



CASE STUDY
APPLICATION OF EU LAW IN PRACTICE

Bucharest, 16 October 2023

coordinated by Nicoletta Aloj, Judge at the Court of Turin, Italy

Part I

The Court of Turin issues a payment order of Euro 50.000,00 in favour of Bank Y against Mister X and against Zeta Ltd for an obligation found on a loan agreement guaranteed by Mister X.

Mister X is resident in Genova.

Zeta Ltd Company has its registered head office in Turin.

The loan agreement and the guarantee agreement contain both a term stating the exclusive jurisdiction of the Court of Turin.

The legal proceedings for obtaining an order of payment according to the Italian procedural law is conducted before a court without the participation of the debtor. The debtor can file an opposition against the order of payment within 40 days after the notification. If the debtor does not file any opposition, the payment order becomes final and enforceable.

The Court of Turin did not assess the unfairness of the contract terms before issuing the payment order.

After the payment order has become final, Zeta Ltd Company went to bankruptcy.

Bank Y files a suit against Mister X before the Court of Genova asking the execution through the sale of real estate.

Bank Y does not deliver the loan and the guarantee agreements in the court file. The payment order and the other documents requested by the Italian procedural law are correctly delivered in the court file.

Questions

1. Shall the Court of Genova, seized of the execution of the payment order issued by the Court of Turin, proceed in the execution?
2. Shall the Court of Genova conduct an *ex officio* investigation (e.g. by asking the creditor to submit the contract or the residence certificate of the debtor) in order to ascertain whether the debtor is a consumer and whether the contract terms are unfair?

Part II

The Court of Genova orders the creditor to deposit in the court file the certificate of residence, the contracts and the certificates on Zeta Ltd issued by the Chamber of commerce.

It can be argued from the mentioned documents that:

- Mister X has always been resident in Genova;
- Mister X was not a partner of the Company when he signed the guarantee agreement;
- Mister X was a minority shareholder of the Company (holding 10% of the share capital) when the Bank brought the action for the payment order before the Court of Turin;
- Mister X never administrated or directed the Company.

Questions

3. Is Mister X a consumer?
4. If yes, shall the Court of Genova assess the unfairness of the contract terms, even though Mister X has not filed a claim in this respect within the proceedings aimed at the adoption of the payment order and the latter has become final?
5. Which contract terms shall be assessed?
6. Shall the Court of Genova declare the contract terms unfair even though the consumer has not raised an objection in this regard?

Part III

According with a recent judgment of the Italian Supreme Court, the assessment of the unfairness of a contractual term can be made by the judge of the execution proceedings only until the property have been transferred to a third party.

Questions

7. Shall the Court of Genova assess the unfairness of the contract terms if the property has already been transferred to a third party?
8. If the Court of Genova doubts that the Supreme Court interpretation is compatible with the EU law, what shall the Court do?



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