

THE COURT OF APPEAL OF MILAN
HOLIDAY CRIMINAL SECTION

The Court of Appeal of Milan, Holiday Criminal Section, in closed doors, in the persons of the undersigned judges:

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|------------------------|-------------|
| - Dr. Valeria DE RISI | - President |
| - Dr. Roberto ARNALDI | - Counselor |
| - Dr. Stefania PIGOZZI | - Counselor |

pronounced the following

ORDER

on the request filed on 28.7.2020 by the lawyer of the company Aveleos Societ  Anonyme - as company summoned as civilly liable party - to decide on the request for suspension of the enforcement of the sentence to pay the provisional damages of 5,000,000 euros ordered in favor of the EAM civil parties, contained in the first instance judgment issued by the Court of Milan on 18.4.2019 and filed on 14.10.2019

having regard to the negative opinion in the file of the General Prosecutor dated 29.7.2020;

lifting the reservation assumed at the outcome of the discussion hearing of 19.8.2020;

FOUND THAT

With the plea marked by the number XVIII (page 119) contained in the appeal filed on 28.11.2019, the nowadays requesting company asked to suspend the enforcement of the provisional sentences in favor of the EAM civil parties, exposing literally *"In particular, the evidently very high amount (5 million euros) of the sum quantified by way of provisional compensation certainly allows us to formulate the forecast of serious and irreparable damage for the company assisted by the writing lawyer"*.

Subsequently, the company Aveleos S.A. filed on February 3, 2020 additional pleas with which, among other things, asked for the suspension of the execution of the provisional sentence to the payment of € 2 million in favor of the GSE civil party, underlining that *"the very high amount of the sums determined by way of provisional compensation, in any case, undoubtedly makes it possible to formulate the forecast of serious and irreparable damage for the company assisted by the writing lawyer; and therefore of that excessive prejudice for the debtor which, according to the legitimacy case law, allows the suspension of the provisional sentence. And this - it should be noted - also bearing in mind that the sums paid as a provisional are well above the paid-up capital of Aveleos, equal to 111,000 euros"*.

Finally, with the request to decide on the suspension request already presented in the deed of appeal, filed on 28.7.2020, the company Aveleos stated that *"the enforcement formula was released in favor*

of the EAM civil party and the executive proceeding is therefore currently pending with the concrete and current risk of serious and irreparable damage” making general reference to the “current economic situation, severely affected by the spread of the pandemic, with the consequent effects on the Company which operates in a sector strictly connected to the incentive policies at European and national level”.

The discussion of the chamber hearing for the interim proceeding was set during the holiday period, held at today's hearing in the presence of all the parties as represented in the trial, having this been considered an urgent matter as it was envisaged as such, despite the imminence of the second degree merit proceeding set for 9.10.2020.

The Court observes:

The objection raised at the hearing by the lawyer of the indicted AKHMEROV Igor and relating to the non-translation of the decree fixing the hearing of 19 August 2020 in the language known to the accused, who does not speak the Italian language, must be preliminarily rejected due to evident lack of interest since this is a suspension of the immediate execution in which the indicted does not participate having interest only in the civil matters raised with the appeal deed while the provisional enforceability concerns only the civilly liable party who in fact raised the related request in the appeal of 28.11.2019 and the subsequent request to decide on 28.7.2020.

On the merits, this Court considers that the request for suspension of the execution of the sentence to pay the provisional damages of 5,000,000 euros in favor of the EAM civil parties cannot be accepted since the company AVELEOS Società Anonima did not meet the burden of proof incumbent on it pursuant to article 600 Code of Criminal Procedure with regard to the existence of serious reasons as an unailing prerequisite for the granting of the requested suspension (see *ex pluribus* Cassation, Section 3 no. 16164 of 27.2.2019 “*The proof of the existence of the serious reasons, placed at the basis of the request for revocation or suspension of the provisional execution of the sentence to pay a provisional, is governed by civil law according to article 2697 of the civil code and, therefore, must be provided by the applicant for the revocation or suspension*”).

In this case, in fact, neither the high amount of the sum to be paid nor the current health emergency situation can have the demonstrative efficacy envisaged by the defense, which does not present any concrete circumstances useful to prove the serious reasons required by article 600 Code of Criminal Procedure following the famous decision of unconstitutionality no. 353 of 1994.

On this point, the legitimacy case law clarified that, for the purpose of accepting the request, “*the existence of excessive damage to the debtor is necessary, which may consist in the destruction of an asset that cannot be restored or in the case of sums of money, in the damage deriving from the evident state of insolvency of the recipient of the provisional, such as to make it impossible or highly difficult to recover the amount paid in the event of a change in the sentence*” (cfr. Cassation Section 2, 27 February 2019 no. 16164 already mentioned above).

None of the aforementioned possible events is demonstrated by the company Aveleos which has not presented any circumstances from which to infer the existence of a clear state of insolvency of the EAM civil parties or, in any case, subsequent concrete difficulties in recovering any sums paid.

The rigorous burden of proof established by the law can certainly not be considered fulfilled by the generic and non-specific references made by the requesting party to the size of the sum which was established or to the economic consequences of the current pandemic since these circumstances do not address in any way or weaken the demonstrative value of elements already ascertained with the

first instance judgment such as the huge profit received by Aveleos from the contractual fraud referred to in Count F) (payment of over 25 million euros made by EAM in favor of Aveleos – see contested judgment page 236) and the participation of the Luxembourg government as the main shareholder of the corporate group by which Aveleos is participated (see conservative seizure order issued by the Court of Milan in panel composition on 31 May 2017).

The imminent holding of the hearing for discussion of the appeal set for October 9, 2020 significantly weakens the alleged danger of "serious and irreparable damage" deriving from the pending - alleged but not documented – of an enforcement proceeding based only on the issue of the enforcement formula in favor of the civil party.

FOR THESE REASONS

pursuant to article 600 paragraph 3 Code of Criminal Procedure

REJECTS

the request of the appellant civilly liable party AVELEOS S.A. of suspension of the enforcement of the sentence to pay the provisional in favor of the civil parties EAM Solar Italy Holding srl and EAM Solar ASA contained in judgment no. 5511/2019 issued by the Court of Milan on 18.4.2019.

To be communicated.

Milan, 19 August 2019

The Councilors

Dr. Roberto Arnaldi

Dr. Stefania Pigozzi

The President
Dr. Valeria De Risi