

An Italian Judgment on Ryanair anti-union behaviour

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In several occasions, the Italian Courts have dealt with cases concerning Ryanair employment relationships; especially, they have widely addressed the issue of the applicable law for social security provision for workers. The legal uncertainties that had triggered such trials have been solved by the legal framework entered into force in May 2010, that is Regulation 883/2004 and the Implementing Regulation 987/2009 (as amended by Regulation 465/2012). In addition, the CJEU, with a Judgment in the Joined Cases C-168/16 and C-169/16 has provided a guideline in the definition of the concepts of ‘place where, or from which, the employee habitually performs his work’ and that of ‘home base’.

Next to these trials, mostly initiated by INPS (Italian National Institute of Social Security), the trade unions, both the Confederated unions (Filt Cgil, Fit Cisl and Uiltrasporti) and the grassroots and autonomous trade unions (such as USB and Anpac), have often demanded a meeting with the management with the aim of initiating collective negotiations, and have resorted to call several strikes to improve the indecent working conditions of the Ryanair workforce. The successful collective actions have put pressure on the management. However, in December 2017, Ryanair has said it would negotiate only with Anpac, an autonomous pilots’ association, but not with other unions.

The attitude of Ryanair, which, so far, have strongly refused any dialogue with and, in general, any openness to the Italian trade unions, has been recognised as anti-union practice, which violates art. 28 of the Statute of Workers (Law 300/1970), by the Court/Tribunal of Busto Arsizio, in a judgment promoted by FILT CGIL and published on 2 February 2018. Let us briefly review the crucial points of the Judgment.

Art. 28 of Law 300/1970 is one of the cornerstones of the Italian trade union law. It provides for a special procedure, which entitles the judge of first instance to adopt a precautionary measure whenever “the employer indulges in behaviours designed to deny or to limit the exercise of trade union freedom and union activity, as well as the right to strike”. The precautionary measure consists in an order to cease from the anti-union behaviours and to cancel its effects, and it may follow a request of the local organs of the national trade union.

The Court of Busto Arsizio starts by resolving some procedural issues. First, it rejects the defendant’s claim, which was contesting the competence of the Italian Court to decide the case; according to the

Court, considering that the trade unions complain about allegedly harmful events occurring in Italy, the applicable norm is art. 7(2) of Regulation EU No. 1215/2012, which states that “a person domiciled in a Member State may be sued in another Member State: [...] (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur”. Therefore, the seised Court is competent to decide the controversy.

Second, as to the applicable law, the Italian Court refers to Regulation (EC) No. 864/2007, on the applicable law to non-contractual obligations. In particular, to art. 4 according to which “...the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs”. The Court concludes in favour of the applicability of the Italian law with a clear statement: “Beyond any doubt, the behaviours of the company deemed anti-union by the trade unions have harmed the image, the role and the action of the trade unions”. In light of the case-law, certain is also the *locus standi* of the trade union. In addition, the Court takes the chance to point out that the Irish norms attached in support of the defendant’s argument that Irish Law is protective enough of trade union rights do not provide evidence of such a more protective nature, compared to the applicable Italian legal framework.

Among the complaints advanced by the trade union, only those referring to the refusal of the air company to negotiate, to provide information and to cooperate with the trade unions are received.

The plaintiff has properly documented the circumstance that the company has failed to reply to specific requests to arrange meetings and provide information. Furthermore, it is unquestionable that Ryanair has established a direct relationship with the employees which inhibits any form of collective action and that “the lack of any response to the demands for meeting and negotiation consists in an anti-union behaviour”.

Moreover, the company has failed to activate the procedures provided for by the national laws and European Directives for the implementation of the trade union rights to be informed, to negotiate, to control, to supervise and guarantee the occupational safety. Interestingly, the company does not deny this behaviour, but it contests the representativeness of the applicant trade union, an argument rejected by the Court.

In particular, the trade union refers to a number of Italian norms, allegedly infringed upon by the company, which are applicable to Ryanair, because of its home base in Malpensa (IT) (consistently with Judgment C-168-169/2016, CJEU). In particular, these norms concern the duty to provide information, the recognition of trade union rights also for agency workers, the duty of big companies to draft a report every two years on the status of the employment relationships and convey it to the

company trade union representations. Eventually, all these norms are found violated by the company, which means a further denial of the trade unions' role, which has also the effect of causing a loss of credibility for the union. Last, in order to identify the occupational health and safety representative, a cooperative attitude from the company is necessary, and Ryanair has failed to provide such collaboration.

The Court concludes for the anti-union behaviour of Ryanair and adopts the precautionary measure provided for by art. 28, Law 300/1970, to order the termination of anti-union behaviours and to cancel its effects.