

# INTERNATIONAL CONFERENCE

# Skyward Bound: Innovating the FUTURE OF AVIATION

FRIDAY, 20 SEPTEMBER 2024

Room "Castoldi", Campus Sant'Agostino, Città Alta - Bergamo



UNIVERSITÀ  
DEGLI STUDI  
DI BERGAMO

Department  
of Law

  
**AIR-CARE**  
AIR transport law, Consumers And  
other Related issues in Europe  
Project No. 101065150 - ERASMUS-IMO-2022-MODULE



Co-funded by  
the European Union

  
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# Air passengers rights: selected issues

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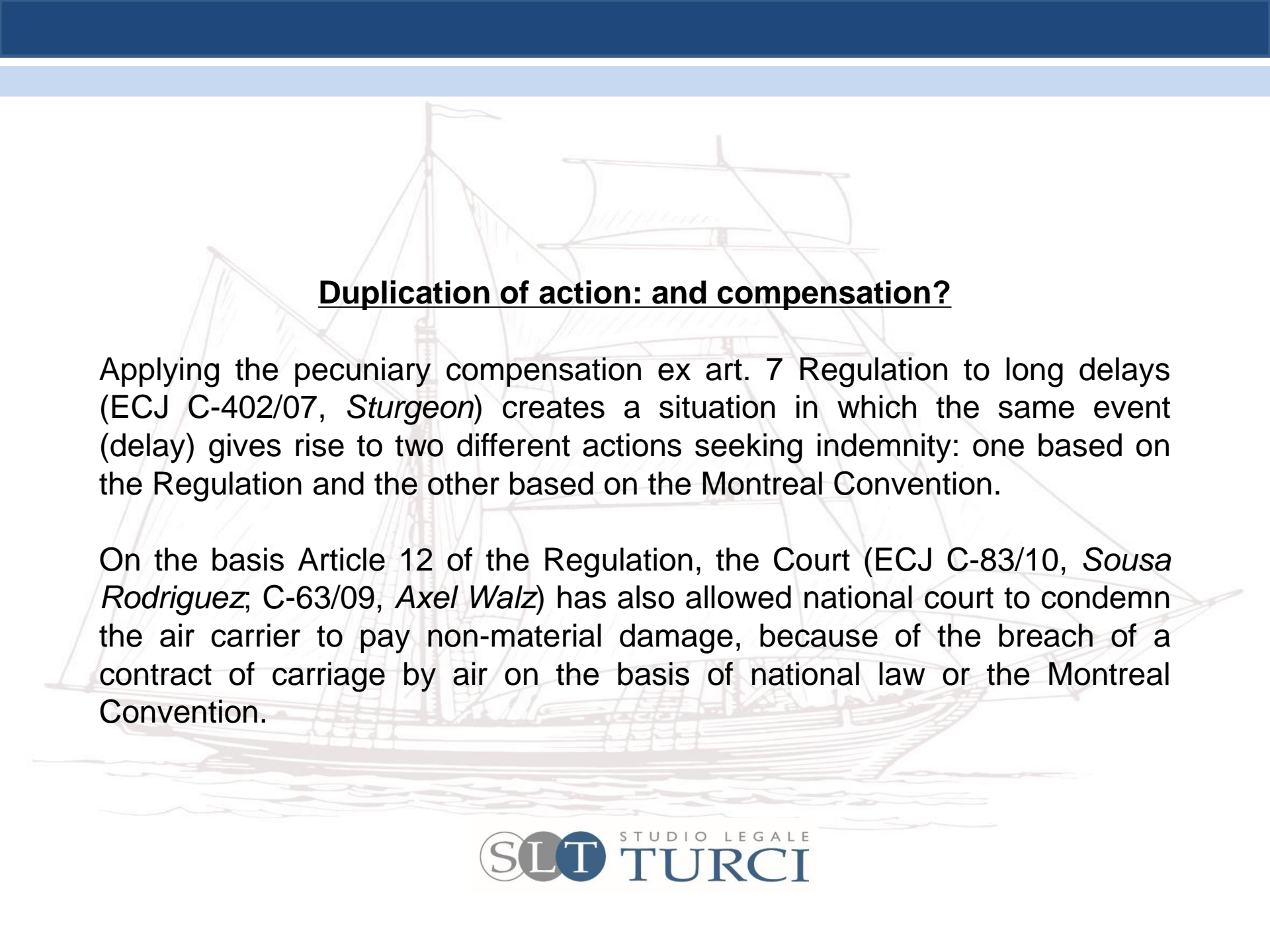
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## The parallel systems

The co-existence of the regime of the Regulation 261/04 and the Montreal Convention system, based on the assumption (ECJ C-344/04, *IATA*) that delay in the carriage of passengers by air cause two types of damage.

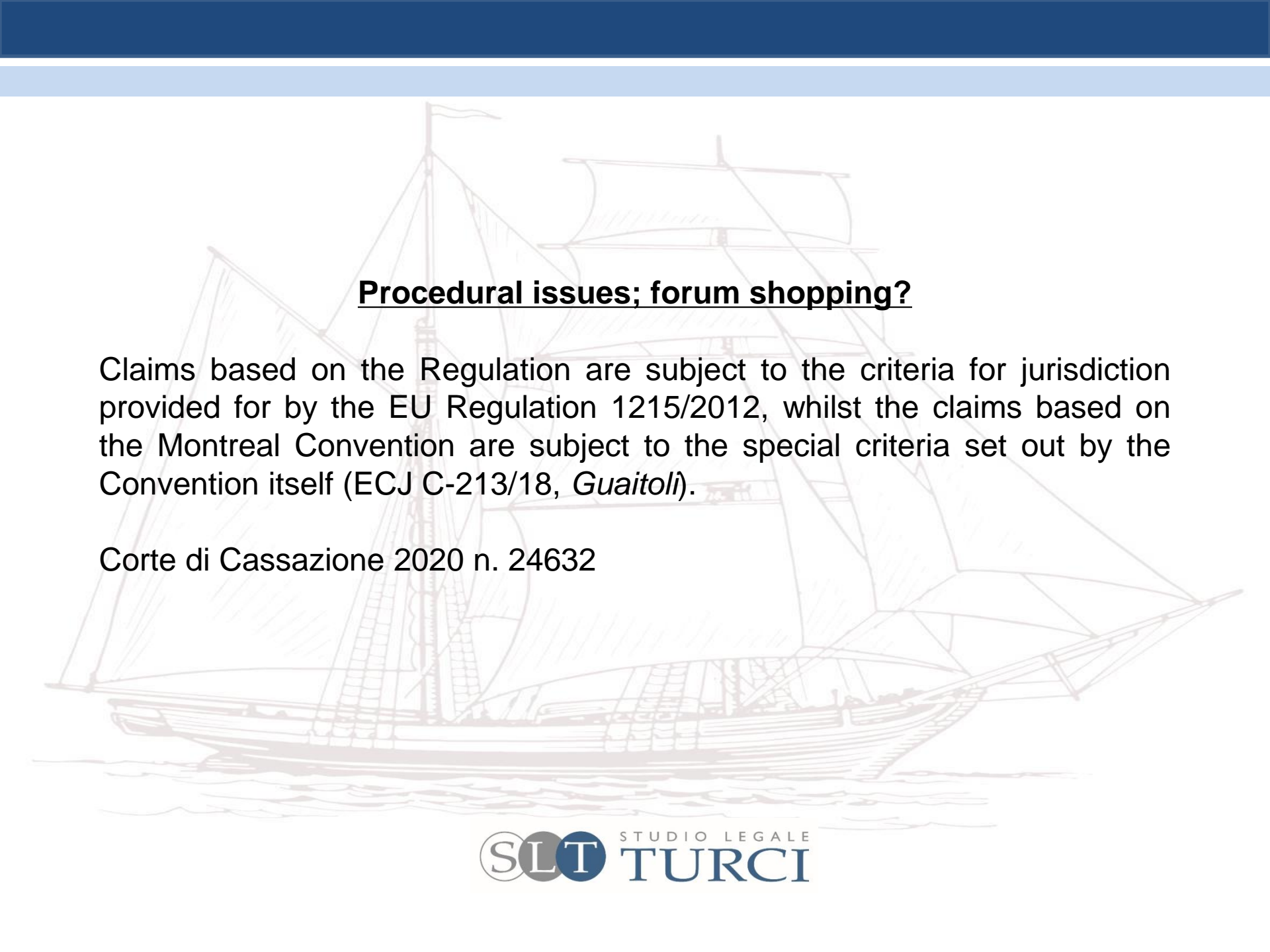
- damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate **assistance or care for everybody concerned**;
- - damage, inherent in the reason for travelling, redress for which requires a **case-by-case assessment** of the extent of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis.



## Duplication of action: and compensation?

Applying the pecuniary compensation ex art. 7 Regulation to long delays (ECJ C-402/07, *Sturgeon*) creates a situation in which the same event (delay) gives rise to two different actions seeking indemnity: one based on the Regulation and the other based on the Montreal Convention.

On the basis Article 12 of the Regulation, the Court (ECJ C-83/10, *Sousa Rodriguez*; C-63/09, *Axel Walz*) has also allowed national court to condemn the air carrier to pay non-material damage, because of the breach of a contract of carriage by air on the basis of national law or the Montreal Convention.



## Procedural issues; forum shopping?

Claims based on the Regulation are subject to the criteria for jurisdiction provided for by the EU Regulation 1215/2012, whilst the claims based on the Montreal Convention are subject to the special criteria set out by the Convention itself (ECJ C-213/18, *Guaitoli*).

Corte di Cassazione 2020 n. 24632



## Who is responsible?

The concept of “flight” as a unit which can be made of separate legs under a single booking (ECJ C-173/07, *Emirates Airlines*) results in the right to compensation for long delays (ECJ C-537/17, *Wegener*), making it irrelevant in which of the legs of the journey the delay had occurred, so that a EU carrier which operated a single leg can be asked for the pecuniary compensation even if:

- They did not operate the leg where the delay occurred (Case C-502/18, *České aerolinie*)
- Such leg was wholly outside EU
- Such leg was operated by a non-EU carrier (ECJ C-561/20, *United Airlines*)



## Who pays?

The concept of flight as a unit made of separate legs is applicable also when no specific legal relationship exists between the carriers operating the separate legs that make up the connecting flights, e.g. when these flights have been combined by a travel agency by means of a single ticket/booking. (ECJ e C-436/21, *flightright*)

ECJ C-215/18, *Primera Air Scandinavia*



## Extraordinary circumstances vs. safety

Safety protocols are dictated to prevent the possibility of accidents, so that it is a public policy choice to favour a precautionary approach (which may lead to delays) whenever there is sufficient ground to raise a safety concern.

The Court has adopted a case by case approach to the issue of “extraordinary circumstances” applying the test of whether the cause of the disruption is internal or external and whether it is under the control of the carrier or not, thus making it rather difficult to predict if delays caused by safety protocols will also be considered as an exonerating cause.



# THANK YOU FOR YOUR ATTENTION!

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