

Punitive damages in Italy

1. Traditionally in Italy the notion of punitive damages has been considered alien to the civil liability system. The reason was that the fundamental and exclusive function attributed to the civil liability was to repair the loss/damage caused by the tort or the contractual breach rather than to sanction the conduct of the wrongdoer or the party in breach. As a result of such traditional approach the Courts assessment of the compensation due to the claimants who have sustained damage/loss resulting from (i.e. caused by) tort or contractual breach has been focused on the extent and nature of such damage/loss and the general rule was that such compensation should ideally tend to put the claimant in the same condition as he/she would have been had the tort/breach not taken place.

2. Consistently with the above approach, until a few years ago Italian Courts seized for granting exequatur to foreign judgments were unanimous in denying exequatur to such judgments to the extent they had awarded punitive damages to the claimant.

That because punitive damages were regarded as contrary to the Italian legal system public order.

3. The above scenario has meanwhile changed after that Italian Supreme Court in full Session (*Corte di Cassazione a Sezioni Unite*) issued its judgment no. 16601/2017 by which it held that in reality one could no longer hold that Italian legal system public order exclude in principle punitive damages. The Supreme Court carried out a very detailed and extended research of law provisions currently in force in Italy in various matters which, under certain conditions and circumstances, expressly contemplates that – in addition to the “ordinary” compensation aimed at restoring the claimant conditions – the Court may charge on the defendant a certain amount as a deterrent for preventing or discouraging such wrong conduct in future.

The Supreme Court came to the conclusion that the notion of punitive damages cannot be regarded any longer as alien to the Italian legal system and that there is no public order rule which bans punitive

damages as such.

4. Nevertheless, the Supreme Court in order to assure predictability and avoid that punitive damages be left to the sole discretion of the judge has set certain strict requirements for admitting punitive damages: punitive damages must be provided expressly by law and the law must also determine the criteria for assessing them (i.e. they could not be awarded by analogy or by judge's equitable assessment).

5. Therefore exequatur would continue to be denied to foreign judgments awarding punitive damages whenever they do not refer to an express law provision determining both the actual conduct which may entitle the foreign judge to award punitive damages and how to assess them.

For more information please contact:

Roberto Bassi

+39 010 543951

+39 335 5689038

r.bassi@siccardibregante.it