



THE ITALIAN SUPREME COURT RECOGNISES THE ENFORCEABILITY IN ITALY OF FOREIGN JUDGMENTS GRANTING PUNITIVE DAMAGES

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Punitive damages have long been considered extraneous to the Italian legal framework. For the first time, with the landmark judgement no. 16601 of 5 July 2017, the Joint Divisions of the Italian Court of Cassation ruled in favor of the enforceability in Italy of foreign decisions awarding punitive damages (usually issued by Courts outside the European Union).

The enforcement in Italy of a decision made by a Court of a State outside the EU is ruled by the Italian Law 218/1995 (the Italian Statute on Private International Law), except in cases where there are specific bi-lateral or multilateral conventions between Italy and the State in question.

In order to make a foreign judgement enforceable in Italy, article 64 of the aforementioned Law provides that such judgement must comply, inter alia, with public order.

Public order, according to Italian Court of Cassation case-law, has been traditionally identified as the set of the fundamental principles governing the ethical and social structure of the national community at a certain time, including therefore the basic principles grounding the scope of civil liability and compensation for damages.

According to Italian laws, the damages have a compensatory scope – i.e. to compensate a person for the loss or harm actually suffered – and not a punitive one. Punitive damages instead do not pursue the financial compensation for the loss suffered, they aim at punishing the conduct of the person found liable in a contractual or tort case.

For this reason, punitive damages have been considered in conflict with the public order, being inconsistent with the above-mentioned principles governing damages compensation, and the Italian settled case-law has refused for a long time recognition and enforcement of foreign judgements awarding punitive damages.

As a matter of fact, the Italian legal framework provides some cases of civil liability which go beyond the simple compensation for the loss suffered.

In particular, the Italian Industrial Property Code authorizes the judge to impose the payment of a pecuniary amount to be determined in relation to the violation and delay in the execution of the relevant judicial orders.

With reference to the responsibility for crimes of defamation through the press, the relevant Italian law provides for fines to be determined taking into account the seriousness of the crime and the extent of the dissemination of the press in question.

The Italian Workers' Statute provides that, in the event of undue dismissal of an employee, which is recognized in Court as invalid, a pecuniary sanction shall be imposed on the employer in an amount not lower than the amount corresponding to five-month salary of the employee.

Finally, the Italian Code of Civil Procedure authorizes the judge to order a party, responsible for starting a civil proceeding in bad faith or with gross negligence, to compensate the counterparty; the amount of compensation is understood as a financial penalty aimed at punishing the conduct of the abuse of proceedings and discouraging such conduct.

Therefore, more than one provision of the Italian legal framework provides damage compensation that goes far beyond simply restoring the loss suffered, and the judgement of the Joint Divisions of the Italian Court of Cassation further confirms the current openness of the Italian legal system to punitive damages.

In consideration of the aforementioned legal provisions, the Italian Court of Cassation finally acknowledged the compatibility of the punitive purposes of civil liability with the Italian legal framework and stated that civil liability can serve different functions:

- a. award compensation to the injured party, in line with the traditional connotation of civil liability as restoration of the loss suffered;
- b. assure deterrence and sanction the unlawful conduct of the subject held liable.

In this view, with the abovementioned judgement no. 16601 of 5 July 2017, the Italian Court of Cassation ruled that foreign decisions that provide for punitive damages are not against public order in principle; they are enforceable in Italy on condition that they respect the general principles of:

- a. legality: punitive damages has to be foreseen in the foreign legal system;
- b. typicality / predictability: the competent judge has the power to condemn to punitive damages on the basis of typical / predetermined and therefore foreseeable circumstances;
- c. proportionality: the compensation has to be limited and assessable based on objective parameters established by the applicable law and, therefore, its assessment has not to be totally left to the discretionary of the Court or juries.

The recent development of US case-law, now addressed not to recognize compensation for punitive damages excessively burdensome with respect to the loss suffered, and the case-law of the Supreme Court of the United States, which limited the assessment of punitive damages by establishing that they should not exceed the compensation granted for the loss suffered, have contributed to bring punitive damages closer to the principles of civil liability and compensation for damages provided for by Italian law, by resolving the historical conflict of the institute of punitive damages with the Italian principles of public order.

Since the principles of interpretation set out in the judgement of the Joint Divisions of the Italian Court of Cassation are rather influential on lower Courts, it is predictable that the latter will apply them in issuing the recognition and enforceability measures of foreign rulings awarding compensation for punitive damages.

The opening of the Italian legal system to the recognition of punitive damages raises the need for a new risk assessment for Italian companies operating in countries, such as the United States, where punitive damages are foreseen by the law. More specifically, such companies must be aware that, in the presence of the requirements recalled by the Italian Supreme Court of Cassation, an award of punitive damages provided by a judgement rendered abroad may be recognized and enforced against them in Italy.