# Italian Corte di Cassazione 5 July 2017 no 16601

Translation by Francesco Quarta*

In the current legal system, the purpose of civil liability law is not just to make the victim of a tort whole again, since the functions of deterrence and punishment are also inherent in the system. The American doctrine of punitive damages is therefore not ontologically contrary to the Italian legal system. However, the recognition of a foreign judgment awarding such damages is subject to the condition that the judgment has been rendered in accordance with some legal provisions of the foreign law guaranteeing the standardization of cases in which they may be awarded (*tipicità*), their predictability, and their outer quantitative limits. The enforcing court must focus solely on the effects of the foreign judgment and on their compatibility with public policy.

KEYWORDS: punitive damages, extra-compensatory damages, civil sanctions, punishment, deterrence, torts, guarantees, recognition and enforcement, exequatur, proportionality, effectiveness, fundamental rights, products liability, public policy

## SUMMARY OF FACTS

NOSA Corporation, headquartered in Florida (USA), obtained from the Venice Court of Appeal[1] a judgment allowing the recognition and enforcement in Italy of three final decisions rendered in the United States:

- The final judgment of 23 September 2008, handed down by the Circuit Court of the 17th Judicial Circuit for Broward County (Florida), confirmed on appeal on 11 August 2010 by the District Court of Appeal of the State of Florida, condemning the Italian company AXO Sport spa to pay the amount of US $1,436,136.87 at an annual interest rate of 11%;

- The judgment of 14 January 2009, whereby the same Court awarded the plaintiff $106,500.00 as compensation for costs, attorney's fees, and 8% annual interest;

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[1] In Italy, courts of appeal act as first instance courts in *exequatur* cases.

- The judgment of 13 October 2010, awarding an additional sum of US $9,000.00 as compensation for costs, attorney's fees, and 6% annual interest in relation to the proceedings on appeal.

With these judgments, the US courts granted NOSA's request to be indemnified by AXO for the payment of one million euros resulting from a settlement reached with the plaintiff, a motorcyclist who had suffered personal injuries in an accident which occurred during a motocross race as a consequence of an alleged defect of the helmet manufactured by AXO, distributed by Helmet House and resold by NOSA.

Pending the proceedings, which the injured had brought also against the importer and distributor of the helmet (Helmet House), NOSA had agreed on the settlement proposed by the motorcyclist, and the American court subsequently held that NOSA was entitled to seek indemnity from AXO for any payment in connection thereto.

NOSA obtained the recognition of the abovementioned judgments by the Venice Court of Appeal (on 3 January 2014), pursuant to Art 64 of legge 31 May 1995 no 218 (Italian rules of private international law), on the grounds that AXO had accepted the foreign jurisdiction.

AXO appealed to the Supreme Court, on the basis of three reasons, opposed by NOSA. The parties submitted recapitulative briefs.

The case was first heard by the First Division of the Supreme Court, which decided, by ordinanza no 9978/16, to stay proceedings and refer the matter to the First President, for its assignment to the Joint Divisions, calling for a reconsideration of the issue concerning the recognition and enforcement of foreign judgments awarding punitive damages.

Further briefs were submitted by the parties before the final oral arguments.

## REASONS FOR THE DECISION

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4) The third plea of the applicant alleges infringement of Art 64 of legge no 218/95 and defective reasoning on the part of the Venetian Court, which purportedly failed to ascertain that the award issued by the US court in favor of the injured party accounted also for punitive damages, without providing any specific reasoning as to the nature of the injuries forming the basis of compensation. The settlement proposed by NOSA and accepted by the motorcyclist provided, in fact, for a comprehensive amount 'in full satisfaction of all damages claims raised by Mr. D., including those for punitive damages'.

AXO's assertion, concerning the incompatibility of the US judgment with public policy, was rejected by the Court of Appeal, on the basis of three convergent arguments that can be summarized as follows: a) the foreign judgment did not elaborate on the different types of damages that were indemnified because it simply reflected 'the amount of the settlement entered into with the injured party', b) it is not necessary to examine the nature of such damages, since AXO has benefitted from the settlement; c) there is no evidence that such (punitive) damages were actually accounted for; the settlement, on closer scrutiny, seems to have been construed otherwise.

While reiterating the same claims made before the first instance court, AXO stresses that the Court of Appeal overlooked the fact that the wording of the settlement proposal expressly allocated 'the settlement payment' also to 'punitive damages'.

The appellant further contends that, since the US judgment did not contain any indication as to the nature of the damages awarded, such lack of reasoning amounted to a violation of law, which would constitute sufficient ground for the Court to refuse its recognition, especially because 'the *quantum* of the award was abnormal'. In that respect, the applicant refers to the Supreme Court precedents no 1781/12 and no 1183/07. These rulings were addressed also in the First Division's ordinanza no 9978/16, advocating for a reconsideration, by the Joint Divisions, of the Supreme Court's traditional position about the compatibility of punitive damages with Italian public policy.

4.1) The applicant's plea is inadmissible, since it is based on the false assumption that the amount charged to the guarantor included an award of punitive damages in favor of the accident victim.

On this issue, the decision of the Court of Appeal is not vitiated by a failure to take into account material or decisive facts, under the meaning of reformed Art 360 of the Code of Civil Procedure.

First of all, it is worth recalling that, according to the case law of this Court (Joint Divisions' judgment no 8053/14), when examining the grounds of a decision the mere 'insufficiency' of its reasoning is not enough for its annulment; what actually counts is the failure to consider an historical fact, either major or minor, mentioned in the judgment itself and discussed between the parties, which is key to the decision to be taken.

We refuse to uphold the applicant's assertion that the lower court has 'totally disregarded the fact that the settlement proposal' – accepted by NOSA and constituting the basis for the decision against the guarantor – also covered the victim's claim for punitive damages.

In the last sentence of page 21 of the judgment, the Court of Appeal clearly considered that the issue of punitive damages had been discussed between the parties. It found, however, that the agreement did not entail any assessment of punitive damages or their acknowledgment, but 'only that NOSA Inc. had asked for a waiver also for the issue of punitive damages, hence seeking a conclusive settlement concerning all pending issues between the parties'. This unequivocal explanation, conveying the interpretation of the US judgment in the light of the underlying settlement, is therefore not vitiated by the kind of omission alleged by the applicant. The settlement agreement was taken into consideration by the court, and the greater or lesser plausibility of the findings regarding its scope is not subject to scrutiny at the current stage of proceedings (with regard to the limited control over the first instance judge's findings concerning the contents of a foreign judgment, see Supreme Court ruling no 1183/07, citing rulings no 1266/1972, no 3709/1983, and no 3881/1969, and explaining that such factual analysis falls within the exclusive competence of the first court). In light of the above, the applicant's complaint is therefore inadmissible.

4.2) The second argument of the applicant's plea is also inadmissible. It states that the US judgment would be a vehicle for a liquidation of punitive damages, on the assumption of the abnormality of compensation granted to the injured party. This assumption, representing the essential premise of the thesis according to which the recognition of the so called punitive damages in our legal systems is banned by Art 64, is groundless.

It is worth recalling that, whilst it is for the judge to investigate, also on his own motion (Corte di Cassazione no 13662/04), the existence of the prerequisites for the recognition of a foreign judgment pursuant to Art 67 of legge 31 May 1995 no 218, such investigation cannot overcome the results of the fact-finding process based on the parties' burdens of proof.

In the instant case, which involves substantial personal injuries (even though the applicant's pleadings were purposely silent on this issue, the counter-pleadings were very detailed in describing the cranial injuries and the disabling after-effects suffered by the victim of the accident), the one million euro settlement (or two million, considering also a similar settlement entered into by Helmet, as pointed out in the party's pleadings) cannot, in itself, be considered abnormal.

The fact-checking done on this issue by the Venice Court of Appeal cannot be scrutinized at this stage of the proceedings, considering that the lower court valued the circumstance that the US Court had weighed the reasonableness of the settlement amount and pointed out, as a closing remark, that an additional sum had been paid on top of that amount pursuant to a direct settlement between AXO and the motorcyclist. In view of this, a new assessment of the alleged abnormal *effects* (emphasis in original) of the US judgment in the Italian legal system is not allowed (this being the scope of review entrusted to the Supreme Court, which is not entitled to evaluate the correctness of the foreign decision in the light of either foreign or Italian laws: see Corte di Cassazione no 9483/2013, and also, perceptively, Corte di Cassazione no 10215/07).

There is no room for review especially because the applicant has not provided any evidence in support of the alleged award of punitive damages, eg, any indication as to the apportionment of economic, moral and, possibly, punitive damages, and their respective legal grounds in the system of origin; any objections raised by the parties on this issue in the proceedings before the US court, etc.

Equally groundless is the applicant's assertion that given the lack of any indication as to the rules and/or criteria actually followed in the quantification of damages in the judgment, part of the settlement amount should be presumed to be punitive in nature. This line of argument, which recalls the unworkable 'lack of reasoning' challenge, already rejected by this Court, is contradicted by the applicant's admission (page 13 of the 2016 brief) that the Di Salvo affidavit, on top of US $335,000.00 for medical expenses, had estimated the plaintiff's loss of earning capacity alone to be in the range of two to three million dollars.

It is pointless, moreover, to adduce that the motorcyclist's attorney had initially informed the Florida jury that the value of demanded damages ranged between ten and thirty million dollars. This defensive approach, which could have been regarded as containing an abnormal and grossly vindictive request, was eventually abandoned in the settlement agreement, the amount thereof having been set well below the level of the purely economic damages originally sought.

In light of this, in no way could the award at issue be regarded as having a 'punitive' character; and such character cannot be inferred from the mere fact that the judgment, or rather the underlying settlement ratified by the court, failed to clearly categorize the award's different components. The applicant endorses a 'radical' interpretation of precedents, which were based on the 'insufficient argumentation' rationale (see, in particular, Corte di Cassazione no 1781/12). However, in the opinion of the Joint Divisions, such rationale is no longer applicable, with the consequence that, in order to successfully challenge an exequatur decision, a claimant has to specify, unequivocally, which legal norms have been allegedly violated by the enforcing court.

5) The dismissal of all three pleas submitted by the applicant results in the rejection of the appeal. However, the inadmissibility of the third plea allows the Joint Divisions to rule on the subject matter thereof pursuant to Art 363 para 3 of the Civil Procedure Code, which may be interpreted in the sense that, even if the appeal is to be rejected in its entirety, the Supreme Court may nonetheless express the relevant principle of law governing the matter, provided that it is one of particular importance. In the instant case, the statement of a principle of law is justified in consideration of the extended scholarly debate which has for some time urged an overruling intervention by this Court, as well as in pursuit of the First Division's order of remittance, prompted by the parties' sagacious arguments.

5.1) In 2007, the Supreme Court denied the recognition and enforcement of a judgment, on a similar subject matter, on the assumption that the idea of punishment and sanction did not pertain to civil liability law and that 'the tortfeasor's conduct' was to be considered irrelevant. The Court thus construed civil liability as having a mono-functional nature, by characterizing its purpose as merely 'restorative of the economic conditions' of the injured party. Though immediately criticized by the majority of scholars, highlighting the inconsistency of these statements *vis-à-vis* the evolution of the notion of civil liability in the past decades, the principle expressed in ruling no 1183/2007 was confirmed by a Supreme Court judgment a few years later. In ruling no 1781/2012 the exclusion of any punitive purpose from the law of civil liability was more explicitly associated with the need to 'control the compatibility of the foreign damages award with the Italian legal system'.

It is the Joint Divisions' belief that this reasoning is outdated and can no longer constitute, in these terms, a suitable filter for the assessment at hand. For some years already, the Joint Divisions of the Supreme Court (see ruling no 9100/2015 on the issue of directors liability) have highlighted that the idea of a punitive function associated to a damages award is no longer 'incompatible with the general principles of our legal system, as it was in the past, in view of the fact that here and there, in the last decades, the legislator has introduced several provisions pursuing, in a broad sense, a punitive goal'.

The Joint Divisions have, however, pointed out that such punitive function is attainable only where 'it is clearly set forth by some provision of law, in accordance with the principle which can be deduced from Art 25 para 2 of the Constitution, as well as from Art 7 of the European Convention on the Protection of Human Rights and Fundamental Freedoms'.

Similar concerns, in combination with the equally meaningful reference to Art 23 of the Constitution, explain why, even in the same timeframe, some judgments continued to repudiate any punitive or deterrent foundation to the law of civil liability (the most significant example is Joint Divisions' ruling no 15350/15). Such denials, even if at times expressed as mere reinforcing arguments, pursued the goal of fencing off any attempt to expand the range of available damages beyond the boundaries set by law, in situations not provided with adequate normative coverage.

However, this does not obliterate the trajectory developed by the law of civil liability in the last decades and what resulted therefrom. In brief, it can be said that beside the primary and predominant compensatory-restorative function (which inevitably comes close to deterrence) a multi-functional nature has emerged (one scholar identified more than ten functions), extending to different areas, the most relevant of which are prevention (or deterrence-dissuasion) and sanction-punishment.

5.2) The ongoing evolution of the legislative environment provides the necessary confirmation of the above description. It is, on the one hand, linked with the legislator's determination to resort to the remedies of civil liability to respond to emerging needs; on the other, prompted by its dynamism *(of civil liability law)*, it shows the inadequacy of a line of thought unavailable to accept any remedies not precisely fitting in the *(compensatory)* 'category'.

The studies carried out by the *Ufficio del Massimario* of this Court, the remitting ordinanza no 9978/16 by the First Division, and ruling no 7163/15 (which ascertained the compatibility of Belgian *astreintes* with Italian public policy) have altogether contributed to draw up a list of such *(extra-compensatory)* remedies.

In the latter decision, the Supreme Court set forth the following examples: 'in the field of patents and trademarks, Art 86 of regio decreto 29 June 1939 no 1127 and Art 66 of regio decreto 21 June 1942 no 929, repealed by decreto legislativo 10 February 2005 no 30, setting forth to this aim the provisions of Art 124, para 2, and Art 131, para 2; Art 206 and Art 140, para 7, of decreto legislativo 6 September 2005, known as the consumers code, weighing the 'gravity of conduct', and, according to some, Art 709-*ter*, paras 2 and 3, of the Civil Procedure Code introduced by legge 8 February 2006 no 54 for breach of the obligations related to child custody; Art 614-*bis* of the Civil Procedure Code, introduced by Art 49 of legge 18 June 2009 no 69, endowing the judiciary with the power to impose a monetary fine for any additional breach or delay in complying with a court's order, 'considering the value of the dispute, the nature of the activity to be performed, the assessed or foreseeable damages and any other circumstance which may be relevant'; Art 114 of legge 2 July 2010 no 104 which, following the latter provision, endows administrative courts with a similar power.

Moreover, the Supreme Court made reference to 'cases where the tortfeasor's punishment is directly determined by the law: such as – besides the provisions of Arts 388 and 650 of the Penal Code – Art 18, para 14, of the Workers' Statute, setting forth an additional sanction as a deterrent for failure to reinstate an unjustly dismissed worker; Art 31, para 2, of legge 27 July 1978 no 392, providing a monetary fine for the tenant/lessor if the reason stated for withdrawing from the lease subsequently proves to be unfounded; Art 709-*ter*, para 4, of the Civil Procedure Code, empowering courts to apply an additional monetary sanction for infringements concerning child custody; and also Art 4 of decreto legge 22 September 2006 no 259, converted into legge 20 November 2006 no 281, on dissemination of illegally wiretapped conversations.

Ordinanza no 9978/16 mentioned among others:

- Art 158 of legge 22 April 1941 no 633, and, above all, Art 125 of decreto legislativo 10 February 2005 no 30 (industrial property), although subject to the limitations set forth by recital 26 of the EC Directive 29 April 2004 (on the enforcement of intellectual property rights), implemented in Italy by decreto legislativo 16 March 2006 no 140 (see Art 158), and the 'partially sanctioning nature' (albeit not punitive) recognized by the Supreme Court in ruling no 8730 of 2011;

- Art 187-*undecies*, para 2, of decreto legislativo 24 February 1998 no 58 (on financial intermediation);

- decreto legislativo 15 January 2016 no 16 (Arts 3-5), which de-criminalized several offenses against the public faith, the individual honor or property; if committed willfully, such torts now trigger the application of a monetary civil sanction for the purposes of punishing and deterring the misconduct, in addition to compensation for any losses suffered by the injured party'.

Both judgments stressed the importance of Art 12 of legge 8 February 1948 no 47, providing in favor of a victim of defamation a 'reparatory amount' in addition to actual damages; as well as of Art 96, para 3, of the Civil Procedure Code, recently introduced, allowing civil courts to enter against the unsuccessful party at trial the payment of an 'equitably determined sum' with the function of punishing the abuse of process (for proceedings before administrative courts see Art 26, para 2, of decreto legislativo 2 July 2010 no 104).

It is also worth mentioning Art 28 of decreto legislativo no 150/2011 which, in discrimination disputes, allows courts when assessing the *quantum* of damages to take into account whether the discriminatory act or conduct was moved by a retaliatory motive against a legal action or other initiatives previously undertaken by the discriminated person with a view to defending the principle of equal treatment.

Further, consider Art 18, para 2, of the Workers' Statute, stating that in no event shall the indemnity awarded to an unjustly dismissed employee be less than five months' gross salary; Art 28, para 2, of decreto legislativo no 81/2015 on the protection of fix-term employees, and the previous rule set forth in Arts 32, paras 5, 60 and 70 of legge no 183 of 2010, which, in cases of conversion of a labor contract into a permanent one due to the unlawful imposition of a term, provides the award of a lump sum compensation in favor of the worker.

The list of 'sanctions', ranging from the matter of condominium property (Art 70 of the implementing provisions of the Civil Code) to the rules on sub-contracting (Art 3, para 3 of legge 192/98), to the provisions on late payments in commercial transactions (Arts 2 and 5 of decreto legislativo 231/02), is still long. It is not necessary to scrutinize here every single example to reconcile the differences between those who push such cases outside the scope of civil liability law and those, including the Joint Divisions of the Supreme Court, who recognize in them a sign of the multiplicity of functions characterizing this controversial institution.

5.3) The Constitutional Court's jurisprudence provides a number of particularly meaningful hints. In ruling no 303 of 2011, the Constitutional Court clarified that the above-mentioned labor legislation (legge 183 of 2010) was 'intended to introduce simpler, clearer and more homogeneous criteria for the liquidation of damages', having 'the effect of approximating the indemnity in question with the losses potentially suffered from the date on which a formal contestation was brought up to the employer until the case is decided by a judge', without deduction of gains otherwise obtained by the employee; such a comprehensive indemnity was depicted as having 'a clear sanctioning nature'.

In ruling no 152 of 2016, the Constitutional Court held that the nature of Art 96 of the Civil Procedure Code, as well as of the former Art 385 of the same Code, is 'not compensatory (or at least not exclusively compensatory) but mainly punitive, with a dissuasive purpose'.

The multi-functionality of civil liability in the present legal system is hence confirmed at the constitutional level, with the primary purpose of fostering effectiveness in the protection of rights (see Corte costituzionale no 238/2014 and Corte di Cassazione no 21255/13) which otherwise, in many cases examined by scholars, would be sacrificed by a mono-functionalistic approach.

Lastly, it should be recalled that the national legislator might introduce 'punitive damages' to prevent the violation of EU law, as acknowledged in ruling 15 March 2016 no 5072, by the Joint Divisions of the Supreme Court.

All this does not entail that the Aquilian institution has altered its own essence, nor that the observed tendency toward the goals of punishment and deterrence will henceforth give Italian judges indefinite leeway to increase the amount of damages at their discretion in contractual or extra-contractual liability cases.

Any imposition of fines requires statutory intermediation pursuant to the *riserva di legge* principle set forth in Art 23 of the Constitution (in connection with Arts 24 and 25), which requires that certain fields be regulated only by statute, thus preventing uncontrolled judicial subjectivism.

6) The above overview sheds light on the issue of the compatibility of foreign punitive damages awards with public policy.

The definition of international public policy provided by the First Division's ordinanza no 9978/16 (at page 21) – 'as a complex of fundamental principles characterizing the domestic legal system in a given historical period, but also satisfying the goal of protecting fundamental human rights that are common to various systems and, above all, can be primarily drawn from legal sources that are higher in rank than statutory law' –, may lead to think that 'the importance of the public policy filter has decreased'.

Surely, the notion of 'public policy', representing a limit to the application of a foreign law, has undergone substantial changes. Originally intended as 'the array of fundamental principles characterizing the socio-ethical structure of the national community in a given historical period and the mandatory principles inherent in the major legal institutions' (see Supreme Court ruling no 1680/84), it has evolved into the sum of 'safeguards set forth by higher-level sources (higher than primary legislation), thus requiring reference to be made to the Constitution and, after the Treaty of Lisbon, to the protections accorded to fundamental rights by the Charter of Nice, having the same authority as the founding Treaties of the European Union by way of Art 6 of the TEU (see Supreme Court ruling no 1302/13)'.

Scholars have explained that the main effect of the reception and internalization of supranational law is not that of a diminished control over the accessibility of foreign rules or judgments that may 'undermine the internal coherence' of the legal system. As already mentioned, this historical function of public policy has been complemented, after the establishment and consolidation of the European Union, by the function of promoting shared values, with a view to harmonizing the observance of such values, which are essential to the existence and growth of the Union.

It has convincingly been observed that the relationship between EU public policy and national public policy does not entail substitution, but rather autonomy and coexistence.

According to the Joint Divisions, evidence of this can be derived from Art 67 of the Treaty on the Functioning of the European Union (TFEU), stating that 'the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States'.

A mere comparison with how the courts of other Member States reacted to innovations coming from a third State or from another Member State cannot be employed as a decisive parameter; similarly, a 'possibilist' statement such as that contained in Recital no 32 of EC Regulation no 864 of 11 July 2007 with regard to non-compensatory damages, is not sufficient either.

A foreign judgment which makes application of a legal institution not regulated by domestic law, even if not outlawed by the European rules, shall always have to be weighed against the principles of the Constitution and those laws that, like sensitive nerves, fibers of a sensorial system and vital parts of an organism, serve to reinforce the constitutional order.

With regard to 'procedural' public policy, without prejudice to the protection of the fundamental rights of defense, a less stringent scrutiny has been accepted by this Court, in order to facilitate the circulation of international legal products. The same approach cannot, however, be maintained with regard to 'substantive' public policy.

Whilst the harmonization process, propped up by supranational Charters, may bring in some innovative effects, the existing differences in national Constitutions and legal traditions still represent living limits: no longer characterized by a self-centered stance, but made more complex by the intricacies of the international framework into which the State is integrated.

Henceforth, in matters such as labor law (see Supreme Court ruling no 10070/13), which are subject to a set of systemic rules enacting the core values of the Republic, the control over their compatibility with the fundamental principles of the *lex fori* cannot be loosened.

Meanwhile, a scrutiny of full consistency between foreign institutions and Italian institutions should not constitute a shield to be used in all cases. It would be pointless to investigate if the deterrent function of civil liability pursued in our system relies on an identical rationale as that of the jurisdiction generating punitive damages awards.

The only question is the following: whether the institution that is knocking on the door is in patent conflict with the pattern of values and rules that need to be taken into account in an *exequatur* proceeding.

7) Such considerations pave the way to the conclusions that are to be drawn with regard to the recognition and enforcement of judgments awarding punitive damages. Simply stated, having removed the obstacle connected with the nature of the damages award, the scrutiny must be focused on the requirements that such award must satisfy in order to be imported into our national legal system without infringing the underlying values of the matter, which can be derived from Arts 23 to 25 of the Constitution.

Since, as previously mentioned (see § 5.2), the imposition of economic fines for purposes of punishment or deterrence by Italian courts is not permitted unless expressly provided for by law, the same applies with regard to foreign judgments. Which means that in the foreign legal system (not necessarily in the Italian system, whose role is confined to verifying the foreign judgment's compatibility) there must be a normative anchoring for an award of punitive damages.

The principle of legality requires that a foreign punitive damages award be grounded on a recognizable normative source, that is to say that the *a quo* court's decision must bear an adequate legal basis, satisfying the requirements of subject-specificity (*tipicità*) and predictability (*prevedibilità*). In sum, there must be a statute, or a similar source, having regulated the matter 'according to principles and solutions' of that country, whose effects should not be in conflict with the Italian legal system.

The facts subject to punishment must therefore be precisely pre-identified (*tipicità*) and limits must be set as to the damages that may be awarded (*prevedibilità*). It is then for each national system, depending on whether it focuses more on the tortfeasor's or the offended party's side, to shape the contours of punitive damages, thus emphasizing their sanctioning rather than their compensatory aims, presumably also by taking into consideration the differences between merely negligent and willful misconduct.

The fundamental principle guiding the analysis is in any case to be inferred from Art 49 of the Charter of Fundamental Rights of the Union, concerning the 'Principles of legality and proportionality of crimes and penalties'. As emphasized by scholars, its application requires that the control carried out by the Courts of Appeal[2] be directed to check the proportionality between restorative-compensatory damages and punitive damages and between the latter and the wrongful conduct, in order to shed light on the nature of the sanction/punishment inflicted.

Proportionality of damages, whatever their nature may be, even beyond this legal provision, remains a core element of civil liability law.

7.1) At this point of the analysis it is worth mentioning that in the North American system, which gave rise to many of the damages awards with which European courts have been concerned regarding their recognition, a rapid evolution has taken place, reducing the risk of the so-called grossly excessive damages.

In 1996 the US Supreme Court (in *BMW*, ruling no 20-051996), with only two dissenting opinions, addressed this particular aspect of punitive damages. Twelve years later the process was almost completed. While most States have regulated punitive damages by statute, thus fencing them off from unpredictable jury verdicts (whose original function was to ensure that the wrongdoers were tried by their peers), the US Supreme Court (in *Philip Morris*, ruling no 20-022007) held that, in the US legal system, an award of punitive damages based on the potential harm to persons who were not party to the lawsuit constituted an infringement of the Due Process Clause set forth in the 14th Amendment of the Federal Constitution. Finally, in the *Exxon* ruling (US Supreme Court, 25 June 2008), it went as far as indicating a maximum ratio of one to one between the amounts awarded for compensatory and punitive damages.

By way of example, it may be worth considering that the current legislation of Florida (Florida Statute) – the State in which the judgments were handed down in the instant case – introduced limits to the multiple liability phenomenon. Such limits operate through the application of the *ne bis in idem* principle, the provision of alternative caps depending on the nature of the liability at issue, and the implementation of an articulated process with an initial verification of liability and a subsequent phase for the possible award of punitive damages (a mini-trial, quite significant in the perspective of our legal system, insofar as it strengthens the procedural guarantees pursuant to Art 24 of the Italian Constitution).

The jurisprudential *revirement* that is being accomplished by the Joint Divisions of the Supreme Court brings about new possibilities that are not purely theoretical. The instant case, which does not even involve punitive damages, is not the appropriate context for further investigation, which is to be delegated

[2] The exequatur courts in Italy. *Supra*, n 1.

to future case law. What counts is to reiterate that the recognition of a punitive damages award is always subject to an evaluation of the effects that the foreign decision may have in Italy. Such evaluation needs to be carried out extensively, as required when at stake is the reception of a foreign judgment containing an institution which is unknown to our system but, in general, is not incompatible with it.

8) The following principle of law can, therefore, be laid down:

In the current legal system, the purpose of civil liability law is not just to make the victim of a tort whole again, since the functions of deterrence and punishment are also inherent in the system. The American doctrine of punitive damages is therefore not ontologically contrary to the Italian legal system. However, the recognition of a foreign judgment awarding such damages is subject to the condition that the judgment has been rendered in accordance with some legal provisions of the foreign law guaranteeing the standardization of cases in which they may be awarded (*tipicità*), their predictability, and their outer quantitative limits. The enforcing court must focus solely on the effects of the foreign judgment and on their compatibility with public policy.

*Omissis*

The costs of this grade of proceedings are to be entirely set off, considering the novelty and complexity of the issues examined.

P.Q.M.

The Court, in plenary session, rejects the appeal … .
So decided on 7 February 2017
Deposited at the clerk's office on 5 July 2017