THE ITALIAN SUPREME COURT OF CASSATION

Third Civil Section

Luigi Alessandro Scarano (*President*); Pasqualina Anna Piera Condello (*Justice*); Irene Ambrosi (*Justice*); Stefania Tassone (*Justice*); Marilena Gorgoni (*Justice Rapporteur*).

Subject matter: Consumer protection – Failure to inform – Precautionary principle – Compensatory and preventive protection

Hearing of 20 February 2026 - in chambers (*Camera di Consiglio*)

has issued the following

ORDER

on the petition for cassation entered under General Docket No. 1922/2025, brought by:

MONICA BRIGANTI, represented and defended by Attorney Fabio Cardanobile, with digital domicile *ex lege*; - *Petitioner* -

against

APPLE DISTRIBUTION INTERNATIONAL LTD, as the European representative of Apple Inc., in the person of its legal representative *pro tempore*, represented and defended by Attorney Daniele Vecchi together with Attorneys Salvatore Gaudiello and Michela Turra, with digital domicile *ex lege*; - *Respondent* -

against the judgment of the Court of Appeal of Bologna No. 1338/2024, filed on 21 June 2024.

General Docket (R.G.) No. 1922/2025 - Section Docket No. 728/2026 - General Collection No. 24015/2026 - Date of publication: 24 July 2026

Having heard the report delivered in chambers on 20 February 2026 by Justice Marilena Gorgoni.

FACTS OF THE CASE

Having alleged that she purchased, in June 2016, a mobile device, model iPhone SE 5S, and made intensive use of it - quantified at more than one hour of daily voice calls and approximately five to six hours of data connection per day, including in conditions of poor signal reception (in cars and on trains) and in proximity to minors; and having alleged that she became aware of the potential health risks arising from the radiofrequencies emitted by the handset in February 2018 (that is, two years after the purchase), following her consultation of a study by the International Agency for Research on Cancer (IARC) suggesting a correlation between prolonged exposure to electromagnetic waves and the long-term onset of tumoral pathologies, Ms. Monica Briganti brought proceedings against Apple Distribution International Ltd. before the Court of Bologna, seeking an order for compensation for the material and non-material damage allegedly suffered as a consequence of the violation of her fundamental right to self-determination, on the ground that the defendant had failed to provide specific, visible and unequivocal warnings as to the risks arising from prolonged use of the handset, as

to the greater vulnerability of children, and as to the continuous emission of electromagnetic waves even in stand-by mode.

She submitted that neither on the outside nor on the inside of the telephone's packaging were there any information or warnings capable of flagging the risks connected with exposure to radiofrequencies, of the type: «avoid or limit prolonged use of the mobile phone; avoid or limit use of the mobile phone in proximity to minors; avoid keeping the mobile phone switched on, at night, on the nightstand; avoid keeping the mobile phone in a trouser pocket; to limit exposure to RF and

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to protect health from even merely potential risks, the use of the speakerphone or of headsets should be preferred».

Indeed, no manual containing safety instructions was included inside the packaging, but only a brochure of minimal content, wholly inadequate from an informational standpoint, in which the subject of "radiofrequency energy exposure" was artificially separated from that of "safety and use," with a misleading effect, inducing the belief that radiofrequencies had no relevance from the standpoint of product safety.

Nor did the user manual - accessible exclusively via the internet - clearly and perceptibly draw attention to the relevance of radiofrequencies for safety purposes; on the contrary, other risks were highlighted (such as hearing risks linked to high volume).

She submitted that further information could be found only through channels of consultation that were not immediately and directly prompted (web pages or internal device settings), relegated to sections that the user was not encouraged to consult, and moreover formulated in ambiguous terms, in particular where reference was made to safety tests carried out "in contact with the body" while, at the same time, "at a distance of 5 mm," without clarifying whether, and under what conditions, the safety limits were actually complied with.

She complained that the defendant was accordingly in breach of Article 1218 of the Civil Code; that it had violated the precautionary principle under Article 191 TFEU; the safety obligations set out in Article 104 of the Consumer Code; and that she had consequently suffered an injury to her right to self-determination and to make an informed consumer choice, since, had she known of the risks of the radiofrequencies emitted by her mobile phone, she would have used it differently, would not have used it near her minor daughters, would not have kept it on her person or near her pillow at night, and would above all have used her landline telephone.

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In the resistance of the defendant company, Apple Distribution International Ltd. (hereinafter simply "Apple"), which preliminarily raised the objection of lack of standing to be sued (*difetto di legittimazione passiva*), asserting that it operated exclusively as a distributor and not as the producer of the mobile devices, the Court of Bologna, by judgment No. 508/2020, rejected both the objection of lack of standing to be sued raised by Apple - treating the product's distributor as equivalent to the producer for the purposes of the Consumer Code - and the claim on the merits, holding that the precautionary principle constitutes a rule of public law addressed to the legislature and is not directly applicable to private relationships of ordinary life, and further finding the absence, in the case at hand, of a scientifically established causal link between exposure to electromagnetic waves and the onset of

tumoral pathologies, as could be inferred from the relevant scientific literature (with reference to the IARC studies of 2001 and 2011).

Ms. Briganti appealed against the aforementioned first-instance judgment.

In the resistance of Apple, the Court of Appeal of Bologna, by judgment No. 1338, filed on 21 June 2024, dismissed the appeal.

Ms. Briganti now brings a petition for cassation against the aforementioned decision of the court of merits, relying on nine grounds, further developed in a brief. Apple resists by way of counter-petition and brief.

The petition was scheduled for hearing pursuant to Article 380-*bis*.1 of the Code of Civil Procedure.

REASONS FOR THE DECISION

1. By the first ground, the Petitioner alleges «violation and/or misapplication» of Articles 6(f), 102, 104 and 117(a) of Legislative Decree No. 206 of 2005 (the "Consumer Code"), as well as of Article 10(8) of Directive 2014/53/EU, pursuant to Article 360, first paragraph, No. 3, of the Code of Civil Procedure.

She complains that the Court of Appeal wrongly denied that the information obligations borne by the producer are directly and immediately binding, making their operation conditional upon the enactment of detailed technical rules,

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in conflict with the settled case law of this Court, according to which the notion of a defective product is not limited to structural non-conformity or to failure to comply with sector-specific technical specifications, but also encompasses the so-called informational defect, made out whenever a product, although conforming to technical standards and bearing the CE marking, lacks instructions and warnings suitable to prevent risks that are not immediately perceptible by the consumer (Cass. No. 6007/2007; Cass. No. 25116/2010; Cass. No. 3692/2018).

She complains that, on this basis, information is an element that contributes to determining the safety of the product and an autonomous parameter for assessing its defectiveness, pursuant to Article 117(a) of the Consumer Code.

She complains that it was not considered that Articles 6 and 104 of the Consumer Code are not merely programmatic, but rather establish information obligations of minimum content that are immediately mandatory, requiring the producer to provide the consumer with instructions, any necessary precautions, and all information useful for assessing and preventing the risks arising from the normal or reasonably foreseeable use of the product, where such risks are not immediately perceptible - these being provisions that, under the express terms of Article 102(3) of the Consumer Code, must apply on a subsidiary and residual basis where sector-specific legislation contains no provisions specifically directed at product safety.

She complains that it was not considered that the information obligations set out in Articles 6 and 104 of the Consumer Code have been construed as immediately mandatory and as constituting a primary source of consumer protection, without the need for further implementing rules, on pain of substantially defeating the general product-safety system (Cass. No. 32079/2024; Cass. No. 33984/2024), the function of these provisions being to guarantee

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a high level of health protection through making available to the consumer the information necessary to make an informed choice, consistent with the rationale of Directive 2001/95/EC and with the principle of user self-responsibility.

She complains that the thesis adopted by the court of merits - according to which the content of the information obligations should be left to the legislature, through the adoption of detailed technical rules - in fact amounts to a reductive and distorting interpretation of consumer law, since it ends up transforming the subsidiary character of the general regime into a ground for the non-enforceability of the information obligation, in conflict with Article 169 TFEU and with Article 38 of the Charter of Fundamental Rights of the European Union, which require a high level of protection of consumers' health and safety to be ensured; and that the absence of clear and perceptible indications as to the precautions to be adopted to prevent the risks connected with use of the device cannot be justified by invoking conformity with technical standards or the absence of further detailed regulations, but must instead be assessed as a direct violation of the information obligations imposed on the producer, in accordance with the principles already affirmed by this Court, including in relation to products potentially affecting human health (Cass. No. 18171/2016; Cass. No. 6857/2019).

3. By the second ground, the Petitioner alleges violation of Articles 1176(2) and 1218 of the Civil Code, with reference to Article 360, first paragraph, No. 3, of the Code of Civil Procedure.

She complains that the court of appeal repeated the erroneous premise already relied upon with regard to the consumer-law obligations, making the operation of the producer's duties of care conditional upon the «prior and uniform identification, by institutional bodies, of the information deemed necessary for consumer-protection purposes» - an activity allegedly reserved to the EU or national legislature (p. 7, last paragraphs).

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She complains that it was not considered that the duty of professional diligence borne by a qualified operator is itself a direct source of duties of protection and, therefore, also of information duties, without there being any need for detailed technical rules to "fill" its content.

In support of this thesis she relies on the case law of this Court emphasizing the need for additional precautionary measures over and above the minimum threshold ensured by technical standards, placing at the centre the warning suitable to enable a correct assessment of risks and the adoption of the necessary precautions, even where the risk is not high in probabilistic terms or has not yet been fully established (Cass. No. 33984/2024; Cass. No. 5813/2019; Cass. No. 15824/2014).

She submits that, in any event, the duty to act prudently so as to avoid causing harm entails the adoption of measures that are necessary, or even merely advisable, to protect the health of the user, with heightened rigor for those who carry on a professional activity and place goods intended for consumption on the market.

She complains that it was not considered that professional diligence under Article 1176(2) of the Civil Code is not exhausted by compliance with minimum technical requirements, but calls for conduct commensurate with the nature and level of danger of the performance in question, including a duty to monitor and update information in line with the state of scientific research, so as to eliminate or reduce risk and inform consumers as completely as possible (Cass. No. 6857/2019).

Relying on Cass. No. 25855/2023, she complains that the duty of diligence contributes to determining the content of the information obligation and broadens its scope to include integrative conduct not originally envisaged, among which are expressly included the duties to inform and adequately instruct, which serve the full satisfaction of the interest of the consumer as obligee.

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Relying on decisions in criminal-law matters, she complains that it was not considered that the duty to adopt strategies of risk assessment, management and communication cannot be shifted onto the consumer on the ground of scientific uncertainty (Cass. (crim.) No. 20426/2002; Cass., United Sections, No. 9857/2008; Cass. No. 35425/2016; Cass. No. 16761/2010).

4. By the third ground, the Petitioner alleges violation of Articles 6 and 104 of the Consumer Code, also in relation to Article 1 of the same Code and to Article 153 TEC (now Article 169 TFEU), pursuant to Article 360, first paragraph, No. 3, of the Code of Civil Procedure.

She complains that the court of merits excluded the operation of the precautionary principle in private relationships of ordinary life, treating it as confined solely to the sphere of States' political and institutional responsibility.

She complains that neither national nor EU law treats the precautionary principle as a merely programmatic or political criterion, but rather as an operative risk-management parameter, transposed into consumer law as a criterion for supplementing the obligations borne by the professional operator. In particular, Article 1 of the Consumer Code, in referring to Article 153 TEC (now Article 169 TFEU), identifies a high level of consumer-health protection as the founding objective of the entire system, an objective achieved through preventive instruments.

She complains that the court of merits failed to consider that the professional operator is required to comply with the precautionary principle by adopting measures proportionate to the characteristics of the product and its intended consumer use, without any distinction being permissible between the public-law sphere and private-law relationships (Cass. No. 30620/2018).

The precautionary principle, within the framework of the general product-safety regime, translates into an obligation on the producer to provide the consumer with information suitable to make knowable and preventable the risks

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arising from the normal or reasonably foreseeable use of the product, even where such risks are merely potential, uncertain, or not immediately perceptible, so as to enable an informed choice and the adoption of adequate precautions. In this sense, the precautionary principle directly permeates the rule set out in Article 104 of the Consumer Code, which requires the producer to indicate the precautions necessary to prevent the risks arising from use of the product.

She disputes the premise that the existence of information obligations on the State, under Law No. 36/2001, would exclude the operation of analogous obligations on the producer, since the existence of public information obligations confirms the relevance of the risk in question and does not eliminate the autonomous duty of protection borne by the economic operator, which is directly grounded in Articles 6 and 104 of the Consumer Code - special-law provisions designed to remedy the informational asymmetry between professional and consumer - as confirmed by the administrative case law on electromagnetic fields, which has held that public institutions are obliged to inform the population of the risks arising from exposure to radiofrequencies precisely in application of the

precautionary principle (see TAR Lazio No. 500 of 21 January 2019, and the judgment of the Council of State No. 5887 of 27 September 2019).

She complains that the thesis adopted by the court of merits - according to which the precautionary principle would require a further legislative act of "concrete implementation" in order to produce effects vis-à-vis private parties - conflicts with the very structure of the general product-safety regime laid down by Directive 2001/95/EC, which transposes the precautionary principle as a general clause of preventive protection, as well as with the case law of this Court, which recognizes precaution as the source of a standard of diligence that can be demanded of the entrepreneur in order to safeguard

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consumer safety, even in the presence of scientifically uncertain risks.

5. By the fourth ground, the Petitioner alleges violation of Articles 6 and 104 of the Consumer Code and of Article 1176(2) of the Civil Code, with reference to Article 360, first paragraph, No. 3, of the Code of Civil Procedure.

She complains that the court of merits held that the state of scientific uncertainty as to the health risks arising from mobile-phone use excluded the existence of any information obligation on the part of the producer.

She complains that it was erroneously held that a duty to inform can only arise in the presence of a scientifically certain risk and a fully established causal link between use of the product and the harmful event, since this improperly introduces, as a condition for the enforceability of the duties of care and information, a requirement not called for by the legal order and incompatible with the preventive function of the general product-safety regime.

She complains that it was not considered that the obligation to adopt precautions and to provide instructions and warnings also arises in situations characterized by scientific uncertainty, where initial scientific studies or epidemiological research - even if incomplete - emerge that are capable of suggesting a health risk (Cass. No. 5813/2019); the absence of certainty does not justify inaction by the producer but, on the contrary, requires the adoption of prudential and informational conduct aimed at preventing or reducing exposure to the risk.

She complains that it was likewise not considered that the duty of protection borne by the producer, as a qualified professional operator, entails constant monitoring of developments in scientific knowledge and the updating of the information provided to the consumer in line with the state of research, so as to eliminate or reduce the risk of harmful effects and to inform the user even in the presence of

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scientific evidence that is still evolving (Cass. No. 6857/2019); an obligation of informational updating held to apply even in fields characterized by scientific uncertainty and by risks not fully established, in furtherance of the preventive protection of health (Cass. No. 30620/2018) and, therefore, not conditional upon proof of harm nor upon a showing of the certainty of the risk, but aimed at enabling the consumer to manage the risk - even merely potential - knowingly, through the adoption of precautions in using the product, in accordance with Articles 6 and 104 of the Consumer Code and with the standards of professional diligence under Article 1176(2) of the Civil Code; accordingly, having found that a situation of scientific uncertainty existed, the court of merits erroneously excluded outright the operation of the information obligations, failing to subsume the facts

of the case within the scope of the duties of care borne by the producer and declining to assess the defendant's compliance in light of those duties.

6. By the fifth ground, the Petitioner alleges violation of Articles 132(4) of the Code of Civil Procedure and 111 of the Constitution, arguing that the judgment is void pursuant to Article 360, first paragraph, No. 4, of the Code of Civil Procedure.

She complains that the court of appeal based its dismissal of the fourth and fifth grounds of appeal on reasoning that was merely apparent, confused and gravely contradictory, such as not to allow the logical-legal reasoning followed to be identified, omitting any genuine examination of the evidentiary and documentary material duly placed on the record, and in particular the classification of radiofrequencies among the possible carcinogens for humans (Group 2B), made by the WHO/IARC as far back as 2011 and repeatedly relied upon in the first- and second-instance pleadings, notwithstanding that this was one of the cornerstones of the Petitioner's case. It is also submitted that the fact that the WHO is the highest international health authority, and that its findings, as incorporated into domestic law

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by Law No. 561/1956, constitute the technical-scientific premise for the operation of the duties of care, was entirely overlooked.

She complains that the decision under appeal is affected by irremediable contradiction where it relies on labour-law case law to deny the harmfulness of mobile-telephony systems, without taking into account that the precedents relied on by the defendant - and partially referred to in the same narrative section of the judgment (including Cass. No. 17438/2012, and numerous decisions of courts of merit issued between 2017 and 2022) - in fact point in the diametrically opposite direction, the existence of a causal link between prolonged exposure to radiofrequencies and the onset of acoustic-nerve neuroma having been recognized.

She complains that the defect of confused reasoning is compounded by the violation of the principle governing the availability of evidence, the court of merits having based its conclusion on extra-judicial sources not duly placed on the record, such as FAQs taken from the websites of AIRC (the Italian Association for Cancer Research) and of the Ministry of Health, without indicating their procedural provenance or allowing them to be tested adversarially; and that the court of appeal failed to engage with the supranational documentation which the Petitioner claims to have produced: specifically, Resolution No. 1815 of 2011 of the Council of Europe and the Resolutions of the European Parliament, which require application of the ALARA principle and the conduct of rigorous information campaigns on the long-term biological risks arising from exposure to electromagnetic fields.

She complains of the failure to indicate the scientific "covering law," the court of appeal having failed to explain by what rational or scientific criterion the assessments of the Istituto Superiore di Sanità (the Italian National Institute of Health) - which were, moreover, specifically challenged by the Petitioner on grounds of methodological fallacy - could override the binding force of the precautionary principle and of Articles 6 and 104 of the Consumer Code.

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7. By the sixth ground, the Petitioner alleges violation of Article 115(2) of the Code of Civil Procedure.

She complains that the district court held it unproven that the intensity, absorption and hazardousness of the radiofrequencies emitted by the mobile phone depended on the manner in which the device was used, such as the duration of exposure, the distance from the body, the conditions of signal reception, and the environmental context of use.

She complains that these circumstances constitute facts specifically pleaded as early as the first-instance writ of summons and reiterated throughout the proceedings, without ever being the subject of specific challenge by the defendant company, given that Apple based its defense on different premises, centred on the alleged non-existence of information obligations and on the uncertain nature of the risk, without ever denying that the manner of using the telephone affects the intensity of exposure to radiofrequencies.

She complains that it was not considered that the dependence of energy absorption on the manner of use of the device emerges from the defendant's own statements concerning the SAR (Specific Absorption Rate), which presuppose a direct correlation between distance from the body, signal-reception conditions, and level of exposure.

These are undisputed and uncontroversial matters which, as such, should have been treated as established for the purposes of the proceedings pursuant to Article 115(2) of the Code of Civil Procedure, whereas the district court characterized these circumstances as mere defensive allegations, holding that there was no evidence that the intensity and hazardousness of radiofrequencies depended on the manner of use of the telephone, thereby unlawfully calling into question uncontested facts and improperly using them as the basis for dismissing the claims.

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8. By the seventh ground, the Petitioner alleges «violation and/or misapplication» of Article 1218 of the Civil Code and of Articles 6 and 104 of the Consumer Code, pursuant to Article 360, first paragraph, No. 3, of the Code of Civil Procedure.

She complains that the court of appeal excluded the producer's breach on the basis of erroneous legal premises and in conflict with the regime governing the information obligations borne by producers of consumer goods.

She complains that, once the case is placed within the scope of contractual liability and liability arising from qualified social contact (*contatto sociale qualificato*), the burden of proving exact performance of the information obligation rested entirely on the defendant company, which should have proven that it had provided the consumer with appropriate and effective information suitable to ensure safe use of the mobile phone in accordance with Articles 6 and 104 of the Consumer Code.

This burden was indeed not discharged by the opposing party, it being documented that Apple provided the user with no clear, visible and immediately perceptible information on the health risks connected with use of the device.

She complains that, in violation of Article 6 of the Consumer Code, no warning concerning radiofrequencies, nor any indication of the precautions to be adopted to reduce exposure, was present inside the telephone's packaging.

The only information on the SAR was relegated to a manual available exclusively online, difficult to find, devoid of prescriptive content, and unsuitable for informing the consumer of how to use the product safely.

She complains that the district court wrongly held that the telephone's conformity with the technical specifications laid down by the legislature and the CE marking sufficed to exclude the defendant's breach.

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She complains that technical conformity does not exhaust the safety obligation borne by the producer, who is required to provide instructions and warnings suitable to enable informed and safe use of the product, especially where ordinary use entails health risks that are not immediately perceptible; and that the informational omission is all the more serious given that the defendant company could, with extreme ease and without any technical or economic burden, have updated its website to include warnings of elementary content but decisive for the protection of consumer health, so that the choice not to do so amounts to a breach of the duties of information and protection incumbent upon it.

She complains that, in dismissing the seventh ground of appeal on the premise that the health risk had not been "unequivocally established," the court of merits excluded the breach not on the basis of a genuine assessment of compliance with the information obligations, but on an erroneous legal premise, making the duty to inform conditional upon scientific certainty of the risk.

9. By the eighth ground, the Petitioner alleges «violation and misapplication» of Article 2059 of the Civil Code, of Article 2 of the Consumer Code, of Article 169 TFEU, and of Article 8 ECHR.

She complains that the court of appeal denied compensability of the non-material damage, erroneously holding that the injury to the consumer's right to self-determination did not, in this case, exceed the threshold of seriousness required by settled case law.

She complains that this court failed to consider that the defendant's conduct did not amount to a partial or tolerable injury, but rather to the total deprivation of the fundamental right to information enshrined in Article 2 of the Consumer Code - a harm-as-event (*danno-evento*) directly affecting her freedom of self-determination, having prevented her from assessing

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the risk knowingly and from adopting protective measures for herself and her family members.

She complains that the total absence of indications as to the risks and precautions for use prevented any comparative assessment between behavioural alternatives, foreclosing her ability to reduce exposure and to avoid using the mobile phone in certain conditions or to knowingly modulate her own conduct; and that the loss of these decisional options constitutes an immediate non-material harm that cannot be reduced to a mere fear of a danger nor made subject to the tolerability filter.

She complains that the court of merits erroneously applied the "tolerability" criterion developed by the San Martino judgments (Cass., United Sections, No. 26972/2008), since where the injury affects interests of constitutional or EU-law rank, compensation constitutes the minimum and inescapable form of protection and cannot be relegated to an exceptional remedy reserved for serious and extraordinary harm.

She complains that it was not considered that, in the case law of this Court, consumer self-determination is recognized as a fundamental right, whose impairment gives rise to compensable psychological suffering under Article 2059 of the Civil Code, in that it affects the genuineness of the individual's decision-making process (Cass., United Sections, No. 794/2009); as confirmed by Article

169 TFEU and Article 8 ECHR, and by the European Court of Human Rights, which includes within the right to respect for private life the right to be informed of health risks, even if uncertain,

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so as to enable the individual to decide whether to expose himself or herself to, or to avoid, the potential danger.

10. By the ninth ground, framed under Article 360 No. 3 of the Code of Civil Procedure, the Petitioner alleges «violation and misapplication» of Articles 2059 of the Civil Code, 169 TFEU, 19 TEU, and 47 of the Charter of Fundamental Rights of the EU.

She complains that the court of appeal wrongly held that the principles of the effectiveness of judicial protection and of the promotion of consumer rights lack direct effect in relationships between private parties.

She complains that it was not considered that EU law requires the national court to interpret domestic law in conformity with EU-law principles, as noted by the CJEU in Case C-505/14 (*Klausner Holz Niedersachsen*), where it was made clear that the construction of national rules must be oriented towards ensuring the full effectiveness of EU law, avoiding decisions of national courts that stand as obstacles to the effective application of EU-law protections.

In this perspective, the promotion of the consumer's right to information enshrined in Article 169 TFEU must translate into recognition of the right to compensation for non-material damage as the minimum and indispensable means of protection, in the absence of which the fundamental right to self-determination remains devoid of substantive effectiveness.

11. The grounds, which may be examined jointly as they are interconnected, are well-founded to the extent set out below and must be upheld in the terms specified hereinafter.

11.1. In the judgment under appeal, the district court based its dismissal of the grounds of appeal raised by Ms. Briganti, then appellant and now Petitioner, principally on the premise that the precautionary principle is confined to the public-law sphere and is unsuited to producing effects in relationships between private parties, its operation requiring a prior and specific legislative intervention uniformly and bindingly identifying the content of the precautions that may be required.

11.1.1. The error of the court of appeal does not, in truth, lie in having denied the direct applicability of the precautionary principle as such, but rather in having failed to verify whether the legal order, through domestic rules that are immediately and directly binding in the field of product safety, of professional diligence, and of good faith or fair dealing, imposes on the

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producer information and precautionary obligations suitable to govern the risk connected with use of the product - precaution thus constituting not an autonomous source of the obligation, but a criterion for supplementing and characterizing the content of positively established obligations.

11.1.2. On this basis, the court of merits reached its decision without a genuine critical review of the statutory and case-law framework (relied upon, in painstaking detail and with precise references, by Ms. Briganti, then appellant and now Petitioner) as it emerges from the principles developed in the fields of product safety, food safety, exposure to electromagnetic fields, and the professional diligence of the qualified operator.

As this Court has already held, the notion of a safe product is not exhausted by verifying that it conforms to technical standards or bears the CE marking, since such parameters identify a minimum safety threshold but do not exhaust the content of the obligations borne by the producer, the notion of a defective product not coinciding solely with structural non-conformity or with failure to observe sector-specific technical rules, but also encompassing the absence or defect of information, where the product, although conforming to standards, lacks the instructions and warnings necessary to prevent risks not immediately perceptible by the consumer (see Cass., 15 February 2018, No. 3692; Cass., 13 December 2010, No. 25116; Cass., 15 March 2007, No. 6007).

It has been held in this regard that compliance with technical standards does not exempt the producer from adopting further precautions where this is necessary to protect the health of the user (see Cass., 23 December 2024, No. 33984, which reaffirmed that «a product conforming to technical standards may nonetheless be defective, because harmful, where it lacks warnings suitable to enable the consumer correctly to assess the risks and to adopt the necessary precautions», clarifying that conformity

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with technical standards is not, in itself, sufficient to exclude liability for the hazardousness of the product).

11.1.3. On a more general level, and with particular regard to food safety, this Court has held that risk management cannot be made conditional upon the existence of scientific certainties, deriving from the precautionary principle the parameter for assessing duties of protection (see Cass., 10 July 2014, No. 15824, in food-law matters, where, in observance of the precautionary principle, a retailer of chili pepper contaminated by highly harmful pollutants was held liable).

Indeed, as early as Cass. (crim.), 24 May 2002, No. 20426, it was held that «the precautionary principle requires a serious strategy for the assessment, management and communication of risk, avoiding shifting onto the consumer the degree of scientific uncertainty that may exist», making clear that the protection of health cannot be made conditional upon full proof of harmfulness.

This approach was adopted by the United Criminal Sections in the judgment of 30 October 2008, No. 9857 (p. 15), which, precisely in relation to the general safety of consumer products, emphasized that sector-specific legislation is designed to bring forward, as far as possible, the stage of oversight, in keeping with the precautionary principle as transposed by EU legislation.

The non-exceptional but structural character of the precautionary principle was reaffirmed by Cass. (crim.), 3 May 2010, No. 16761 (noting that «where the causes, the possible course, and the effects of a phenomenon are unknown, caution in addressing it must be all the greater») and by Cass. (crim.), 24 August 2016, No. 35425 (which found liability for failure to adopt precautionary measures even in the presence of scientifically uncertain or low-probability risks).

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It must accordingly be emphasized that the legal order does not, in truth, recognize any zone exempt from precautionary duties, precautions being for that reason required precisely in contexts of uncertainty.

With particular regard to the oncogenic risk arising from prolonged exposure to electromagnetic waves, it should be noted that the issue of the informational deficit (*deficit informativo*) in this regard has already been addressed by this Court, albeit with reference to situations not coinciding with the

one now at issue, and in terms that, on a first reading, may appear not entirely consistent as regards the precautionary principle.

This apparent lack of consistency must, however, be assessed in light of the different contexts in which the issue has, from time to time, been raised and examined.

It is appropriate, first of all, to recall Cass., 12 October 2012, No. 17438 - not for the purpose of establishing causation in the strict sense, but as an indication of the legal non-neutrality of scientific uncertainty and of the consequent duty of risk-governing conduct.

In assessing the causal link between prolonged exposure to radiofrequencies and tumoral pathology, this Court took as its starting point an inconclusive scientific picture, in which «there was no convincing evidence of the role of radiofrequencies in the genesis of tumors», and, while noting that «the studies had not excluded such an association», gave weight to the duration and intensity of exposure, observing that, «with all the limitations inherent in this type of study», «an additional risk of brain tumors, and in particular of neuroma, was documented after exposure of more than 10 years».

It follows that scientific uncertainty is not equivalent to legal irrelevance of the risk and does not, in itself, warrant a wait-and-see attitude: where the risk is not excluded and the exposure is such as to make it appreciable, the legal order permits, and indeed requires, risk-governing conduct.

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The position taken by the administrative courts is no different.

The Council of State has required producers of mobile telephones to adopt precautions going beyond mere CE marking (see Consiglio di Stato, 27 September 2019, No. 5887).

Likewise, the Regional Administrative Court (TAR) for Lazio, 15 January 2009, No. 500, held that the State had been in a state of inertia for having failed, for almost twenty years since the entry into force of the framework Law No. 36/2001, to ensure adequate information on the risks connected with exposure to electromagnetic fields.

That decision constituted one of the premises leading to the subsequent creation of the institutional portal cellulari.salute.gov.it, which specifically references the 2011 Cefalo Study and the 2022 MobiKids study, which, although not establishing with absolute certainty a causal association between mobile-phone use and the onset of brain tumors in young people, nonetheless concluded that further scientific investigation was necessary.

Following this, in December 2022 the Ministry of Health issued a circular on the use of mobile phones and electronic devices in classrooms, together with a set of guidelines containing instructions and best practices aimed at reducing levels of exposure to electromagnetic fields produced by mobile phones and at preventing the possible risks connected with their use.

In line with the approach taken in Cass., 28 July 2015, No. 15853, Cass., 10 June 2020, No. 11105 held, differently, that compliance with the limits set by Law No. 36/2001 and by the Prime Ministerial Decree (D.P.C.M.) of 8 July 2003 satisfies the precautionary principle and forecloses preventive judicial protection, giving rise to a presumption of absence of danger where the sector-specific parameters are complied with («failure to exceed the limits set by statute by the national legislature precludes recourse to preventive judicial protection of the right to

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health, which is conceivable only where a proven danger of impairment exists - a danger which must be presumed excluded where the limits set by the sector-specific regime have been observed»).

The underlying premise of this line of authority is that there exists a presumption excluding the unlawfulness of the emissions in question, and their hazardousness, where they comply with the limits set by the general and special sector-specific rules.

In these decisions, however, the precautionary principle was examined in a context radically different from the one now at issue, involving an interest of a supra-individual nature relating to the protection of public health from electromagnetic emissions - an interest whose assessment and regulation the legal order primarily entrusts to the State.

Framework Law No. 36/2001 in fact conferred on the State exclusive competence to determine exposure limits, attention values, and quality objectives, in consideration of the «overriding national interest in defining uniform criteria and homogeneous rules», explicitly linked, among other things, to the activation of precautionary measures in application of the precautionary principle.

In this perspective, the Constitutional Court, called upon to review the legitimacy of more restrictive regional regimes, made clear that the setting of threshold values responds to a complex and articulated rationale, not limited to the protection of health alone but extended to a balancing exercise with other interests of constitutional rank, such as the development of energy infrastructure and of telecommunications systems, falling within the concurrent competences under Article 117(3) of the Constitution.

Constitutional Court judgment No. 307 of 2003 held that the uniform, nationwide determination of threshold values represents the point of balance between competing needs and cannot be left to fragmented or territorially differentiated assessments.

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Within this framework, the precautionary principle is already absorbed and implemented by the State legislature, such that the court is entrusted solely with verifying compliance with the statutory parameters, without being able to substitute its own independent assessment of the risk for those legislative choices. It is no coincidence that, in that context, preventive judicial protection has been held admissible only where a concrete and current danger of impairment of health is ascertainable, the relevance of a risk framed merely as a possibility, not raised to the level of a reasonable probability, being excluded.

11.1.4. This line of case law lies entirely within the sphere of public-law regulation of electromagnetic risk, concerning diffuse and collective interests, and is therefore unsuited to serve as the parameter for assessing the information and protection obligations borne by the producer in its contractual relationships with the individual consumer.

Indeed, the coexistence of distinct planes - the administrative and the civil-law plane - is confirmed by the case law on Article 844 of the Civil Code, this Court having repeatedly emphasized the difference between the administrative regime (where the parameters set to protect public health are relevant) and civil-law protection in relationships between private parties.

It has been held in this regard that the difference between these forms of protection cannot automatically translate into a restrictive reading of Article 844 of the Civil Code such as to exclude a concrete assessment of whether the limits of normal tolerability have been exceeded, it being necessary, on the contrary, from a constitutionally oriented perspective, to give precedence to the

interest in a normal quality of life over the requirements of production (Cass., 10 January 2025, No. 631; Cass., 31 July 2024, No. 21479).

In such cases, this Court has held that compliance with the limits and parameters set at the administrative level does not exhaust the civil-law assessment of the conduct in question, requiring the court to verify

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independently, on the different plane of relationships between private parties, the obligations and protections operating there.

On this basis, it may accordingly be stated that, on the plane of public-law regulation of risk, the precautionary principle comes into play whenever the negative effects of conduct or of a human activity are not yet fully ascertainable on a scientific level, performing the function of a guiding criterion for State and EU action in the legislative and administrative choices affecting the protection of health and the environment.

The Court of Justice has made clear that, in sectors characterized by a high degree of technical-scientific complexity and by a marked informational imbalance (such as the use of plant-protection products, food safety, the marketing of tobacco products, and the management of risks connected with products potentially harmful to health), public intervention cannot be made conditional upon prior, certain proof of the reality and seriousness of the risk, it being sufficient that there is a plausible probability of potentially serious harmful effects on human health, such as to justify the adoption of protective measures even in the presence of an inconclusive scientific picture (CJEU, 22 December 2010, Case C-77/09, *Gowan Comércio Internacional e Serviços*; CJEU, 17 December 2015, Case C-157/14, *Neptune Distribution*; CJEU, 22 November 2018, Case C-151/17, *Swedish Match*).

On this reasoning, the impossibility of determining with certainty the existence or extent of the risk, where this results from the non-definitive nature of the results of the studies available, does not exclude the operation of the principle, provided there remains a probability of real harm to public health should the risk materialize.

Precisely in fields such as those of plant-protection products and tobacco, where exposure is widespread and the effects may manifest themselves only after a period of

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time, the Court of Justice has held that the adoption of restrictive measures of a preventive nature is lawful, being aimed at avoiding the occurrence of irreversible harmful effects (CJEU, 22 December 2010, Case C-77/09, *Gowan Comércio Internacional e Serviços*; CJEU, 22 November 2018, Case C-151/17, *Swedish Match*).

Risk assessment has consequently been held to require reliance on the most reliable scientific data available and on the most recent results of international research, without this implying that the final consolidation of the scientific evidence must be awaited, it being sufficient that the technical knowledge relied upon is up to date and not manifestly unreliable.

This criterion has been affirmed with particular clarity both in relation to plant-protection products and with reference to industrial additives, sectors in which the complexity of the scientific assessments involved does not allow intervention to be deferred until absolute certainties are reached (CJEU, Grand Chamber, 1 October 2019, Case C-616/17, *Blaise and Others*; CJEU, 8 July 2010, Case C-

343/09, *Afton Chemical*; CJEU, 22 December 2010, Case C-77/09, *Gowan Comércio Internacional e Serviços*).

It has also been made clear that, where developments in scientific knowledge reveal a health risk significantly greater than that originally anticipated - and possibly incorporated into specific precautionary legislation - the precautionary principle requires constant monitoring of risk levels, since the dangers arising from inaction may prove more serious than those connected with the adoption of preventive measures suitable to reduce or prevent effects that have proved more harmful than expected.

This approach has also been reaffirmed in relation to GMOs, where the Court has emphasized the need for dynamic risk monitoring in light of developments in scientific knowledge (CJEU, Grand Chamber,

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1 October 2019, Case C-616/17, *Blaise and Others*; CJEU, 13 September 2017, Case C-111/16, *Fidenato*).

It is thus evident that, wherever a plausible probability of harmful effects persists, the precautionary principle has been used to justify restrictive or informational measures in sectors characterized by diffuse risks that are not easily perceptible by the ultimate addressee, giving weight to the need to prevent harm before it manifests itself in irreversible form.

11.1.5. In terms of concrete and operative risk reduction, what points further in this direction is the so-called ALARA principle (*as low as reasonably achievable*), which represents the criterion through which the legal order governs risks arising from exposure to potentially harmful factors, even in the absence of full scientific certainty as to their hazardousness.

This principle, far from being a rule of a merely technical or sector-specific character, operates as a general risk-reduction criterion, requiring that exposure be kept "as low as reasonably possible," compatibly with use of the product and with available scientific knowledge.

The ALARA principle does not presuppose a finding of certain harmfulness, but is founded precisely on the scientific plausibility of the risk and on the need to prevent its possible materialization.

The case law of this Court has repeatedly held that the obligation to adopt precautionary and informational measures arises already in the presence of preliminary studies, inconclusive scientific investigations, or incomplete epidemiological evidence, where such elements are suitable to suggest a health risk.

It has been made clear in this regard that «the adoption of the necessary precautions cannot be made conditional upon a definitive finding of harmfulness, but must instead be triggered already in the presence of serious and consistent indicia of possible danger» (Cass., 10 July 2014, No. 15824); and that

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such precautions may consist, first and foremost, of reducing exposure levels and informing the person exposed.

This Court has emphasized that information cannot be limited to a generic warning, but must be «suitable to enable the recipient to carry out a correct assessment of the risks and benefits and to adopt all necessary precautions», stressing that, in the presence of scientifically uncertain risks, the duty of

prudence requires the adoption of proportionate measures, such as, for example, «the reduction of exposure levels» (see Cass., 28 February 2019, No. 5813).

This holding is a direct expression of the ALARA principle, as a criterion for risk containment.

This approach also finds confirmation in the case law on food safety, where the precautionary principle requires a strategy of risk assessment, management and communication that cannot result in shifting scientific uncertainty onto the consumer (Cass., United Criminal Sections, 30 October 2008, No. 9857; Cass. (crim.), 24 May 2002, No. 20426).

The duty to reduce exposure to risk - including through informational measures - has been held to operate even before harm has been established, as an instrument of the anticipated protection of health.

It is within this framework that the ALARA principle assumes central relevance in the present case as well.

The Petitioner complains that the use of a mobile phone entails exposure to radiofrequencies that varies and depends on the manner of use - such as the duration of calls, the distance from the body, the conditions of signal reception, and cumulative exposure - and that, in certain conditions of ordinary use (for example, in a car or where the signal is weak), the emission of radiofrequencies increases significantly, and that exposure is greater in the case of prolonged use or proximity to the body, with particular regard to minors.

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The application of the ALARA principle translates into an obligation to inform the consumer of the manner of use suitable to reduce exposure, enabling him or her to knowingly modulate his or her own conduct.

Even accepting that doubts persist as to the operation of the precautionary principle in relationships between private parties - reducible, as it is, to a systematic risk-assessment criterion and to a parameter orienting the regulatory framework which the legal order incorporates and translates into specific obligations - the court of appeal, in the judgment under appeal, wholly failed to assess whether, in light of the rules in force and of the professional-diligence standard, the legal order requires Apple to inform the consumer of the existence of the specific risks arising from the electromagnetic waves emitted by the mobile phone.

The link between the precautionary principle and private relationships of ordinary life is instead ensured by professional diligence under Article 1176(2) of the Civil Code.

This Court has emphasized that the qualified operator is not required merely to comply with minimum technical requirements, but must adopt all prudential and informational measures which, on an *ex ante* assessment, prove necessary or even merely advisable to avoid causing harm to the health of the user.

It has in particular been held that the duty of qualified professional diligence requires the adoption of additional precautionary measures, among which, first and foremost, information, even where the risk is not high in probabilistic terms or has not yet been fully established (see Cass., 10 July 2014, No. 15824, and, in conformity, Cass., 7 March 2019, No. 6857).

It has also been held that the duty adequately to inform and instruct the consumer forms part of the physiological content of the performance owed by the qualified operator under Articles 1176(2) and 2236 of the Civil Code, as an expression of the standards of good faith and fair dealing.

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It has been emphasized in this regard that diligence entails the determination of the content of the obligation, both as a standard of performance and as a measure of fault, to the point of rising to a criterion of general application, including during performance of the obligation, and restoring particular importance to the contractual arrangement and to its interpretation under the standard of objective good faith pursuant to Articles 1175 and 1366 of the Civil Code - a criterion imposed on both parties to the obligation, which gives meaning to the obligation by determining it in all its aspects, for the purposes of reconstructing the content assumed by the obligor and, accordingly, the scope of the performance owed in order to satisfy the interest asserted by the obligee.

The resulting obligations, therefore, are not only those directly connected with performance itself, but also those relating to the purposes for which the obligation was assumed, broadening it to include conduct not originally envisaged but supplementary to the obligation (see Cass., 5 September 2023, No. 25855).

It is indeed settled in the case law of this Court that, besides constituting a rule of conduct (which a party - irrespective of the existence of specific contractual obligations - must observe in the relationships of ordinary life in order to protect the interests and welfare of others, the violation of which gives rise to liability: see Cass., 20 August 2015, No. 16990; Cass., 15 February 2007, No. 3462; see also Cass., 20 May 2015, No. 10270; Cass., 27 August 2014, No. 18304; Cass., 27 April 2011, No. 9404; Cass., United Sections, 25 November 2008, No. 28056; Cass., 24 July 2007, No. 16315; Cass., 13 April 2007, No. 8826; Cass., 27 October 2006, No. 23273; Cass., 20 February 2006, No. 3651; see further Cass., 24 September 1999, No. 10511; Cass., 20 April 1994, No. 3775) and a rule (under Article 1366 of the Civil Code) for the interpretation of contracts (see Cass., 23 May 2011, No. 11295), good faith or fair dealing indeed also constitutes a criterion for determining contractual performance, as a source distinct

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both from the heteronomous, gap-filling source under Article 1374 of the Civil Code (as to which see Cass., 27 November 2012, No. 20991) and from the mandatory source under Article 1339 of the Civil Code (as to which see Cass., 10 July 2008, No. 18868; Cass., 26 January 2006, No. 1689; Cass., 22 May 2001, No. 6956; see also Cass., 9 November 1998, No. 11264), for the purpose of supplementing the conduct owed (see Cass., 10 January 2022, No. 13342; Cass., 2 April 2021, No. 9200; Cass., 29 January 2018, No. 2057; Cass., 30 October 2007, No. 22860; and, most recently, Cass., 18 May 2026, No. 14793), in that it requires maintaining loyal conduct and observing duties of information and warning as well as of safeguarding the interests of others - within the limits of reasonable burden (that is, not amounting to activities that are onerous or exceptional, or that entail significant risks or considerable sacrifice: see Cass., 30 March 2005, No. 6735; Cass., 9 February 2004, No. 2422) - the violation of which gives rise to liability in respect of false reliance even merely negligently induced in third parties (cf., with reference to different fact patterns, Cass., 20 February 2006, No. 3651; Cass., 27 October 2006, No. 23273; Cass., 15 February 2007, No. 3462; Cass., 13 April 2007, No. 8826; Cass., 24 July 2007, No. 16315; Cass., 30 October 2007, No. 22860; Cass., United Sections, 25 November 2008, No. 28056; Cass., 27 April 2011, No. 9404; Cass., 27 August 2014, No. 18304).

On this basis, the burden imposed by the duty of objective good faith or fair dealing must be assessed by reference to the circumstances of the case, the nature of the relationship, and the qualities of the parties involved (see Cass., 30 October 2007, No. 22860); and, within contractual relationships, must be assessed in light of the specific cause of the contract (cf., with reference to an engagement

conferred by a client on a professional, Cass., 29 January 2013, No. 2071; and, with reference to an autonomous guarantee contract, most recently, Cass., 18 May 2026, No. 14793).

It follows that, even though the precautionary principle, strictly construed, binds the State to adopt measures suitable to prevent risks to

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health even where the existence of a certain causal link between use of a product and harm has not been scientifically demonstrated, the private operator, once it has placed that product on the market, in turn bears an obligation to conduct itself - and, in particular, to conduct itself as regards informing the consumer - in accordance with a standard of the utmost diligence, prudence and loyalty.

For while it is true that the information obligation borne by the State (Law No. 36 of 2001) and that borne by the producer (Articles 6 and 104 of the Consumer Code) have different statutory sources, different personal scopes, and different purposes, it is equally true that the former does not subsume the latter, but rather confirms its rationale.

Once it is established that exposure to radiofrequencies is regarded by the legal order as a risk warranting preventive protection through information, the producer's information obligations are correspondingly heightened.

The position adopted by the court of merits - according to which the precautionary principle is unsuited to found information obligations directly applicable to private parties in the absence of further legislative intervention - does not, therefore, suffice to exclude the possibility of characterizing Apple's conduct as unlawful (*contra ius*).

The different conclusion reached by the district court in the judgment under appeal is not consistent with consumer-protection law, as interpreted by the Court of Justice in light of Article 1 of the Consumer Code and Article 169 TFEU, nor with the case law of this Court and of the administrative courts referred to above.

Still less can scientific uncertainty be treated as a factor exempting from the duty to inform, as the court of merits instead held.

On the contrary, it constitutes precisely the premise that requires positive action, for preventive purposes, to protect consumers as regards product safety.

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The conclusion reached by the court of appeal is even less persuasive when one considers that Articles 6 and 104 of the Consumer Code are of an immediately mandatory character, constituting a primary source of consumer protection without the need for further detailed rules (Cass. No. 33984/2024).

The question whether the precautionary principle is relevant in private relationships of ordinary life then loses decisive significance, given that, in contexts in which the legal order ensures a high level of health protection, the professional operator is required to adopt measures proportionate to the characteristics of the product and its intended consumer use, without there being room for a rigid separation between the public-law sphere and relationships between private parties (Cass., 27 November 2018, No. 30620).

11.1.6. On this basis, contrary to what was held by the court of appeal in the judgment under appeal, the omission of adequate warnings as to safe use of the telephone cannot be excluded by mere

reference to the product's conformity with technical standards and by the reductive assertion that the precautionary principle binds only the State, without implications for the producer's information obligations.

11.2. The court of appeal also based its dismissal of the original claim brought by Ms. Briganti, then appellant and now Petitioner, on a second *ratio decidendi*, logically autonomous from the first, namely the finding that the alleged harm was not compensable.

It held, in fact, that the eighth and ninth grounds of appeal, concerning the compensability of the harm arising from the violation of the right to self-determination, should «be regarded as absorbed, given that, in the absence of unlawful or defaulting conduct, there is no room for recognizing a right to compensation».

It then added: «The grounds are, moreover, also unfounded», in view of the fact that the reasons put forward were insufficient to overcome the logical reasoning followed by the tribunal, which had correctly held that a condition for the

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compensability of non-material damage arising from violation of the right to self-determination «is that it cross the threshold of seriousness of the offense in accordance with the standards laid down by the decisions of this Court (cf. Cass., United Sections, No. 26972/2008 and No. 26975/2008)».

Now, these holdings do not, in fact, appear to have been formulated merely *ad abundantiam* nor as merely reinforcing arguments, but constitute an autonomous *ratio decidendi*, concurrent with, and logically self-sufficient to sustain, the decision adopted.

11.2.1. The judgment under appeal states in terms: «…the contrary conclusion would entail compensation for the mere fear of a danger, which has no standing whatsoever as a compensable head of damage *ex se*» (pp. 10–11). And it further specifies that «…it cannot be said that the threshold of seriousness of the offense required by the case law of this Court has been exceeded (Cass., United Sections, Nos. 26972/2008 and 26975/2008)».

Now, this holding, too, is erroneous.

The court of merits in truth stopped its inquiry at the finding of the non-compensability of "mere fear," without verifying whether, in the case at hand, the alleged harm amounted to an actual and legally cognizable psychological disturbance, as required by the case law of this Court, which consistently distinguishes between abstract fear and concretely suffered mental anguish (*patema d'animo*).

On this basis, the court of appeal treated the plane of the abstract characterization of the risk as equivalent to the distinct and decisive plane of the actual impact of the informational deficit on the personal sphere of the consumer, failing to determine whether the alleged fear had, in the case at hand, by its intensity and duration, attained the character of serious non-material harm suitable to exceed the threshold of tolerability set out by the United Sections.

The reasoning of the district court is, in truth, at odds with

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the principle set out by the United Sections of this Court in the Seveso case, where they excluded the compensability of fear as such but at the same time recognized protection for concretely proven

psychological disturbance, even in the absence of biological injury (Cass., United Sections, 21 February 2002, No. 2515).

11.2.3. In that decision, this Court held that mere abstract fear of a future event is not, in itself, sufficient, holding that compensatory protection presupposes concrete proof of a psychological disturbance - that is, of suffering and mental anguish, even if transitory in nature - causally connected to exposure to the risk and to the resulting limitations on the ordinary conduct of life.

Beyond the reference to non-material (moral) damage, it should be noted that weight has been given, as an indicator of the concreteness of the harm, to the fact that the persons exposed were compelled to undergo periodic medical check-ups and to live, for an appreciable length of time, with a persistent state of anguish and alarm, with actual repercussions on their habits of life.

Fear as such is thus not compensable, but psychological disturbance proven as a concrete effect of exposure to a risk that could not be knowingly managed is compensable.

11.2.4. Given that compensability is not excluded by the merely contingent nature of the risk, but depends on the concrete impact of the informational deficit on the personal sphere of the person exposed, the inquiry must accordingly shift from the plane of mere emotional disturbance to the distinct plane of the impairment of the decision-making process governing consumer choices.

It is on this plane - and not on that of the anticipation of the feared harm-as-event - that the protection of the right to self-determination comes into play, as an autonomous legal interest whose impairment may give rise to a compensable claim independently of the occurrence of further harm to health.

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The overall legal framework places at the centre of the system, in a unitary and systematic manner, the constitutional value of the right to self-determination, whose violation may give rise to compensable harm even independently of any connection with other forms of harm, whenever a person is deprived of the ability to make informed choices.

The right to self-determination is a value inherent in the system and is recognized across a plurality of domains - self-determination in health matters, in matters of procreation, of identity, of economic and contractual matters, and in digital contexts - not reducible to a single unity, not because the right is not one, but because the domains in which it is relevant, and hence the choices that shape its essence, condition its operative rules.

11.2.5. By judgment No. 794 of 15 January 2009, the United Sections of this Court recognized the compensability of the injury to the right to self-determination, holding that «the violation of the right to information, affecting as it does a person's freedom of choice, constitutes compensable non-material harm, as an infringement of an inviolable personal right».

It was made clear in this regard that the harm lies not in mere emotional suffering, but in the alteration of the decision-making process, which deprives the individual of the ability knowingly to choose whether, and how, to expose himself or herself to a risk.

11.2.7. Such an approach is, moreover, consistent with this Court's case law on the violation of the duty to inform in the healthcare context, where it has been made clear that the impairment of the right to self-determination is legally relevant even in the absence of harm to health, it being clarified that a compensation claim may be upheld where the patient shows, even by way of presumption, what choice he or she would have made had he or she been correctly informed, according to a

counterfactual assessment based on a high degree of logical probability (Cass., 12 June 2023, No. 16633).

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Similarly, in cases of financial intermediation, it has been held that an investor complaining of an omitted or inaccurate disclosure must prove the harm and the causal link between the breach and the harm, and that, had he been adequately informed, he would have refrained from the transaction that later proved harmful (Cass., 24 April 2018, No. 10111).

It follows that, even in consumer-law matters, impairment of self-determination, although conceivable in the abstract as an autonomous harm, requires, for compensation purposes, concrete proof of the causal impact of the informational omission on the decisions to purchase or use the product, and cannot be resolved into a merely asserted claim of loss of freedom of choice.

Now, in the case at hand, the court of appeal did not, in truth, ascertain whether the counterfactual link between the established informational omission and the impairment of the right to self-determination was adequately pleaded and proven, including in light of an *ex ante* prognostic assessment grounded in ordinary experience and in presumptions that are simple yet serious, precise and consistent.

The Petitioner alleged that, had she been in a position to know of the existence of the health risks connected with exposure to radiofrequencies and of the elementary precautions suitable to reduce their impact, she would have used the device differently, adopting alternative conduct that was wholly ordinary, reasonable, and widespread in society.

She alleged in this regard that she would have limited prolonged use of the telephone; avoided using it near her minor children; preferred the speakerphone or headsets; avoided keeping the device in contact with her body or switched on during the night: all conduct falling within common rules of prudence and consumer self-responsibility, once adequately informed.

For this very reason, such allegations did not call for proof amounting to absolute certainty, it being sufficient, under the settled teaching of this Court, to establish a high

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degree of logical probability that, had complete and non-misleading information been provided, the consumer's decision-making process would have been oriented differently.

Such an assessment by presumption is, moreover, consistent with the approach taken by this Court in relation to the advertising of "light" cigarettes, where the impairment of the right to self-determination was traced to the loss of the ability to make an informed choice, inferable, including by presumption, from the misleading nature of the informational message and its capacity to influence consumer decisions (Cass., United Sections, 15 January 2009, No. 794).

The loss of the ability to make such choices may well constitute an immediate and direct consequence of the informational omission, the use of the product in that case having taken place in conditions of forced unawareness of the risk.

From this perspective, the harm does not consist in a mere *ex post* assertion of hypothetical choices, but in the actual and irreversible impairment of the process of self-determination, which was consummated at the very moment when the Petitioner used the device without being placed in a position to assess, manage and knowingly reduce her exposure to the risk.

11.2.8. In light of these elements, the impairment of the right to self-determination as thus reconstructed should not have been treated as a merely emotional or tolerable harm; it

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presented itself, at the very least, as suitable to constitute a non-trivial impairment of a fundamental legal position (see also Cass., 15 October 2019, No. 25914), such that the characterization adopted by the court of merits in the judgment under appeal is the result of an erroneous and reductive assessment of the *thema decidendum*.

11.3. Nonetheless - and this is a further point, indeed a still more decisive one - the second *ratio decidendi* is unsuited to sustain the dismissal of the claim, since, even were the concrete compensability of the harm arising from impairment of the right to self-determination to be excluded, this could not in any event have resulted in denying Ms. Briganti, then appellant and now Petitioner, any form of protection whatsoever.

From the outset, she is shown to have alleged the violation of a current legal obligation, and to have sought protection that, by its nature, operates also - and above all - on a preventive plane.

Once the *contra ius* conduct is established, the question was not limited to the compensability of the harm, but extended to the need to remove or neutralize the effects of unlawful conduct exposing the consumer to a health risk without the minimum informational tools needed to manage it.

Civil liability, particularly in fields such as the present one which affect health and are characterized by informational asymmetry, indeed also - and above all - performs a preventive, risk-governance function, which may translate into recognition of the unlawfulness of the conduct and into the affirmation of an obligation to conform future conduct accordingly.

By virtue of the principle *iura novit curia*, the court is bound neither by the claimant's litigation strategy nor by the legal characterization initially adopted, but is required to carry out a legal characterization of the claim suitable to identify, in keeping with the principle of the effectiveness of judicial protection, the remedy most useful and appropriate to protect the underlying legal interest.

Such an exercise of legal characterization, provided it does not result in an alteration of the facts of the case and thus of the *causa petendi* and the *petitum* (understood as the factual core alleged and the specific relief sought), requires it to be considered that, given the centrality of the right to health within the legal system, its protection is expressed not only in *ex post* protection sanctioning the harmful effects of unlawful, compensable conduct, but also - and above all - in *ex ante* protection aimed at prohibiting members of society from engaging in conduct

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capable of endangering the integrity of the protected interest - preventive protection that does not depend on the occurrence of a harm-as-consequence (*danno-conseguenza*).

The right to health, in view of which the impairment of the right to self-determination was alleged, indeed belongs to the category of absolute personal rights, which do not tolerate external interference capable of compromising their integrity and which, for that very reason, call for instruments of anticipated protection (Cass., United Sections, 20 February 1992, No. 2092; Cass., United Sections, 21 March 2006, No. 6218; Cass., United Sections, 1 August 2006, No. 17461; Cass., 27 July 2000, No. 9893; Cass., 8 November 2006, No. 23735).

On this basis, the court of merits should have examined the possibility of identifying remedies additional and different from mere compensatory protection, suitable to safeguard the interest of Ms. Briganti, then appellant and now Petitioner, that had been impaired.

In particular, consideration should have been given, on the one hand, to ordering the producer to perform a specific act (*facere* specifico), such as the inclusion, supplementation or correction of the information provided by way of (more) stringent warnings; the adoption of instruments suitable periodically to draw the user's attention to prolonged exposure to the risk, including through immediate and repeated digital warnings (such as pop-up notifications or messages on start-up or during use of the device); and the provision of accessories suitable to enable the product to be used under conditions of greater safety.

Injunctive relief is structured within the legal order as an instrument of restitution in kind, aimed at eliminating a current and lasting impairment of an absolute legal position.

This Court has repeatedly emphasized that the essential character of injunctive relief lies precisely in its preventive-protection function, aimed at avoiding the repetition of conduct

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that is dangerous or harmful and has already been engaged in, in breach of duties not to act (Cass., 13 March 2013, No. 6226; Cass., 21 May 2008, No. 13067).

12. Accordingly, in light of all of the foregoing, the decision under appeal is erroneous in several respects.

The court of merits incorrectly excluded the existence, in this case, of *contra ius* conduct, proceeding from a reductive reading of the information obligations borne by the producer and confining the precautionary principle to the public-law sphere alone, without verifying whether the legal order, through rules that are immediately and directly binding in the field of product safety and professional diligence, requires the adoption of informational precautions suitable to govern the risk connected with use of the product.

It incorrectly excluded the compensability of the alleged harm on the basis of a summary and reductive characterization, limiting its inquiry to "mere fear" and applying in the abstract the tolerability criterion developed by the United Sections, without determining whether, in this case, the informational deficit had an appreciable impact on the decision-making process of the consumer, now Petitioner, and on her ability knowingly to determine her own conduct with regard to the exposure to risk in question.

It unlawfully narrowed the scope of protection, reducing the dispute to a stark choice between an award of damages and outright dismissal of the claim, failing to examine the applicability, in this case, in addition to compensatory protection, of preventive and injunctive remedies, aimed at safeguarding the impaired legal interest and at neutralizing the effects of conduct productive of risk.

14. It follows from the grounds being well-founded, in the terms indicated, that the petition is upheld and that the judgment under appeal is quashed accordingly, with the case remanded to the Court of Appeal of Bologna, which, sitting in a

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different composition, shall conduct a fresh examination, applying the principles set out above that were disregarded by the court below.

The court to which the case is remanded shall also rule on the costs of the cassation proceedings.

ON THESE GROUNDS (P.Q.M.)

The Court upholds the petition in the terms set out in the reasoning above. It quashes the judgment under appeal accordingly and remands the case, including as to the costs of the cassation proceedings, to the Court of Appeal of Bologna, sitting in a different composition.

So decided in Chambers on 20 February 2026 by the Third Civil Section of the Italian Supreme Court of Cassation.

The President

Luigi Alessandro Scarano

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