PUNITIVE DAMAGES IN ITALY

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I. Introduction

PUNITIVE DAMAGES ARE COMMONLY UNDERSTOOD AS DAMAGES AWARDED TO THE VICTIM OF SOMEBODY ELSE’S MISCONDUCT, EXCEEDING ACTUAL DAMAGE SUFFERED, IN ORDER TO PUNISH THE WRONGDOER.1

From a perspective aimed at investigating the hidden ways in which either courts or legal systems award punitive damages, both the relationship between the amount of damages awarded and the blameworthiness of the conduct of the wrongdoer and, more generally, whether tort law has a deterrent purpose have to be addressed.

The possible correlation between the blameworthiness of the tortfeasor’s conduct and the amount of damages awarded also plays a role when courts appear to tacitly “sanction” outrageous conduct by granting a particularly “generous” indemnity, despite formally refusing to countenance the practice of awarding damages in excess of actual damage suffered (especially in legal systems where punitive damages conflict with ordre public).

In tort law, a deterrent purpose exists when the defendant’s conduct is assessed either as a factor affecting the imposition of liability or the amount of damages awarded or in cases where the benefits gained through the damaging event are taken into account in determining the amount of damages to be awarded.2

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2 C. Scognamiglio, Danno morale e funzione deterrente della responsabilità civile, Responsabilità civile e previdenza (RCP) 2007, 2485 ff. The author points out that, for that reason, the statement that “Damages also serve the aim of preventing harm” (art. 10:101 PETL) is not sufficient to conclude that tortious liability has a deterrent purpose. According to the author, the PETL seem to be slightly inconsistent, namely with reference, on the one hand, to the statement that “The
II. Compensation for Damage in Personal Injury Cases

Not surprisingly, the question of whether punitive damages may be awarded has been explicitly addressed in Italian jurisprudence with particular focus on non-pecuniary damages (danno non-patrimoniale) in personal injury cases, i.e. with reference to damages which – intrinsically – cannot be precisely quantified in money terms.3

According to Italian jurisprudence, in the case of a personal injury due to an unlawful act, apart from pecuniary loss (danno patrimoniale), i.e. loss of income and medical expenses arising from the injury, at least two4 different types of non-pecuniary loss are recoverable: danno biologico5 (i.e. injury to the victim’s personal integrity) and danno morale (i.e. the pain and suffering experienced as a result of the harmful event. It refers to the “psychological suffering” of the injured party: damage to their “internal sphere”).

scope of protection may also be affected by the nature of liability” (art. 2.102(5) PETL), in the sense that “an interest may receive more extensive protection against intentional harm than in other cases”; on the other hand, as far as non-pecuniary damages are concerned, the PETL state that “in the assessment of such damages, all circumstances of the case, including the gravity, duration and consequences of the grievance have to be taken into account”, with the specification that “The degree of the tortfeasor’s fault is to be taken into account only where it significantly contributes to the grievance of the victim”, therefore by explicitly qualifying the relevance of the subjective element as exceptional. See also E. Navarretta, Funzioni del risarcimento e quantificazione dei danni non patrimoniali, RCP 2008, 502 f.


4 The issue of whether the so-called danno esistenziale, which relates to the necessary change of the victim’s everyday habits as a consequence of the harmful event and therefore refers to the “external sphere”, is a distinct (from danno biologico and danno morale) and autonomous type of non-pecuniary loss is currently being debated among Italian legal scholars and in the jurisprudence. See, most recently, Corte di Cassazione (Cass.) (Joint Sections) – 11 November 2008, no. 26972, RCP 2009, 38 ff., with commentaries by P.G. Monateri, E. Navarretta, D. Poletti and P. Ziviz; Cass. (3rd Section) 20 April 2007, no. 9510, Giustizia civile Massimario (GCM) 2007, 4, which explicitly excluded its autonomous nature. Contra: Cass. (Labour Section) 16 May 2007, no. 11278, GCM 2007, 5, according to which “danno esistenziale represents an autonomous theoretical category within art. 2059 Codice civile” (Civil Code, CC) (for the content of art. 2059 CC, cf. fn. 31). For an outline of danno esistenziale, see Cass. 24 March 2006, no. 6572, in: Foro italiano (FI) 2006, I, 2334; Giurisprudenza italiana (GI) 2006, 1359; RCP 2006, 1041 and 1477; Giustizia civile (GC) 2006, 1443; Danno e responsabilità (DR) 2006, 852; Corriere giuridico (CG) 2006, 787; Corriere del merito 2006, 1165; Guida al diritto 2006, no. 16, 64; Rivista critica del diritto del lavoro 2006, 473 and, more recently, Cass. 12 June 2006, no. 13546, RCP 2006, 1439; DR 2006, 843; CG 2006, 1382.

5 The commonly accepted doctrine of danno biologico states that damages have to be awarded in the case of physical or psychological injury regardless of the victim’s ability to earn. On danno biologico, see E. Navarretta, Diritti inviolabili e risarcimento del danno (1996) passim.