to adopt any measure against the other party (whose claims were instead considered by the judgment to deserve protection) [...].

(Paragraph 17.4). “The *Corte d'Appello* should have rather proceeded as follows. It should have begun by determining the key features of the freezing injunction and the disclosure order. It should have considered that interim measures, specifically those aimed at preserving assets, are an essential component of all domestic legal systems and are not meant, as such, to discriminate the addressee vis-à-vis the other party. The goal of interim measures is rather to ensure the effectiveness of the decision that the court is ultimately asked to render and avert such risks as may be associated with the time needed to bring the proceedings on the substance to an end.

While the goal pursued is basically common to all legal systems, each jurisdiction surrounds interim measures with the safeguards that it considers appropriate. One should not give a decisive weight to the diversity of these safeguards, insofar as they all ensure the equality of the parties' arms.

Accordingly, the *Corte d'Appello* should have focused on whether, in the State of origin, the addressee had been granted “arms” which enabled him to react to the “arms” of the other party. The answer could be found in the very order given by the Royal Court of Guernsey. The latter Court retained the power to revoke and modify the measure upon a request by the addressee, and a hearing to that effect had already been convened (the measure had in fact been granted *ex parte*). Furthermore, the Law Reform (Miscellaneous Provisions) (Guernsey), 1987 provides that the court issuing a freezing order “may require the applicant to enter into such undertakings on such terms as may be specified”. Under the latter provisions, courts used to require that the applicant – as it occurred in the instant case – undertake to compensate such prejudice as

the injunction may cause to the addressee of the measure. A failure to comply with such an undertaking may result in the applicant, too, being in contempt of court, in the same way as the respondent in the event of a failure to observe the freezing or the disclosure orders [...].

(Paragraph 17.5). “The fact that the Guernsey orders involved the threat of harsh penalties in case of non-compliance does not entail that the granting of the measures in question should necessarily involve a violation of procedural public policy [...].

Admittedly, these indirect coercive measures raise some delicate issues, among which the issue of the geographical reach of *in personam* measures, the observance of which may be due in a State other than the State where the measures were given.

But there is no need to discuss that problem here. Rather, it is worth noting that recourse to coercive measures to promote compliance with a court order is not alien to the Italian legal system. Article 388 of the Italian criminal code makes it a criminal offense to deliberately evade from an order given in court proceedings. Article 127 of the Italian code on intellectual property goes as far as to criminalize any failure to answer (or any false information in response to) the questions that a court may ask where seized of proceedings relating to counterfeiting and other infringements of intellectual property rights”.

(Paragraph 17.6). “Disclosure orders, for their part, can hardly be considered to entail, as such, a restriction of the procedural rights of the addressee [...]

Provisions exist in the Italian legal system that address substantially the same concerns as those underlying the disclosure orders known in England and Guernsey. This is notably the case of Article 492(7) of the Italian code of civil procedure: the provision, now abrogated, allowed for research of the debtor’s assets to be carried out by a court bailiff in the framework of enforcement proceedings [...].

Also significant in this respect is Article 14 of the legislative decree of 26 October 2020, No. 152, adopted to implement Regulation (EU) No. 655/2014 of 15 May 2014, which established a European Account Preservation Order, specifically as regards requests for information relating to bank accounts [...].”

Comment:

1 Introduction

The *Corte di Cassazione* ruled on several occasions, especially over the last twenty years, on procedural public policy as a possible ground for non-recognition of foreign judgments.

The case law of the Court on this topic has been consistently geared towards restricting the operation of the public policy defence, so that it merely covers exceptional cases. In fact, while the defence has been invoked somewhat frequently in practice, only occasionally did the *Corte di Cassazione* conclude that a foreign decision ought to be denied recognition on the ground that the proceedings in the State of origin involved an infringement of basic procedural rights. Actually, the *Corte di Cassazione* reached such a conclusion only in cases where fundamental procedural safeguards had been openly disregarded and one party was effectively deprived of the opportunity to be heard or otherwise suffered from unequal treatment.³

Three ideas appear to underlie the Court's case law on procedural public policy. They are all prominently featured in the ruling that forms the object of this comment.

2 Principles, rather than Rules, Serve as Yardsticks

The *Corte di Cassazione* has recurrently stressed that the relevant standards for assessing whether a foreign judgment offends the procedural public policy of Italy are not the Italian rules of civil procedure, but rather the principles that underlie those rules.⁴ This means that the public policy defence may not be triggered unless recognition would challenge the core principles of Italian legal procedure, whereas it is immaterial whether the procedural rules applied in the court of origin display the same operational features as those in force in Italy.

The focus on principles, rather than rules, has two main implications. On the one hand, the described approach prevents the public policy defence from being raised too often. Procedural rules vary greatly from one State to another. If respect for public policy were to be assessed based on a sheer comparison between the provision in the State of origin and the rules of Italian civil procedure, the exception would likely be called into question on

3 For instance, the *Corte di Cassazione* relied on the public policy defence to deny the recognition of a decision whereby a Sharia court operating in Palestine had recorded the repudiation of a wife by her husband: *Corte di Cassazione (Sez. I civile)*, 7 August 2020, No. 16804. The Court observed then that the wife was only informed of the proceedings when she was notified that the court had recorded the repudiation. The wife had also not been informed of the start of the stage of the proceedings the purpose of which was to ascertain whether the husband might have revoked the *talaq*.

4 For a notable expression of this approach, see *Corte di Cassazione (Sezioni Unite Civili)*, 5 July 2017, No. 16601.

numerous instances and would disproportionately affect the judgments emanating from States whose legal traditions or procedural models simply differ from the Italian ones. This would ultimately defeat the purpose of the rules on the recognition of judgments, the object of which is to ensure that the authority of the decisions of the courts of one State can be reasonably relied upon in another subject only to such limits as reflect a concern for fairness and sovereignty.

On the other hand, by stating that regard ought to be had to procedural principles, rather than rules, the *Corte di Cassazione* indicates that one should look at the substance of the safeguards adopted in the State of origin, rather than their form or their “mechanics”. What matters is whether the concerns that shape the law and practice of the State of origin substantially correspond to those protected under Italian rules and – in the affirmative – whether those concerns enjoy in the State of origin a protection that can be regarded as sufficient based on Italian standards. In practice, a two-fold test applies: one is about the policies pursued in the State of origin and involves an assessment of consistency with the fundamental policies of the Italian legal system; the other is about the legal means whereby those policies are pursued and revolves around the adequacy of such means, the question being whether, irrespective of their manner of operation, they succeed in realizing the policies in question to an extent that Italian standards regard as sufficient.

The ruling analyzed in this comment provides an illustration of this approach. The freezing injunctions known in Guernsey and England fundamentally differ, in terms of structure and mode of operation, from the *in rem* asset preservation orders that Italian courts are permitted to issue. That difference, however, is not enough a reason to trigger the public policy defence.

What is crucial for the purposes of public policy is whether the rules that surround an *in personam* freezing order under the law of Guernsey underlie a concern for the same policies as Italian law regards as relevant in the field of provisional measures (the effectiveness of the expected final decision of the court, without unduly restricting the addressee's right of defence and right to enjoy his property), and whether the rules in force in Guernsey ultimately provide the addressee with an opportunity to be heard and to have the measure revoked or modified, where appropriate. There is no room for the public policy exception if the policies of Guernsey are consistent with the basic policies of Italy and if the remedies available under the law of Guernsey, no matter their shape or form, ultimately provide the addressee with sufficient protection.

The case law of the *Corte di Cassazione* features various applications of the approach described above.

One remarkable example is found in a ruling concerning the recognition of a US judgment which lacked reasoning.⁵ The issue was raised, then, of whether recognition ought to be denied on grounds of public policy, taking into account that Article 111(6) of the Italian Constitution requires, as a matter of principle, that all judicial decisions be accompanied by an illustration of the reasons that support them. The *Corte di Cassazione* took the view that the recognition of a foreign judgment lacking reasoning does not necessarily offend public policy. The provision in Article 111(6) of the Constitution, the Court argued, refers as such to the decisions of Italian judicial authorities and reflects the way in which Italian authorities are organized and work. Thus, the requirement that decisions be reasoned is not absolute in nature and does not affect, as such, the recognition of foreign judgments. As far as procedural public policy is concerned, the question is whether in the proceedings in the State of origin the right of the defence had, globally, been respected. If the answer is in the affirmative, then the judgment may not be denied recognition solely on the ground that it does not come with a statement of the supporting reasons.

3 A Case-by-Case Analysis Is Needed

According to the *Corte di Cassazione*, when assessing whether a foreign judgment should be denied recognition on grounds of public policy, regard ought to be had to the facts of the case. The assessment, put in another way, must be done *in concreto*, and may not be based on the general features of the kind of decisions to which the judgment concerned belongs, let alone the situation in the State of origin or the quality of its judiciary.⁶

In the ruling that forms the object of this comment, the *Corte di Cassazione* relied on the above directive to signify that the circumstances in which the court of origin granted a provisional measure do not necessarily, nor automatically, affect the recognition of the subsequent judgment given by that court regarding the merits of the dispute. One must rather look at the facts of the case and see whether, by granting the provisional measure in question, the court of origin in fact undermined the fairness of the proceedings, taken as whole. Put in another way, an assessment *in concreto* is one involving a consideration of all the relevant circumstances relevant to the proceedings.

5 *Corte di Cassazione (Sez. I civile)*, 15 April 2019, No. 10540.

6 On the *in concreto* assessment of compliance with public policy, see generally PERLINGIERI and ZARRA, *Ordine pubblico interno e internazionale tra caso concreto e sistema ordinamentale*, Napoli, 2019, p. 27 ff.

Similar assertions had appeared in previous rulings of the *Corte di Cassazione*. When seized of situations where one of the parties complains of a violation of procedural rights, the *Corte di Cassazione* is used to assess the extent to which the violation affected the whole proceedings and whether the party complaining of the violation was given the opportunity to have the violation reviewed and to obtain, where appropriate, that the effects of the violation be removed. A ruling of 2021 provides an interesting example of this approach.⁷ Under a judgment rendered in Romania, an Italian company had been ordered to pay damages to a Romanian company. The Italian company submitted that it had joined the proceedings in Romania, following an action on warranty, at a stage when the key facts concerning its liability had already been ascertained. On this basis, it complained that it had not been given the opportunity to present its case before the Romanian court and contended that the judgment ought to be denied recognition on grounds of procedural public policy. The Court dismissed the motion, noting that the Italian company, once it joined the proceedings, failed to submit any request to the Romanian court regarding the fact finding and fact assessment procedure, and – more generally – took a totally passive stance towards the proceedings.

4 Domestic and International Standards Coexist and Merge

The public policy defence is traditionally presented as a means to protect the identity of a State, that is, the policies that that State – the State where the effects of a judgment are being relied upon – regards as essential.⁸ However, this does not mean that the public policy of a State, as understood by the rules of private international law, merely consists of such policies as originate in the State concerned, i.e. those enshrined in that State's constitution and its legislation. Other policies, namely those resulting from the international conventions (and/or regional instruments) to which the State concerned is a party, also play a role in this regard.

The *Corte di Cassazione* has often relied on both national and international standards for the purposes of defining the scope of Italian public policy. It refrained from suggesting that the former should carry more weight than the

⁷ *Corte di Cassazione*, 23 July 2021, No. 21233.

⁸ See, also for additional references, FRANZINA, "The Purpose and Operation of the Public Policy Defence as Applied to Punitive Damages", in BARIATTI, FUMAGALLI and CRESPI REGHIZZI (eds.), *Punitive Damages and Private International Law: State of the Art and Future Developments*, Milano-Padova, p. 43 ff., p. 56.

latter, or *vice versa*, and rather favored a joint or combined reference to all the relevant sources, be they domestic, regional, or international in nature.

The ruling of the *Corte di Cassazione* concerning the recognition of a Romanian judgment referred to in the previous Section of this paper provides an illustration of this approach.⁹ The recognition of the Romanian judgment had been challenged then, among other things, on the ground that participation in the proceedings entailed the payment of duties of such a high amount that the parties' right of access to a court was allegedly undermined. The *Corte di Cassazione* dismissed the argument. It did so based on the same standards developed by the European Court of Human Rights in its case law concerning the issue whether by imposing high stamp duties and other forms of taxation of judicial proceedings a Contracting State of the European Convention on Human Rights can be regarded to breach Article 6 of that Convention.¹⁰

The ruling examined in this paper reflects a similar approach. The case was governed by the Italian Statute on Private International Law, but this did not prevent the *Corte di Cassazione* from referring, in its reasoning, to the ruling of the Court of Justice of the European Union in *Gambazzi*.¹¹ The latter ruling concerned the interpretation of the Brussels Convention of 27 September 1968 on the recognition and enforcement of judgments in civil and commercial matters, a regional regime whose current incarnation is Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("*Brussels I bis*").¹²

Although the regional rules were of no avail in the case at hand, given that EU law does not apply to Guernsey, the *Corte di Cassazione* found it appropriate to approach the matter in basically the same way as if the ruling originated in a Member State of the European Union and recognition were governed by regional rules. Under the latter rules, the scope of a Member State's public policy should be construed having in mind the constitutional traditions that are common to Member States, and the fundamental principles of the legal order of the Union itself, notably as enshrined in the European Convention

9 See *supra* note 7.

10 The *Corte di Cassazione* specifically relied on three judgments of the Strasbourg Court: *Kreuz v. Poland*, Application No. 28249/95, Judgment of 19 June 2001; *Weissman and others v. Romania*, Application No. 63945/00, Judgment of 24 May 2006; and *Stankov v. Bulgaria*, Application No. 68490/01, Judgment of 12 July 2007.

11 Case C-394/07, *Marco Gambazzi v. DaimlerChrysler Canada Inc. and CIBC Mellon Trust Company*, 2009.

12 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, OJ L 351 of 20 December 2012, p. 1.

on Human Rights and the Charter of the Fundamental Rights of the European Union.¹³

All in all, the basic procedural rights that the *Corte di Cassazione* is ready to protect through the public policy exception, regardless of whether domestic or internationally uniform rules on recognition apply, are shaped by the combined operation of multiple sources. The *Corte di Cassazione* retains the primary responsibility for defining the formula according to which the different ingredients of public policy – domestic, regional, and international – should be mixed and interact with each other.

5 Concluding Remarks

The views expressed by the *Corte di Cassazione* in the ruling analyzed in this contribution do not substantially depart from those found in other judgments given by the Court concerning procedural public policy as an obstacle to the recognition of foreign judgments.

This is nonetheless a significant decision in at least two respects. First, the *Corte di Cassazione* reiterated in this ruling its restrictive approach to the public policy defence, and it did so in a manner that is particularly clear and outspoken. By quoting the Benjamin N. Cardozo's "we are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home", the Court issued a strong recommendation to lower courts that they avoid parochialism and embrace instead an outward looking attitude. Arguably, the call would have not proved as resounding had it been accompanied by a quote from an Italian author. Secondly, the ruling is important because it restates the methodology that lower courts should adopt when dealing with procedural public policy issues. The language of the Court is, in some passages, pedagogical. The Court somehow considered that it should not content itself with reviewing the lower court's judgment and apparently decided to seize the opportunity to provide general guidance to courts and practitioners.

In this sense, the ruling presents itself as an attempt to codify the *Corte di Cassazione's* approach to procedural public policy and, as such, serves as a reference for future cases.

This is not to say, of course, that all questions are settled. Significantly, the *Corte di Cassazione* refrained from providing an answer to a question that the

13 See, in particular, Case C-7/98, *Dieter Krombach v. André Bamberski*, 2000, paras. 22 ff, and Case C-619/10, *Trade Agency Ltd v Seramico Investments Ltd*, 2012, para. 52.

Court was not required to address in the instant case but is likely to reappear in circumstances analogous to those considered in the ruling.

Reference is made to the recognition and enforcement in Italy of *in personam* freezing injunctions which are meant to affect the ability of the addressee to deal with assets located anywhere in the world. It is recalled that, in the case examined, the issue was not whether the Guernsey freezing injunction itself ought to be recognized and enforced in Italy, but whether the recognition of the Guernsey final judgment on the merits should be denied recognition on the grounds that it was preceded by such a measure.

The *Corte di Cassazione* acknowledged that indirect coercive measures, an inherent characteristic of English and Guernsey freezing orders, raise some delicate issues as regards their geographical reach and their international circulation.

It is not the purpose of this contribution to address those issues, or to discuss the extent to which the findings of the *Corte di Cassazione* in the ruling examined in these pages actually pave the way for the recognition and enforcement of interim measures of that kind (if and insofar as the applicable rules on recognition provide, as a matter of principle, that foreign interim measures may be given effect in Italy, which is not the case under the Italian Statute on Private International Law).¹⁴ That said, it is worth noting that, in a recent decision, the *Corte d'Appello di Napoli* relied explicitly on the ruling of the *Corte di Cassazione* examined here to conclude that a freezing injunction granted by the High Court of Justice of England and Wales was enforceable in Italy under the Brussels I *bis* Regulation, thereby excluding that its recognition could be denied on grounds of procedural public policy or otherwise.¹⁵

14 Art. 64 of the statute is merely concerned with the recognition of “judgments” (“sentenze”), and provides, among other things, that a judgment is not eligible for recognition unless it has become *res judicata* in the legal order of origin.

15 *Corte d'Appello di Napoli, Fallimento Foreign Economic Industrial Bank LLC (Vneshprombank LLC)*, 28 December 2021, unreported.