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Termination for convenience in fixed-term joint stock companies: the recent sentence by the Supreme Court

The recent judgement no. 2629 issued by the Italian Supreme Court on 26 January 2024 ruled about the admissibility of termination for convenience in fixed-term joint stock companies.

Termination upon notice in joint stock companies is provided for by art. 2437 of the Italian civil code, that lists the cases in which withdrawal from the company can be considered just cause termination. The third paragraph provides for termination for convenience limited to permanent joint stock companies.

However, the fourth paragraph rules the possibility, for companies whose shares are not listed on a regulated market, to provide for commonly agreed causes for termination in the statute. The Supreme Court with judgement no. 20206/2009 already cleared that termination for convenience, while it is a demonstration of the party's freedom of choice, must be exercised while fulfilling good faith duties, and it is therefore unlawful if it is exercised for different purposes from those it was granted for.

The case ruled by the Court refers to a controversy between a fixed-term joint stock company, shoes shares are not listed on a regulated market and a withdrawing shareholder. The company's statute contained a clause which allowed termination for convenience with a 180 days' notice. The shareholder filed a claim to the arbitrary panel, which dismissed his requests to ascertain the termination and to liquidate his shares.

Then, the Court of Appeal of Cagliari dismissed the plaintiff's appeal, interpreting the legislative provision of termination for convenience in permanent joint stock companies as an exception to the general legislation which provides for termination upon notice as a tool to protect a dissenting shareholder who did not took part in important decisions of the company. The judgement also declared the clause null and void in order to protect third parties. The shareholder appealed the Supreme Court for three reasons.

With the first reason, the plaintiff claimed that the statuary clause providing for termination for convenience was not illicit, having its source in the statuary autonomy of the companies whose shares are not listed on regulated markets, according to the fourth paragraph of art. 2437 of the Italian civil code.

With the second reason, the shareholder claimed that, in Italian law, the list of voidness causes is exhaustive, therefore it is not possible for a judge to declare the voidness of the clause in order to protect third parties and creditors. The third parties were protected by the fulfilment of the legal registration requirements regarding the company statute.

With the third reason, the plaintiff claimed the wrong interpretation by the Court of Appeal of both the statute and the law. He stated that termination for convenience was provided for in the statute in order to balance the positions of the minority shareholders, given that a single shareholder held the property of over half of the company's stock.

Also, considering that the law provides for termination for convenience in permanent joint stock companies as well, the interpretation of the Court of Appeal cannot be shared. As stated by the plaintiff, the voidness of the clause providing for termination for convenience in fixed term joint stock companies is not justified, since the interests of third parties are the same in the two types of companies. The Supreme Court deemed all the plaintiff's reasons valid and upheld the appeal.

The Supreme Court clarified that each case, provided for by the law, of termination upon notice in joint stock companies had a different ratio. The first paragraph of art 2437 of the Italian civil code outlines termination upon notice as a mean to protect the dissenting shareholder, as the Court of Appeal also concluded. Other causes are provided for in order to protect the shareholders of controlled companies.

The institute of termination for convenience referred to in the third paragraph of article 1437 of the Italian civil code has the purpose of protecting the shareholder's freedom from permanent obligations. The following paragraph rules the possibility of agreeing other causes for termination upon notice.

It is not cleared if those causes have to be specific, nor what is the interest they should protect, which is therefore left to the autonomy of the parties.

The legislative reform of corporate law of 2003 aimed to increase businesses' competitiveness, given that facilitating disinvestment is an effective incentive to investment. For this reason, the cases for termination upon notice were increased, also giving the shareholder the opportunity to withdraw from the company when the statuary provisions for termination change.

The interpretation that strictly linked termination upon notice to the dissent of the shareholder was overcame and more attention was put on investors' interests, not related to the administration of the company, among which the opportunity to easily disinvest.

It was chosen to facilitate the shareholder's withdrawal, giving more protection and assurances to potential investors. Termination upon notice cannot be considered exceptional anymore since it has become a tool of the economic actors.

For the same reason, since the reform, the list of the causes of termination upon notice is not strictly mandatory anymore, leaving to the autonomy of the party the possibility to provide for other causes, being those a tool to balance the positions of minority and majority shareholders.

It is not excluded by the law that the shareholders, exercising their contractual autonomy, could provide for termination upon notice in the statute. Therefore, the statuary clause providing for this possibility, with an appropriate notice term as referred to in art. 2437 of the Italian civil code, is to be deemed valid in joint stock companies whose shares aren't listed on regulated markets.

The judgement in question is especially important, since it clarified an issue on which there was uncertainty for a long time in both jurisprudence and legal academic discourse, giving more assurance to the economic actors. Following this elucidation, permanent joint stock companies whose shares are not listed on regulated markets, will be incentivized to provide for the possibility of termination for convenience in their statutes, having an assurance of the validity of the clause.

Also, there is no more uncertainty around the clauses' validity, concerning the institute in question, provided for in the companies' statutes. This comes with positive consequences for the shareholders who would want to exercise their right to withdraw from the company, without just cause.

Shareholders will not run into limitations to their exercise of termination for convenience caused by interpretative uncertainty. The protection of third parties remains assured by the registration of statutes and subsequentially of the causes of termination upon notice.