Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 11 September 2025 [1]

Case C-196/24 [Aucrinde] [i]

xx
v
ww,
yy,
zz,
vv,
joined parties:
Ministère Public

(Request for a preliminary ruling from the tribunal judiciaire de Chambéry (Court of Chambéry, France))

(Reference for a preliminary ruling – Judicial cooperation between the courts of Member States in civil or commercial matters – Taking of evidence in civil or commercial matters – Exhumation of a body for the purpose of establishing parentage – Genetic testing – Request for the taking of evidence considered contrary to fundamental principles of the national law of the requested Member State – Grounds to refuse a request for the taking of evidence – Conflict between fundamental rights – Human dignity of a deceased person – Respect for private and family life – Personal identity – Right to know one's genetic origins)

I. Introduction

1. The present request for a preliminary ruling invites the Court to interpret Regulation (EU) 2020/1783, which establishes judicial cooperation in civil and commercial matters in relation to the taking of evidence. [2]

2. More precisely, the Court is invited to assess for the first time whether national legislative rules, regarded as a matter of public policy under national law, can be relied on as a ground for refusing to execute a request for the taking of evidence sent by a court of one Member State (the requesting court) to the court of another Member State (the requested court).

[1] Original language: English.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

[2] Regulation of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (OJ 2020 L 405, p. 1) ('Regulation 2020/1783'.)

3. The questions before the Court arose in the context of judicial proceedings brought before the Tribunale di Genova (District Court, Genoa, Italy; 'the Italian court') in order to establish the paternity of the applicant in the present case. To that end, that court made a request to the tribunal judiciaire de Chambéry (Court of Chambéry, France), which is the referring court, for the taking of evidence pursuant to Regulation 2020/1783 for the purpose of completing an expert genetic report necessary for establishing paternity. The execution of that request involves exhuming the body of the putative father, buried in France, and taking a sample from the body necessary for genetic fingerprinting.

II. Relevant EU Law

EU Charter of Fundamental Rights

4. Article 1, entitled 'Human dignity' provides:

'Human dignity is inviolable. It must be respected and protected'.

5. Article 7, entitled 'Respect for private and family life' provides:

'Everyone has the right to respect for his or her private and family life, home and communications.'

Regulation 2020/1783

6. Article 1 defines the scope of Regulation 2020/1783. It distinguishes between the indirect taking of evidence, in Article 1(1)(a) thereof, and the direct taking of evidence, in Article 1(1)(b) thereof. That provision reads as follows:

'1. This Regulation applies in civil or commercial matters in which the court of a Member State, in accordance with the law of that Member State, requests:

(a) the competent court of another Member State to take evidence; or

(b) the taking of evidence directly in another Member State.

(…)'

7. Article 12 of Regulation 2020/1783 contains general provisions on the execution of requests for the indirect taking of evidence under Article 1(1)(a) of that regulation. The relevant parts of Article 12 provide:

'1. The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.

2. The requested court shall execute the request in accordance with its national law.

3. The requesting court may call for the request to be executed in accordance with a special procedure provided for in its national law, using form A in Annex I. The requested court shall

execute the request in accordance with the special procedure unless doing so would be incompatible with its national law or it is unable to do so because of major practical difficulties. If the requested court does not comply with the call for the request to be executed in accordance with a special procedure for one of those reasons, it shall inform the requesting court using form H in Annex I.

(…)'

8. Article 16 of Regulation 2020/1783 enumerates the grounds for refusing to execute requests for the indirect taking of evidence as provided for in Article 1(1)(a) thereof. Whereas Article 16(1) concerns only requests for the examination of a person, not relevant in the present case, Article 16(2) reads as follows:

'2. The execution of a request may only be refused on grounds other than those referred to in paragraph 1, where one or more of the following grounds applies:

(a) the request does not fall within the scope of this Regulation;

(b) the execution of the request does not fall within the functions of the judiciary under the law of the Member State of the requested court;

(c) the requesting court does not comply with the request of the requested court to complete the request for the taking of evidence pursuant to Article 10 within 30 days of the requested court asking it to do so; or

(d) a deposit or advance asked for in accordance with Article 22(3) is not made within 60 days of the requested court asking for such a deposit or advance.'

9. Article 19 of Regulation 2020/1783 concerns requests for the direct taking of evidence, as provided for in Article 1(1)(b) thereof. Article 19(7) enumerates the grounds for refusing to execute such a request, it reads as follows:

'7. The central body or the competent authority of the requested Member State may refuse a request for direct taking of evidence only if:

(a) it does not fall within the scope of this Regulation;

(b) it does not contain all of the necessary information referred to in Article 5; or

(c) the direct taking of evidence requested is contrary to fundamental principles of law in its Member State.'

Regulation No 1206/2001 [3]

10. Regulation 2020/1783 is a recast of Regulation No 1206/2001.

[3] Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 2001, p. 1 ('Regulation No 1206/2001').

11. The relevant provisions of Regulation No 1206/2001, Articles 1, 10, 14 and 17, correspond, respectively, to Articles 1, 12, 16 and 19 of Regulation 2020/1783.

12. In that respect, the case-law on Regulation No 1206/2001 is also relevant for the interpretation of the applicable provisions of Regulation 2020/1783 in the present case.

III. The facts in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

13. The applicant in the present case, xx, brought proceedings before the Tribunale di Genova, (Civil District Court, Genoa) seeking to establish that aa, who is deceased and buried in France, is his biological father.

14. The applicant seeks from that court (i) a declaration stating that he is the illegitimate son of aa, (ii) authorisation to use his father's name and (iii) an order that the competent registrar enter the future judgment into the record when it becomes final.

15. The defendants in the main proceedings, who are legitimate children of aa, objected to undergoing the tests necessary for a haematologist's report to determine whether the applicant has genetic characteristics matching those of the defendants. They instead requested that a genetic examination be performed on the body of their late father. Therefore, the Italian court ordered an expert report by a haematologist and appointed an expert to carry out a genetic comparison between the applicant and the body of the putative father upon his exhumation.

16. On 18 November 2022, the Italian court sent to the referring court a request for the exhumation of the body of the putative father, pursuant to Regulation 2020/1783, using Form A, as provided in Annex I to that regulation.

17. However, under the Code civil (French Civil Code), a judge cannot order the exhumation of a body for the purpose of obtaining a genetic sample with a view to establishing parentage, unless the deceased person had given his or her express consent during his or her lifetime.

18. The relevant provision of the French Code civil (Civil Code), Article 16-11 thereof,[4] provides:

'The identification of an individual by DNA fingerprinting may be sought only:

1° In the context of investigative measures conducted in the course of judicial proceedings;

2° For medical or scientific research purposes;

3° For the purpose of establishing, when it is unknown, the identity of deceased persons;

[4] That provision was introduced into the French Civil Code on the basis of Article 5, I, 1 of loi n° 2004-800 du 6 août 2004 relative à la bioéthique (Law No 2004-800 of 6 August 2004 on bioethics; 'the Law on Bioethics'). As observed by the European Commission, according to which there is no presumption of the consent for genetic sampling of a deceased person, that law was a legislative reaction to the exhumation of the famous singer Yves Montand in November 1997, for the establishment of his paternity over a person who claimed to be his daughter. That is why, according to a commentary on Décision n° 2011-173 QPC du 30 septembre 2011 (Decision No 2011-173 QPC of 30 September 2011) of the Conseil constitutionnel (Constitutional Council, France), this amendment is sometimes referred to as the 'Montand amendment'.

4° Under the conditions provided for in Article L. 2381-1 of the code de la défense [(Defence Code)];

5° For the purpose of combating doping, under the conditions provided for in Article L. 232-12-2 of the code du sport [(Sports Code)].

In civil matters, such identification may be sought only by execution of a measure of investigation ordered by a court before which an action is brought, seeking either to establish or to contest parentage, or to obtain or remove subsidies. The consent of the person concerned must be obtained expressly and in advance. An identification cannot be made by DNA fingerprinting after a person's death unless that person gave his or her express consent during his or her lifetime.

…'

19. Additionally, as submitted by the French Government, the entire chapter of the French Civil Code to which that provision belongs is considered a matter of public policy, by virtue of Article 16-9 of that code.

20. In those circumstances, the referring court wonders whether Article 12(2) of Regulation 2020/1783 should be construed as allowing a court to refuse to execute a request for the taking of evidence when such a request is considered contrary to the fundamental principles of law of the Member State of the requested court.

21. The referring court noted that the grounds for refusing to apply Regulation 2020/1783 are listed exhaustively in Article 16 thereof, and, therefore, Article 12 does not contain a further ground for refusing to apply that regulation. However, that court also expressed concerns that such an interpretation of Article 12 means that there is no safeguard protecting against requests to be executed under procedures which do not comply with standards of EU law,[5] especially Articles 1 and 7 of the Charter of Fundamental Rights of the European Union ('the Charter').

22. In those circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 12 of [Regulation 2020/1783] allow a national court to refuse to apply that regulation and to comply with the request from the requesting State, on the ground that the procedure specified in the request is contrary to fundamental principles of the national law of the requested State, and in particular Article 16-11 of the Civil Code?

(2) If Article 12 of [Regulation 2020/1783] applies regardless of national law, how should Article 1 (right to dignity) and Article 7 (right to respect for private life) of the [Charter] be interpreted and the links between them determined in order to establish whether or not such an application of the Regulation infringes the [Charter]?'

23. The applicant in the main proceedings, the French Government and the European Commission submitted written observations to the Court.

24. A hearing was held on 29 April 2025 at which the French Government and the Commission presented oral argument.

[5] See paragraph 90 of the order for reference.

IV. Analysis

A. Preliminary remarks – unpacking the questions referred

25. In order to provide useful advice to the Court, I find it necessary to deconstruct the questions referred in order to better understand the concerns of the referring court.

26. By the first question, the referring court in essence asks whether it can *refuse* to execute the request, made pursuant to Regulation 2020/1783, requesting a post-mortem genetic sampling of a person buried in France for the purpose of establishing parentage, given that the French Civil Code prohibits the taking of such evidence if the person concerned did not give his or her consent while alive.

27. According to that court, refusing to execute a request on the basis of Article 12 is not possible, since an exhaustive list of grounds for refusing such a request is set out in Article 16 of Regulation 2020/1783, and domestic public policy is not among them. Nevertheless, the referring court wishes to verify whether such a ground can be inferred from Article 12(2) of Regulation 2020/1783.

28. In its observations submitted to the Court, the French Government claims that the request from the Italian court is not a request for the indirect taking of evidence, as per Article 1(1)(a) of Regulation 2020/1783, meaning that Article 12 thereof is not relevant for the case at hand. According to that government, that request seeks a direct taking of evidence, as per Article 1(1)(b) of Regulation 2020/1783, meaning that Article 19 thereof is applicable. The first question should, according to that government, be reformulated so as to ask for an interpretation of Article 19 of Regulation 2020/1783.

29. The significance of such a reading for the present case lies in the possibility for a requested court to refuse to execute a request for the direct taking of evidence if such a direct taking of evidence would be contrary to fundamental principles of law in the requested Member State, as expressed in Article 19(7)(c) of Regulation 2020/1783. Conversely, no equivalent ground exists for refusing a request for the indirect taking of evidence.

30. In order to answer the first question, it will therefore be necessary first to assess whether Article 12 of Regulation 2020/1783 actually applies in the present case, which would be the case only if the request at issue is a request for the indirect taking of evidence.

31. The second question of the referring court is slightly more complex. Assuming that Article 16-11 of the French Civil Code cannot be applied to refuse the post-mortem genetic sampling of aa, the referring court additionally asks whether the execution of the request from the Italian court would be in contravention of the Charter. More precisely, that court refers to the links between Articles 1 and 7 of the Charter. Thus, it in fact asks how the right to dignity of the human body after death and the right to know one's origins are balanced under the Charter.

32. As suggested at the hearing, the second question therefore essentially asks whether the relevant Italian law which allows judges to order post-mortem genetic sampling for the purpose of establishing parentage, regardless of whether the putative parent gave prior consent during his or her lifetime, is in conformity with the Charter.

33. However, in the order for reference the referring court does not express any concerns as to the conformity of the relevant Italian law with the Charter. Rather, that court explains that the answer to the second question would help it to determine whether Article 16-11 of the French Civil Code is itself compatible with the Charter.

34. The question as to the compatibility of Article 16-11 of the French Civil Code with the Charter only arises if that rule is applicable in the present case for the purpose of refusing the request for the taking of evidence. Only after establishing that Article 16-11 can be applied can one assess whether that application would be in conformity with the Charter. However, by answering the second question as it was asked, that is, on the presumption that Article 12(2) and Article 16 of Regulation 2020/1783 exclude the application of Article 16-11 of the French Civil Code as a ground for refusing to execute a request for the taking of evidence, the question of compatibility of that rule with the Charter would be hypothetical as that rule is not applicable to the facts of the case.

35. I therefore consider that the Court can answer the second question only if that question can be understood as asking whether the Charter must be interpreted in a manner that is consistent with a reading of Regulation 2020/1783 in such a way that it does not preclude the Italian court from making a request for the taking of evidence, consisting of post-mortem genetic sampling, under the circumstances of the present case.

36. In the alternative, should the Court answer the first question in the affirmative, thus allowing the referring court to rely on its domestic rules of public policy to refuse to execute the request for the taking of evidence, the second question should be reformulated. In that case, the second question should be understood as asking whether the Charter should be interpreted as allowing national rules to condition post-mortem genetic sampling on the explicit consent of the person during his or her lifetime.

B. The first question

37. By its first question, the referring court asks, in essence, whether Article 12(2) of Regulation 2020/1783 allows it to refuse to execute a request for the indirect taking of evidence on the ground that the procedure specified in that request is contrary to fundamental principles of the national law of the requested Member State.

1. Indirect or direct taking of evidence

38. As explained, the French Government argued that the request from the Italian court was a request for the direct, rather than for the indirect, taking of evidence, in which case Article 12 of Regulation 2020/1783 would not be applicable; the relevant provision would instead be Article 19 thereof.

39. The factual difference between the indirect taking of evidence (as defined in Article 1(1)(a) of Regulation 2020/1783) and the direct taking of evidence (as defined in Article 1(1)(b) of Regulation 2020/1783) lies in whether the evidence is taken by persons under the jurisdiction of the requested court or by persons under the jurisdiction of the requesting court. In the latter case, those persons take evidence in another Member State themselves, by, for instance,

travelling to and questioning a witness in the territory of a requested Member State.[6]

40. The procedural difference between the two types of taking of evidence lies in the bodies responsible for communicating and authorising the taking of evidence. When a request for the indirect taking of evidence is made, the requesting court directly contacts the requested court. That court then decides on the methods of taking the requested evidence in accordance with its own law. Additionally, such requests are to be sent using Form A, which is annexed to Regulation 2020/1783. On the other hand, for the direct taking of evidence, the requesting court must obtain permission from the central body or the competent authority, which each Member State is required to designate in accordance with Regulation 2020/1783.[7] Such a request is forwarded using Form L, which is annexed to that regulation.

41. Furthermore, for requests for the indirect taking of evidence, the procedure under which the evidence is taken is conducted according to the domestic rules of that court.[8] Whereas, for requests for the direct taking of evidence, the evidence is taken in conformity with the procedure provided for by the law of the State of the requesting court.

42. Finally, and significantly for the present case, the grounds for refusing a request for the taking of evidence differ depending on whether it is to be taken indirectly or directly. Unlike with the indirect taking of evidence, the direct taking of evidence may be refused on grounds of public policy concerns of the requested Member State. According to Article 19(7)(c) of Regulation 2020/1783, refusal is possible if the direct taking of evidence requested is contrary to fundamental principles of law in that Member State.

43. No explanation is given in Regulation 2020/1783 as to why the two types of taking of evidence have different grounds for refusing requests.[9] However, as contended by the Commission, the rationale for a broader scope to refuse a request for the direct taking of evidence is likely justified by its potentially intrusive nature on the sovereignty of the requested State.[10] In the case of the direct taking of evidence, the requested State is asked to allow persons from the requesting Member State into its territory to carry out an investigation, which may affect the powers of the Member State in which it takes place.[11]

44. However, even where the direct taking of evidence is at issue, the ground laid down in Article 19(7)(c) of Regulation 2020/1783 for refusing requests based on fundamental principles of law of the requested State appears to be limited. As some legal scholars have suggested, such a ground only applies to the possibility of direct enforcement of the investigative measure by the requesting court, and not to the substance of the investigative measure. Therefore, even if the

6 Under Regulation 2020/1783, it is possible to examine a person directly without travelling to another Member State, using videoconferencing. See Article 20 of Regulation 2020/1783.

7 Article 4 of Regulation 2020/1783.

8 Article 12(2) and recital 17 of Regulation 2020/1783.

9 Such an explanation cannot be found either in the documents witnessing the legislative history of that act.

10 At the hearing, the Commission explained the difference between the two methods of cross-border taking of evidence by the fact that in the case of direct taking of evidence there is less control by the jurisdictions of the requested State. It contended that, for that reason, in the negotiations on that method of execution, the Member States insisted on what the Commission called a 'clause of sovereignty', which would allow them to refuse to permit the experts of other Member States to carry out enquiries in the requested Member State that are contrary to the fundamental principles of the requested State's legal order.

11 Thus, in the judgment of 21 February 2013, *ProRail* (C-332/11, EU:C:2013:87, paragraphs 47 and 48), the Court considered that in so far as the expert designated by a court of a Member State must go to another Member State in order to carry out the investigation which has been entrusted to him or her, that might, in certain circumstances, affect the powers of the Member State in which it takes place, in particular where it is an investigation carried out in places connected to the exercise of such powers or in places to which access or other actions is, under the law of the Member State in which the investigation is carried out, prohibited or restricted to certain persons.

direct taking of evidence could be considered contrary to fundamental principles of a requested Member State, that would not automatically preclude the possibility of that evidence being taken indirectly. In that situation, the central authority may still invite the requesting court to refer the matter to the competent court of the requested State. [12]

45. Has the Italian court in the present case requested the indirect or direct taking of evidence?

46. First, the request was sent directly to the referring court, and not to the French central body. [13]

47. Second, the request was sent on Form A, used for the indirect taking of evidence. However, that, in itself, does not necessarily preclude the possibility that the requesting court used the wrong form, and had in fact intended to make a request for the direct taking of evidence.

48. It is therefore necessary, third, to assess what exactly the requesting court has asked for.

49. To my mind, several steps must be taken to acquire the evidence necessary for the establishment of parentage in the present case. First, the body must be exhumed. Second, a sample must be taken from that body for the purpose of genetic fingerprinting. Third, that sample must be analysed. Fourth, the analysed sample must be compared to the sample taken from the applicant.

50. Form A, on which the request was sent, was submitted to the Court as part of the national file. It is clear from that form that the requesting court asked the requested court to order the exhumation of the body. Inevitably, however, the exhumation itself cannot constitute evidence within the meaning of Regulation 2020/1783 and is thus not the purpose of the request.

51. The evidence is a genetic sample taken from the exhumed body. It is not entirely clear from Form A, as filed, who is to take the samples from the body. The requesting court asked permission for an expert – the same person who would subsequently compare the samples – to be present when the sample is taken from the body. Nevertheless, the presence of the parties and representatives of the requesting court is possible during the indirect taking of evidence. [14] Thus, the mere presence of the expert under the jurisdiction of the requesting court does not mean that the evidence is being taken directly. The wording used in Form A by the requesting court leaves room for two interpretations: either that it was requesting that the Italian expert take the sample directly or only that the expert be present when the evidence is taken. [15] To my mind, even if the Italian expert were physically to take the sample, that action would still have been performed under the control and responsibility of the representatives of the requested court, and thus may still be understood as the indirect taking of evidence. In any case, the referring court did not ask for any clarifications from the requesting court, and it seems that it understood the request as one for the indirect taking of evidence.

[12] See Mougenot, D., 'Le règlement européen sur l'obtention des preuves', *Journal des Tribunaux*, 2002, p. 21, and Nuyts, A. and Sepulchre, J., 'Taking of evidence in the European Union under EC Regulation 1206/2001', *Business Law International*, 2004, p. 334.

[13] In France, that body is the Département de l'entraide, du droit international privé et européen (Department for mutual assistance, private international law and EU law) (DEDIPE) of the Ministry of Justice.

[14] See, for example, European Justice Network, '(Provisional) updated practice guide for the application of the regulation on the taking of evidence', 2025, p. 46, available at: https://e-justice.europa.eu/topics/trainings-judicial-networks-and-agencies/european-judicial-network-civil-and-commercial-matters/ejns-publications_en.

[15] Point 11.1 of Form A (description of the taking of evidence to be carried out), states: EXHUMATION OF THE BODY of [aa], deceased in [XY] and buried in [XY], and DIRECT EXAMINATION OF EVIDENCE by [XY] of the Institute of Legal Medicine of Genoa, consisting of the EXTRACTION OF BIOLOGICAL SAMPLES NECESSARY FOR THE TECHNICAL CONSULTATION OF THE COMPARATIVE GENETIC TRAITS OFFICE between the applicant xx and the body of the presumed father aa.

52. The foregoing circumstances lead to the conclusion that the requesting court asked for the indirect taking of evidence.[16] Therefore, Article 12 is relevant for assessing whether the referring court in the main proceedings has the right to refuse the request for the taking of evidence made under Regulation 2020/1783.

2. Interpretation of Article 12 of Regulation 2020/1783

53. According to Article 12(1) of Regulation 2020/1783, the requested court *must* execute the request without delay and, at the latest, within 90 days of receipt of the request. The execution of the request is to happen, as envisaged by Article 12(2) of that regulation, *in accordance with the national law of the requested Member State*.

54. Can Article 16-11 of the French Civil Code be understood as 'national law' within the meaning of Article 12(2) of Regulation 2020/1783? If so, can that provision justify the refusal of the request for the taking of evidence?

55. In the view of the Commission, the purpose of Article 12(2) of Regulation 2020/1783 is merely to state that the *procedural methods* according to which the taking of evidence is to be carried out are determined by the law of the requested court.

56. I agree with the Commission.

57. Such interpretation is supported by the wording of Article 12(2) of Regulation 2020/1783, when considered in the wider context of that provision, by its legislative history and, most importantly, by the logic and typical framework of mutual recognition instruments, adopted under Title V of the FEU Treaty.

58. Starting with the wording in its immediate context, I first note that Article 12(3) of Regulation 2020/1783 enables the requesting court to ask the requested court to take the evidence in accordance with a special procedure, as provided for in the national law of the State of the requesting court. That indicates that the phrase 'national law' used in Article 12(2) of Regulation 2020/1783 prescribes the procedure for the taking of evidence, as the purpose of Article 12(3) is to allow for a change to the applicable procedure – from the law of the requested court to the law of the requesting court – even though the evidence is still taken by the requested court.

59. Moving to the legislative history, Regulation No 1206/2001 and later Regulation 2020/1783 drew inspiration from the Hague Evidence Convention.[17] That convention can thus be used for interpreting the provisions of those regulations.[18]

60. Article 9(1) of that convention states: 'The judicial authority which executes a Letter of Request shall apply its own law *as to the methods and procedures* to be followed.'[19]

[16] Should this prove not to be a correct interpretation, which is for the national court to decide, that court should forward the request to the French central authority, and it is for that authority to decide whether the direct taking of genetic samples by the Italian expert after exhumation is allowed. If that is the case, the question of interpretation of Article 19(7)(c) of Regulation 2020/1783 may arise.

[17] Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ('the Hague Evidence Convention').

[18] As the Court has already confirmed in the judgment of 17 February 2011, *Weryński* (C-283/09, EU:C:2011:85, paragraph 65). See also Opinion of Advocate General Kokott in *Weryński* (C-283/09, EU:C:2010:490, point 60).

[19] Emphasis added.

61. The wording of Article 9(1) of the Hague Evidence Convention is therefore less ambiguous as to its scope than Article 12(2) of Regulation 2020/1783, since it explicitly refers to the methods and procedures. [20]

62. It is therefore plausible to conclude, as suggested by the Commission, and not refuted by the French Government, that Article 12(2) of Regulation 2020/1783 applies only to methodological and procedural matters concerned with the taking of evidence. Hence, only those matters are to be governed by the national law of the requested Member State, whereas the substantive matters, such as the permissible evidence for proving certain facts, are governed by the law of the requesting State.

63. Therefore, the question whether ordering certain types of evidence in the context of a specific judicial procedure is necessary and whether such a request conforms with the protection of fundamental rights is a question that is to be assessed by the requesting court in accordance with its own law – in the present case, Italian law – and not in accordance with the law of the requested State. Article 16-11 of the French Civil Code being such a substantive rule, expressing *in abstracto* a balance chosen by the French legislature between the right to know one's origins and the right to respect for the human body, is not applicable to the request of the Italian court, for which the appropriate balance is determined by Italian law.

64. Even if that is, admittedly, not very clearly expressed in Regulation 2020/1783, it does follow from the structure of that act that the taking of evidence is ordered by the requesting court, and is therefore its responsibility. That is logically so, as only that court, knowing all the facts of the case, can assess, on the basis of its national law, which evidence is necessary and whether the reasons for gathering that evidence can justify restricting certain rights. [21]

65. Regulation 2020/1783 is based on the principle of mutual recognition, a principle that underpins all instruments on judicial cooperation adopted under the FEU Treaty, including judicial cooperation in civil or commercial matters. [22]

66. The principle of mutual recognition is based on the mutual trust among Member States that their respective institutions respect the values and fundamental rights as protected by the EU legal order. [23] On the basis of that principle, the requested court must trust that a decision of the requesting court, and the national law on which it is based, is not in breach of fundamental rights as protected by the Charter. That court cannot, in principle, question the legality of the decision of the requesting court, but must act as if it is valid, and must therefore execute that request. That is so, even if the solution under the law of the requesting State differs from the solution under the

[20] See, for example, Preliminary Document No 6 of December 2008 for the attention of the Special Commission of February 2009 on the practical operation of the Hague Apostille, Service, Evidence and Access to Justice Conventions, 'The Taking of Evidence by Video-Link under the Hague Evidence Convention'. When discussing Article 9(1), that document refers to the taking of evidence via video link as an example of the practical application of that provision.

[21] See, by analogy, but in relation to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), judgment of 21 March 2024, *Gjensidige* (C-90/22, EU:C:2024:252, paragraph 46).

[22] See Article 67(4) and Article 81(2) TFEU. See also Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014 (EU:C:2014:2454, paragraph 191) ('Opinion 2/13'). That is so, even if Regulation 2020/1783 does not refer to that principle. See, in relation to the previous Regulation No 1206/2001, Opinion of Advocate General Jääskinen in *ProRail* (C-332/11, EU:C:2012:551, point 48), in which he argues that that instrument is based on mutual trust. The Court confirmed that the principle of mutual recognition underlies cooperation among courts in civil and commercial matters. See, for example, judgment of 25 May 2016, *Meroni* (C-559/14, EU:C:2016:349, paragraph 47).

[23] Opinion 2/13, paragraphs 168 and 192.

law of the requested State. If the legal validity of such a decision is to be challenged, it must be done before the requesting court, which is responsible for ensuring that that decision complies with fundamental rights.

67. Other instruments based on the principle of mutual recognition have a similar framework: substantive issues related to the request for cross-border cooperation are a matter for the issuing/requesting court and its legal order, whereas the procedure for executing such a request is a matter for the executing/requested court and its legal order. At the same time, the grounds for refusing a request for cross-border cooperation are restricted and exhaustively enumerated by the act at issue.

68. Thus, for instance the European Investigation Order (EIO) that serves a similar purpose to that of Regulation 2020/1783, but concerns cross-border cooperation in the area of criminal law, also provides that, in principle, the responsibility for substantive decisions concerning the gathering of evidence lies with the issuing court, whereas the procedure for the actual gathering of that evidence is governed by the law of the executing court.[24] A similar distribution of responsibilities can also be found in the EPPO Regulation.[25]

69. The protection of fundamental rights in relation to a substantive decision to take evidence is, therefore, in principle the responsibility of the issuing or, in the wording of the present case, the requesting court. However, in order to guarantee the protection of fundamental rights, as protected by the EU legal order, the Court of Justice has found that the executing/requested court, can nevertheless question the legality of the request for judicial cooperation in exceptional situations.[26] Such exceptional circumstances were found to exist where there were systemic problems with the respect of fundamental rights in the legal system of the issuing/requesting court known to the executing/requested court. In such a situation, a two-step test is conducted, in which the executing/requested court first assesses whether there exists a systemic problem with the respect of fundamental rights in the legal order of the issuing/requesting court, and, if established, the court must then verify whether there is a risk of infringement of the rights of a particular individual.[27] Only if both conditions are fulfilled may the executing judicial body refuse to execute the request for cross-border cooperation.

70. Outside of those exceptional circumstances, there is no basis for inferring any further grounds for refusing a request for the taking of evidence from Article 12 of Regulation 2020/1783.

71. In the present case, none of the participants alleges systemic issues in the Italian legal order. Additionally, none of the participants in the procedure questioned the legality of the Italian court's decision by which it requests the taking of evidence. In those circumstances, there is no reason for the requested French court to refuse to execute the request, unless one of the grounds expressly enumerated in Article 16 of Regulation 2020/1783 is found to exist.

[24] See Articles 6 and 9 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1) ('the EIO Directive').

[25] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1) ('the EPPO Regulation'). See judgment of 21 December 2023, *G.K. and Others (European Public Prosecutor's Office)* (C-281/22, EU:C:2023:1018, paragraph 71).

[26] See, in the context of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) ('the EAW Framework Decision'), judgment of 29 June 2017, *Popławski* (C 579/15, EU:C:2017:503, paragraph 19 and the case-law cited).

[27] The Court announced such a possibility for the first time in the judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 88 and 91 to 93), and has confirmed it on many occasions since.

72. The wording of Article 16(2) of that regulation is very clear in expressing that the list of situations therein which justify the refusal to execute a request for the taking of evidence is exhaustive. [28] It uses the wording 'may only be refused' and then states four situations. [29]

73. The Court has already confirmed the need for a strict interpretation of those exceptions, which leads to the conclusion that such a request may be refused only in the situations listed in that provision. [30]

74. The first exception allows a requested court to refuse a request where that request does not fall within the scope of Regulation 2020/1783. In that respect, it should be noted that the Court has explained that the requesting court is free to ask for international legal cooperation within a different legal framework from that established by Regulation 2020/1783. [31] The choice of legal framework is for the requesting court to decide.

75. In the present case, it seems clear that the requesting court chose Regulation 2020/1783 as the applicable legal framework, as it sent the request using Form A provided in Annex I to that regulation.

76. The other three situations are clearly not applicable to the circumstances of the present case, which was not contested by any of the participants in this procedure.

77. On the basis of the foregoing, it must be concluded that Article 16-11 of the French Civil Code is not applicable for deciding whether the request for the indirect taking of evidence can be refused. That is so even if that rule is, under French law, regarded as a matter of public policy.

C. The second question

78. Given my proposed answer to the first question referred, according to which the requested court must execute the request for the indirect taking of evidence, notwithstanding the national rule of public policy prohibiting such a taking of evidence, the second question of the referring court, as explained at the beginning of this analysis (under A), can only be understood as asking whether the Charter prohibits an interpretation of Regulation 2020/1783 to the effect that the post-mortem taking of genetic evidence for the purposes of the establishment of paternity is possible regardless of whether the person gave prior consent during his or her lifetime.

79. The referring court asks the question in the context of balancing the respective rights enshrined in Articles 1 and 7 of the Charter. The second question of the referring court refers to Article 1 as the provision protecting the right to human dignity of the human body, even after death, and refers to Article 7 as the provision protecting the right to know one's origins, guaranteed as part of the right to privacy.

80. From my understanding of the present case, the violation of Article 1 of the Charter is not at issue, at least not in its sense of the *absolute* nature of the right to human dignity. The present case rather questions to what extent the Charter protects, on the one hand, the right to know one's

[28] Article 16(1) of Regulation 2020/1783, which also states the grounds of refusal, relates only to the taking of evidence by questioning a witness and is not applicable in the present case.

[29] Additionally, recital 16 of Regulation 2020/1783 states that the circumstances in which it is possible to refuse to execute a request for the taking of evidence should be confined to strictly limited exceptional situations.

[30] Judgment of 17 February 2011, *Weryński* (C-283/09, EU:C:2011:85, paragraph 53).

[31] See judgment of 21 February 2013, *ProRail* (C-332/11, EU:C:2013:87, paragraphs 44 to 46).

origins, to which the Italian court appears to give precedence by making its request for the indirect taking of evidence, and, on the other hand, the right to respect for the human body after death, to which French law appears to attach greater value than Italian law.

81. The question as it arises from the present case in fact aims to clarify whether the balancing of those two rights or interests, which under Italian law resulted in a request for the exhumation of the body for the purposes of genetic sampling in order to establish paternity, is acceptable under the Charter.

82. I will undertake my analysis by asking whether the Charter, first, protects the right to know one's origins, second, protects a right to respect for the human body after death, and, third, prevents the way in which these two rights are balanced under Italian law.

83. Before undertaking this analysis, I must explain that, to my mind, in the system based on mutual recognition the requested court is not allowed, in principle, to question the conformity of the Italian court's decision with the Charter. To safeguard the respect of fundamental rights, there should be a possibility for the person whose rights are allegedly being infringed to challenge the decision of the Italian court and that challenge should be brought within the Italian system of judicial remedies. However, in the present case, the person whose interests are at issue is no longer among the living, and his family, in this case his legitimate children, who might have an interest in objecting to their father's exhumation and genetic sampling, did not object, but have requested that evidence be taken from their father's body. For that reason, I am of the opinion that, due to the circumstances of this case, the Court should answer the second question asked by the referring court.

1. The right to know one's origins under the Charter

84. The right to know one's genetic origins was expressly recognised, for the first time, by the United Nations Convention on the Rights of the Child,[32] and subsequently by the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.[33] That right is not explicitly mentioned in the European Convention on Human Rights (ECHR), but the European Court of Human Rights (ECtHR) has recognised it as an implied right based on Article 8 thereof.

85. The Court has not yet had the opportunity to interpret that right in the context of EU law. However, on the basis of Article 52(3) of the Charter, in so far as it contains rights which correspond to the rights guaranteed by the ECHR, the meaning and scope of the rights granted by the Charter will be the same or broader.

86. Article 7 of the Charter corresponds to Article 8 of the ECHR. Therefore, the Court should interpret the right to know one's genetic origins under the Charter by taking into consideration the manner in which the ECtHR interpreted Article 8 of the ECHR.

87. That court recognised the right to know one's origins as part of the right to establish details of one's identity as an individual human being in *Gaskin v. the United Kingdom*.[34] It further explained, in *Mikulić v. Croatia*, that the determination of parentage is an important aspect in

[32] Convention on the Rights of the Child of 20 November 1989 (*United Nations Treaty Series*, Vol. 1577, No 31922, p. 167 (1995)).

[33] Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993 (*United Nations Treaty Series*, Vol. 1870, No 31922, p. 167 (1995)).

[34] ECtHR, Report of the ECHR Commission of 13 November 1987, *Gaskin v. the United Kingdom* (CE:ECHR:1987:1113REP001045483, § 89).

the development of individual identity. In fact, the court stated that children have a vital interest, protected under the ECHR, in receiving the information necessary to uncover the truth about important aspects of their personal identity, which may have strong formative implications for an individual's sense of identity. [35] A year after that judgment, the ECtHR, in *Odièvre v. France*, expressly stated that people have a right to know their origins, which is derived from the scope of the notion of private life. [36]

88. However, that court also stated that that right is not absolute; it has to be balanced in specific cases against other fundamental rights of third parties and the public interest, and consequently, Member States enjoy a certain margin of appreciation. [37]

89. In *Jäggi v. Switzerland*, the ECtHR restated that the applicant's right to know his genetic origins is linked to the right to identity protected under Article 8 of the ECHR. [38] More particularly, in that judgment, that court balanced the right to know one's genetic origins against the right to respect for the dead. It explained that the interest of an individual in knowing his or her genetic origins does not decrease with age. [39]

90. Later, in *Pascaud v. France*, the ECtHR, reiterating the right to know one's origins, found that the French authorities had failed to consider Mr Pascaud's right to know his parentage with sufficient weight, since domestic law offered no legal avenue for post-mortem testing due to the absence of living relatives to consent, which left the applicant with no effective remedy to establish his identity. [40]

91. Hence, based on the ECtHR's case-law on Article 8 of the ECHR, which the Court should use to interpret Article 7 of the Charter based on Article 52(3) thereof, I can conclude that the right to know one's genetic origins is a right that should be recognised by the Court of Justice. At the same time, however, that right is not absolute, but can be limited, although limiting it requires balancing it against other rights and interests of all third parties involved, including the right to respect for the body after death.

2. The right to respect for the body of the deceased person

92. In its second question, the referring court placed at one end of the scale the right to know one's origins under Article 7 of the Charter and, at the other end of the scale, the right to human dignity, protected under Article 1 of the Charter.

[35] ECtHR, 7 February 2002, *Mikulić v. Croatia* (CE:ECHR:2002:0207JUD005317699, § 64). See, in that regard, analysis by Blauwhoff, R.J., 'Tracing down the historical development of the legal concept of the right to know one's origins. Has "to know or not to know" ever been the legal question?', *Utrecht Law Review*, Vol. 4, Issue 2, 2008, p. 107.

[36] ECtHR, 13 February 2003, *Odièvre v. France* (CE:ECHR:2003:0213JUD004232698, § 44). For an analysis of the Italian legal system and the right to know one's genetic origins, see Praduroux, S., 'The right to know one's genetic origins: A right in need of regulation', *The Italian Law Journal*, Vol. 7, No 2, 2021, pp. 803 to 820.

[37] ECtHR, 15 November 2016, *Dubská and Krejzová v. the Czech Republic* (CE:ECHR:2016:1115JUD002885911, §§ 178 and 179). That court explained that, in principle, the margin of appreciation allowed to a State depends on the importance of the individual's rights at stake. If the right is crucial to an individual's intimate or key rights, the margin is narrow. However, if there is no consensus among European countries on the issue, and it raises moral or ethical questions, the margin is wider.

[38] ECtHR, 13 July 2006, *Jäggi v. Switzerland* (CE:ECHR:2006:0713JUD005875700, § 25).

[39] ECtHR, 13 July 2006, *Jäggi v. Switzerland* (CE:ECHR:2006:0713JUD005875700, § 40).

[40] ECtHR, 16 June 2011, *Pascaud v. France* (CE:ECHR:2011:0616JUD001953508, § 67).

93. Justification for deriving a right to respect for the human body after death from the right to human dignity can be found in the case-law of the French Conseil constitutionnel (Constitutional Council). In two judgments, of 2011 and 2024, that court found that Article 16-11 of the French Civil Code reflects the French legislature's desire to respect the human body after death as a matter of the dignity of the human person. That court confirmed the constitutionality of that legislative choice despite its interference with the right to know one's identity. [41]

94. However, the right to human dignity is protected by Article 1 of the Charter as an absolute right, [42] and therefore cannot be balanced against other rights. [43]

95. On the contrary, the right to respect for a human body after death, even if understood as an expression of the value of human dignity, [44] should not be qualified as an absolute right protected by Article 1 of the Charter. In the legal systems that protect such a right, its limitation is possible [45] if said limitation is necessary for the protection of other rights or public interests. In France, as explained by the French Government, the dignity of the human body after death is not an absolute right. [46]

96. How can one understand the connection of the right to dignity of the human body, which can be limited, to human dignity, which, when understood as a fundamental right under the Charter, is absolute?

97. The Explanations relating to the Charter concerning Article 1 thereof state that human dignity is not only a fundamental right in itself, but constitutes the real basis of other fundamental rights. [47]

98. In that sense, some other rights contained in the Charter, such as the right to respect for private life (expressed in Article 7 of the Charter), the right to life (expressed in Article 2 of the Charter) or the right to the freedom of expression and information (expressed in Article 11 of the Charter) could be understood as more concrete expressions of human dignity as a principle

41 See Décision n° 2011-173 QPC du 30 septembre 2011 (Decision No 2011-173 QPC of 30 September 2011) of the Conseil constitutionnel (Constitutional Council) and Décision n° 2024-1110 QPC du 31 octobre 2024 (Decision No 2024-1110 QPC of 31 October 2024) of the Conseil constitutionnel (Constitutional Council).

42 The concept of an 'absolute' right means that that right will always prevail over any other right; in other words, it cannot be balanced against other rights in specific situations. That is why some authors prefer to attribute a relative, rather than an absolute, quality to the right of human dignity. See, for instance, Alexy, R., 'Human dignity and proportionality analysis', *Espaço Jurídico Journal of Law*, Vol. 16, No 3, 2015, p. 83.

43 Even if most constitutional systems that expressly protect the right to human dignity consider that right to be a relative right, the Charter, similarly to the German Constitution, opted to treat the right to human dignity as an absolute right. The consequence of opting for the absolute protection of human dignity in the German constitutional order was the attribution of a narrow meaning and scope to that right. In that respect, see Grimm, D., 'Dignity in a legal context: Dignity as an absolute right', in McCrudden, C. (ed.), *Understanding Human Dignity* (Proceedings of the British Academy: Themed volumes of essays in the humanities and social sciences, Vol. 192), at p. 381.

44 On the difference between the human dignity as a value and as a right, see Barak, A., 'Human dignity: The constitutional value and the constitutional right', in McCrudden, C. (ed.), *Understanding Human Dignity* (Proceedings of the British Academy: Themed volumes of essays in the humanities and social sciences, Vol. 192), at p. 363.

45 That is evident from the Research note 25/002, drawn up by the Research and Documentation Directorate of the Court of Justice of the European Union in January 2025. That research covered the legal systems of 13 Member States.

46 At the hearing, the French Government explained that the French Civil Code or the case-law of the Conseil constitutionnel (Constitutional Council) does not attribute an absolute value to respect for the human body after death. There are different situations, such as, for instance, criminal investigation, allowed by French law, in which exhumation for post-mortem genetic sampling can legally be undertaken without the consent of the person concerned having been given during his or her lifetime. That means that under French law both the right to respect for the human body and the right to consent with regard to the taking of samples for genetic fingerprinting can be limited for legitimate purposes.

47 Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) ('the Explanations').

expressed in the Charter and a value expressed in Article 2 TEU. Those expressions of human dignity are not absolute [48] and can be limited if it is necessary for achieving other legitimate aims or for the protection of other relative fundamental rights.

99. However, if restriction of a right expressing human dignity cannot be justified in a specific situation, human dignity as protected by Article 1 of the Charter must be considered to be violated. [49] That can be concluded on the basis of the Explanations of the Charter, according to which dignity of the human person is part of the substance of other rights laid down in the Charter and it must therefore be respected, even when those other rights are restricted. That is how the absolute character of the right to human dignity in Article 1 of the Charter may be understood. [50]

100. In short, and without any ambition to develop a comprehensive theory about human dignity in EU law, to my mind, human dignity can be understood as being a twofold concept. On the one hand, there is the core of human dignity that enjoys absolute protection. On the other hand, there is 'a peripheral area of diffusion of human dignity', in which a balancing with other conflicting rights is possible. [51]

101. Apart from the expressions of human dignity that are explicitly protected by the Charter, there might be other manifestations of human dignity. In that sense, it is possible to derive the right to respect for the human body after death from the right to respect for human dignity. That right could equally be understood as an expression of the right to privacy, enshrined in Article 7 of the Charter.

102. The Court has not yet had the opportunity to decide whether such a right exists as a fundamental right at the level of EU primary law. However, in *Memoria and Dall'Antonia*, the Court considered that the objective of protection of the respect owed to the memory of the deceased is capable of amounting to an overriding reason in the public interest. [52] In his Opinion in that case, Advocate General Campos Sánchez-Bordona was of the view that the dignity that the deceased person enjoyed while alive can have an appropriate and legally protectable projection beyond his or her death. [53]

103. An important aid in determining the content of EU fundamental rights is the comparative analysis of the constitutional systems of the Member States. [54]

[48] The only absolute manifestation of human dignity, expressly protected by the Charter, is the prohibition of torture and inhuman or degrading treatment or punishment, guaranteed by Article 4 of the Charter. See, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198 paragraph 85); of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218, paragraph 78); and of 17 October 2024, *Ararat* (C-156/23, EU:C:2024:892, paragraph 36).

[49] In that respect, see my Opinion in *Commission* v *Hungary (Values of the European Union)* (C-769/22, EU:C:2025:408, paragraphs 134 to 137).

[50] See, in that respect, Dupré, C., 'Article 1 – Human dignity', in Peers, S. et al., *The EU Charter of Fundamental Rights – A Commentary*, second edition, Bloomsbury, 2021, p. 18. The author states that 'it is more helpful to understand dignity's inviolability as the EU commitment to do everything possible to avoid breaching human dignity. In this sense, dignity's inviolability becomes the axiomatic foundation of the whole EU, echoing the "inalienable and sacred rights of Man" of the 1789 French Declaration of the Rights of Man and Citizen.'

[51] See, in that regard, Heselhaus, S. and Hemsley, R., 'Human dignity and the European Convention on Human Rights', in Becchi, P. and Mathis, K. (eds), *Handbook of Human Dignity in Europe*, Springer, 2019, p. 987.

[52] Judgment of 14 November 2018, *Memoria and Dall'Antonia* (C-342/17, EU:C:2018:906, paragraph 57).

[53] Opinion in *Memoria and Dall'Antonia* (C-342/17, EU:C:2018:479, footnote 44).

[54] Lenaerts, K. and Gutman, K., 'The comparative law method and the European Court of Justice: Echoes across the Atlantic', *The American Journal of Comparative Law*, Vol. 64, Issue 4, 2016, pp. 841 to 864.

104. In that respect, the Research Note drawn up by the Research and Documentation Directorate of the Court[55] demonstrated that all Member States encompassed by the research recognise that the human body deserves respect after death, even though that concern is not necessarily understood as a fundamental right. In a balancing exercise, the rights of the deceased are taken into consideration, but the right to know one's origins appears to be widely regarded as the prevailing right.[56]

105. On the basis of that comparative analysis, I conclude that the right to respect for a human body after death exists as a general principle of EU law, which can be elaborated as a manifestation of human dignity. Such a concern should therefore be taken into consideration when deciding whether to allow the exhumation of a body for the purpose of satisfying the right to know one's origins, protected as part of the right to private life under Article 7 of the Charter.

3. Balancing the right to know one's origins against the right to respect for the human body

106. The issue raised by the second question referred by the national court is whether the balancing of those two rights under the Charter allows for an interpretation of Regulation 2020/1783, according to which genetic sampling of a human body after exhumation can be required as evidence to be taken in cross-border judicial cooperation for the purposes of a procedure for the establishment of paternity.

107. Even though in both *Jäggi v. Switzerland*[57] and *Pascaud v. France*,[58] the ECtHR found in favour of the right to know one's origins, that does not mean that that right always prevails over the right to respect for the human body after death. A balancing exercise must be undertaken by taking into consideration the circumstances of each particular case and carefully weighing up all the interests involved.[59]

108. There is nothing to indicate that the balance reached by the Italian court under Italian law in the present case is precluded by the Charter. That court seems to have taken into consideration other possibilities for the establishment of paternity, and requested the exhumation and genetic sampling of the alleged father only as a last resort.

109. The fact that the French judge, or a judge of any other State, guided by his or her own national law could have arrived at a different solution does not influence the conclusion that the balance reached by the Italian judge seems acceptable from the point of view of the Charter.

[55] Research note 25/002, drawn up by the Research and Documentation Directorate of the Court of Justice of the European Union in January 2025.

[56] Apart from the French Republic; another exception may be the Republic of Cyprus.

[57] ECtHR, 13 July 2006, *Jäggi v. Switzerland* (CE:ECHR:2006:0713JUD005875700, §§ 43 and 44).

[58] ECtHR, 16 June 2011, *Pascaud v. France* (CE:ECHR:2011:0616JUD001953508, § 68).

[59] See ECtHR, 13 July 2006, *Jäggi v. Switzerland* (CE:ECHR:2006:0713JUD005875700, §§ 38 and 39), and ECtHR, 16 June 2011, *Pascaud v. France* (CE:ECHR:2011:0616JUD001953508, §§ 59 and 60).

110. The Court has already explained that Member States may have a different understanding of human dignity, or indeed of other rights contained in the Charter, as long as they respect the essence of those rights.[60] For as long as there is no harmonisation of certain issues at EU level, for which the EU legislature chooses the proper balance, the solutions adopted by different Member States may differ.[61]

111. The EU legislature has not (yet) adopted common rules governing permitted evidence in civil proceedings, or, more concretely, common rules governing the procedures for proving paternity in situations in which a parent is deceased. The Italian and French solutions may differ in that respect, and may be applied as long as the chosen balance does not infringe the essence of one of the rights placed on that balance.

112. On the basis of the foregoing, I propose that the Court answer the second question by stating that the Charter does not prohibit a court of a Member State from requesting, under Regulation 2020/1783, the taking of evidence by post-mortem genetic sampling even if the deceased person has not given his or her consent to such sampling during his or her lifetime.

V. Conclusion

113. I propose that the Court answer the questions referred for a preliminary ruling by the tribunal judiciaire de Chambéry (Court of Chambéry, France) as follows:

(1) Article 12 of Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence)

does not allow a requested national court to refuse to execute a request for the taking of evidence on the ground that the procedure specified in the request is contrary to fundamental principles of the national law of the requested State.

(2) The Charter of Fundamental Rights of the European Union

does not prohibit a court of a Member State from requesting, under Regulation 2020/1783, the taking of evidence by post-mortem genetic sampling even if the deceased person has not given his or her consent to such sampling during his or her lifetime.

[60] The most famous case in that respect is *Omega*, in which the Court accepted as a justification for the restriction of the freedom to provide services an objective of public policy in Germany based on the protection of human dignity that was understood differently in that State from the way in which that concept was perceived in the same situation in other Member States. The German constitutional concept of human dignity was interpreted as prohibiting the commercial exploitation of games involving the simulated killing of human beings, which was not the case in other Member States (judgment of 14 October 2004, *Omega* (C-36/02, EU:C:2004:614)).

[61] However, if the EU legislature harmonised an issue at EU level, the Member States could not apply the standard of protection of fundamental rights guaranteed by their constitutions even when that standard is higher than that chosen by the EU legislature, because that would undermine the principle of the primacy of EU law. See judgment of 26 February 2013, *Melloni* (C-399/11, EU:C:2013:107, paragraphs 56 to 58).