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Italy Admits Punitive Damages

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On July 5, 2017, the Joint Divisions of the Italian Court of Cassation ruled, for the very first time, in favor of the enforceability in Italy of foreign decisions (*i.e.*, judgment issued by courts outside Italy and the European Union) granting the payment of so-called punitive damages.¹

Following the decision issued by the First Division of the Court of Cassation on May 16, 2016,² the mentioned judgment recognized the possibility to enforce in Italy such foreign decisions, even if the institute of punitive damages has been considered for a long time alien to the Italian legal framework.

In recent years, certain dispositions of Italian legislation have gradually recognized the right to obtain the payment of amounts which exceed the mere compensation for the loss or damage suffered. These provisions relate to different subject areas, such as industrial property rights, labor law, aggrieved court liability and financial intermediation.³ Therefore, the ruling of the Joint Divisions of the Italian Court of Cassation further endorsed the existing openness to punitive damages, which was already identifiable—to a limited extent—under Italian legislation.

As a consequence of this ruling, corporations operating in Italy and abroad are now exposed to higher potential risks, as plaintiffs could be encouraged to sue them in jurisdictions—such as the United States—where punitive damages can be granted and have those judgments recognized in Italy.

Enforcement of Foreign Decisions in Italy: General Principles

Under Italian law, the enforcement of a foreign decision in Italy is subject to the authorization of the Court of Appeal of the place where the foreign decision is to be executed. The relevant procedure is provided, in the EU context, by Regulation no. 1215/2012 or, outside the EU and lacking specific international conventions, by the relevant statute governing Italian international private law (Law no. 218/1995). In the case submitted to the Court of Cassation, the decisions to be recognized and enforced have been issued by the competent courts of the State of Florida, United States of America; therefore, the recognition and enforcement has been asked in compliance with Article 64 of Law no. 218/1995, since there are no bilateral or multilateral conventions for the enforcement of judicial decisions in civil matters between Italy and the U.S.

In particular, according to Article 64 of Law no. 218/1995, in addition to certain requirements in terms of guarantee of a due process, a foreign decision must comply, *inter alia*, with public order, which, according to the Italian Court of Cassation case law, has been traditionally identified as the set of fundamental principles governing the ethical and social structure of the national community at a certain time, thus including also the basic principles grounding the scope of civil liability and damage compensation.⁴



Are Punitive Damages Conflicting with the Principle of Public Order as Emerging from the Italian Legal System?

So far, foreign decisions granting punitive damages to an injured party were considered against public order, being not compliant with the basic principles grounding damage compensation under Italian law; hence, such decisions were not enforceable in Italy.

In fact, the Italian framework on civil liability is based on compensatory damages, which are paid as a compensation for the actual losses, injuries or harms suffered as a result of the behavior of the wrongdoer. Punitive damages ensure the injured party financial compensation that exceeds what is necessary to compensate the patrimonial loss suffered, since such damages are intended to punish the conduct of the wrongdoer. Well-established case law excludes the possibility of claiming punitive damages under Italian law, repeatedly stating that damages do not have a punitive scope under Italian law, since they shall be limited to the restoration of the patrimonial integrity of the injured subject.⁵

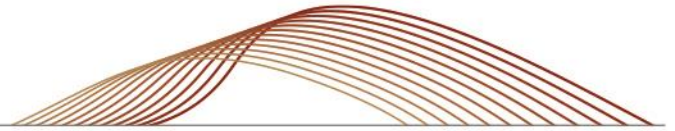
Notwithstanding this rationale underlying Italian civil damages, the Italian legal system already contained certain instances of civil liability, which go beyond the mere compensation for the harm suffered or the loss experienced. In particular, the Code of Industrial Property enacted in 2005 empowers the judge to impose the payment of a pecuniary amount to be determined in relation to the violation and the delay experienced in the execution of the relevant judicial orders.⁶ Similarly, the law governing the publishing of newspaper and books and the liability for felonies related to such profession provides for pecuniary sanctions for defamation realized through the press, to be determined taking into consideration the severity of the offence and the extent of dissemination of the press at issue.⁷ The Italian Workers' Charter (*Statuto dei Lavoratori*) provides that, in the event of an employee's wrongful dismissal, which is later recognized to be null, the pecuniary sanction shall never be lower than the amount corresponding to the remuneration of five months.⁸ In relation to financial intermediation, the relevant legislation provides for pecuniary sanctions having deterrent and punitive purposes.⁹ Eventually, the Italian Code of Civil Procedure empowers the judge to order the party liable of taking part in the court proceeding with bad faith or aggrieved fault to compensate the counterparty, upon request of the latter; the amount of the compensation is intended as a pecuniary sanction for aggrieved court liability, thus aiming at sanctioning the misconduct of abuse of process as well as deterring such conduct.¹⁰

Therefore, more than one provision of the Italian legal framework attributes to damage compensation a scope that goes far beyond the mere restoration of the prejudice suffered.

The Joint Divisions of the Italian Court of Cassation's Decision

The Joint Divisions of the Court of Cassation recalled, in line with the above-mentioned legal provisions, recent judicial findings on the matter,¹¹ which excluded the incompatibility between the punitive scopes of civil liability with the Italian legal system. Moreover, according to the decision, several doctrinal contributions have promoted the possibility to grant the injured party the right to obtain compensation, which goes beyond the patrimonial loss suffered, assuming that civil liability may also have a deterrent effect, preventing similar misconduct before it occurs. Eventually, case law of the Italian Constitutional Court confirmed that civil liability is to ensure effective protection of the injured party.¹²

On these bases, the Joint Divisions of the Italian Court of Cassation recognized that civil liability may serve different functions: it primarily grants compensation to the injured party, in line with the previous connotation of civil liability as restoration of patrimonial loss, but it may also ensure deterrence and sanction the wrongdoing of the subject held liable.



Given this comprehensive nature of civil liability, the decision stated that foreign decisions granting punitive damages are not against public order in principle and, thus, could be enforced in Italy, but only at certain preconditions

In fact, a foreign ruling providing the payment of punitive damages may be executed in Italy only in case foreign legislative provisions (or equivalent sources) grant the competent Judge with the power to award punitive damages based on typical and predictable circumstances. Moreover, the amount due shall be limited (*i.e.*, the quantification of the amount is not completely under the discretion of the Court). Thus, the ruling itself sets general requirements of legality, typicality, and predictability to be met in order to execute in Italy foreign rulings granting the payment of punitive damages.

Eventually, this ruling examined the recent development of U.S. case law on punitive damages, pointing out that U.S. Courts now expressly repeal “grossly excessive” punitive damages, which do not preserve any proportionality between the loss suffered and the compensation received, since they could be “arbitrarily” quantified by juries. This kind of punitive damages would not be compliant with the Italian public order, as said above. Since the U.S. Supreme Court limited the quantification of punitive damages, establishing that they should not exceed the compensation granted for the loss suffered,¹³ punitive damages under U.S. case law are no longer conflicting with principles shaping civil liability and damage compensation under Italian law and thus do not conflict with the public order.

Conclusions

A decision of the Joint Divisions of the Italian Court of Cassation—which is entitled to provide a uniform interpretation of the law—represents a forceful precedent, which lower courts and subsequent judgments are likely to abide to where required to recognize and enforce foreign decision implying an order to compensate punitive damages.

Corporations operating in Italy and abroad have to be aware that they are now exposed to higher potential risks of being sued abroad, where punitive damages can be granted, and subsequently bear enforcement proceeding in Italy.



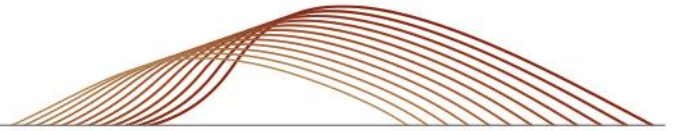
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¹Joint Divisions of the Court of Cassation no. 16601/2017.



²https://www.paulhastings.com/publications-items/details/?id=5564e969-2334-6428-811c-ff00004cbded#_edn1.

³Art. 124, co. 2, of Legislative Decree no. 30/2005 (Code of Industrial Property); art. 18 of Law 300/1970 (*Statuto dei Lavoratori*); art. 96 of Italian Code of Civil Procedure; art. 12, of Law no. 47/1948 governing the publishing of newspapers and books and the liability for felonies related to such profession; art. 3 to 5 of Legislative Decree no. 58/1998 (Consolidated Law on Financial Intermediation).

⁴Court of Cassation, First Division, no. 1680/1984.

⁵*E.g.*, Court of Cassation, First Division, no. 1781/2012.

⁶Art. 124, co. 2, of Legislative Decree no. 30/2005 (Code of Industrial Property).

⁷Art. 12, of Law no. 47/1948 governing the publishing of newspapers and books and the liability for felonies related to such profession.

⁸Art. 18, co.2, of Law no. 300/1970 (*Statuto dei Lavoratori*).

⁹Art. 3 to 5 of Legislative Decree no. 58/1998 (Consolidated Law on Financial Intermediation).

¹⁰Art. 96 of Code of Civil Procedure.

The Joint Divisions of the Court of Cassation also referred to other legislative provisions demonstrating openness to punitive damages, *e.g.*, art. 3 to 5 of Legislative Decree no. 7/2016, introducing civil pecuniary sanctions in relation to the intentional violation of public faith, honor and property; art. 28 of Legislative Decree no. 150/2011, granting the judge the possibility to impose pecuniary sanctions—to be determined upon identification of the discriminatory conduct as the consequence of the reprisal consequent to a judiciary action or unlawful reaction to a precedent action of the injured party seeking equal treatment; art. 140, co. 7, of Legislative Decree no. 206/2005, determining the amount of the pecuniary sanction on the basis of the seriousness of the violation of consumers' rights.

¹¹Court of Cassation, First Division, no. 1781/2012

¹²Constitutional Court no. 238/2014 and no. 21255/2013.

¹³U.S. Supreme Court no. 07–219, *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).