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Italy Moves Towards the Admissibility of Punitive Damages

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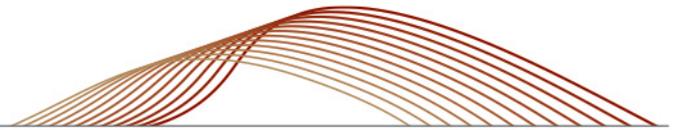
On May 16, 2016, the First Division of the Court of Cassation (one of Italy's Supreme Court divisions for civil and criminal cases) issued a ground-breaking interim decision on whether a foreign court decision ordering a party to pay punitive damages is enforceable in Italy. The decision sets in motion a process that may increase the exposure of Italian corporations and encourage litigation against them in jurisdictions—most notably the United States—where punitive damages can be claimed.

The enforcement of a foreign decision (defined as a judgment issued by courts outside Italy and the European Union)¹ in Italy is subject to the authorization of the Court of Appeal where the foreign decision is to be executed.² The competent Court of Appeal is in charge of verifying whether the decision issued abroad meets the requirements provided for under the relevant statute governing Italian international private law (Law No. 218/1995) in order to be enforced in Italy. Among the criteria set by Law No. 218/1995, the foreign decision has to be compliant with public order.

Based on a Court of Cassation's decision (No. 1183 of 2007), Italian courts are adverse to authorize the enforcement of foreign decisions which order the payment of punitive damages, based on the argument that punitive damages are contrary to public order.

According to case law, *punitive damages* (*i.e.*, a compensation awarded to an injured party that goes beyond what is necessary to compensate the person for losses and that is intended to punish the wrongdoer) do not comply with the public order because *compensatory damages* (which are paid as a compensation for losses, injuries, or harms suffered as a result of the behavior of the wrongdoer that can readily be proven to have occurred) are the milestone of the Italian legal system regarding damages and then are protected by public order.

As a consequence, foreign decisions ordering the payment of punitive damages do not meet the requirement provided for under Italian international private law (*i.e.*, they are considered contrary to public order). Therefore, Italian courts do not allow a party that has obtained a punitive damages award (typically in the U.S.) to attach the Italy-based assets of a losing party for the recovery of the punitive damages on the basis of a foreign court decision.



On May 16, the First Division of the Court of Cassation objected to the mentioned precedent, doubting whether the compensatory damages are the unique remedy applicable for the compensation of damages under Italian law and, in any event, whether such compensatory damages are protected by public order. In this regard, in its decision No. 9978, the First Division observed that:

- certain provisions of Italian law already provide punitive damages (*e.g.*, in case of vexatious litigation, where the losing party may be ordered to pay punitive damages to the winning party or, under the intellectual property legislation, where damages are calculated in connection to the profit of the offender); and
- the notion of public order has been changing in recent years, and now refers to international public order rather than the domestic one; therefore, public order is no longer interpreted as limited to the Italian legal system principles, but refers to the combination of the fundamental rights of a human being which different legal frameworks have in common. In this respect, the First Division mentioned several decisions issued by courts of other European countries (*e.g.*, in Spain, France, and Germany) where punitive damages were not automatically considered contrary to public order.

Based on these arguments, decision No. 9978 stated that punitive damages should not be considered contrary to public order under Italian law. As a consequence, foreign decisions ordering the payment of punitive damages should be enforceable through the Italian legal system.

However, given the precedent case law, and the importance of the matter, the First Division, instead of issuing a final decision, asked the president of the Court of Cassation to evaluate whether the Joint Divisions of the Court of Cassation—which have the duty, under Italian law, to assure an uniformly interpretation of law—should finally adjudicate the case.

If the Joint Divisions were to come to the same conclusion of the First Division (a decision is likely to be issued in the next months), Italian corporations would be exposed to higher potential risks, and plaintiffs would be encouraged to sue them in jurisdictions—such as the United States—where punitive damages can be granted.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Milan lawyers:

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¹ The recognition and enforcement of decisions issued by the Courts of European Member States are governed by the EU Regulation no. 1215/2012.

² Pursuant to Italian international private law (Law No. 218/1995).