The Case of FCA Italy S.p.a. v. M.D. and Others

Summary and Outcome

the Italian Supreme Court reversing the decision of the Court of Appeals of Naples, found that the protest of a group of workers which involved the hanging of a dummy representing the company's CEO, did not fall within the lawful right to freedom of expression, in the form of satire.

Facts

On June 5, 2014, a group of workers of FCA Italy S.p.a. (FIAT) organized a protest in front of the factory of Nola. The demonstration included the exposition of a dummy dressed as FIAT's CEO Sergio Marchionne and a picture of his face attached to the body, which had been hung with a rope on a gallows. The dummy's hanging was meant to recall the suicides of other FIAT workers. The protest further included a fake will of Sergio Marchionne, which attributed the workers' deaths to him, and a funeral.

The Court of First Instance of Nola considered that the workers had been lawfully terminated. However, on September 27, 2016, the Court of Appeals of Naples reversed the decision. The Judges found that the workers had not acted to the "moral or material detriment" of the company. Instead, their actions fell within the right to freedom of expression in the form of the right to critique the employees. In the Court's opinion, first, the actions adhered to the criterion of *subjective truth* in that one of the workers who had committed suicide had left a letter that explained that her choice depended on the conditions under which she worked. Second, according to the Court, the employees' action was not excessively violent nor disproportioned in light of the tragic events that gave origin to their protest.

FCA Italy S.p.a. appealed the decision before the Supreme Court. The company contested the interpretation of the Court as regards both the unlawfulness of the termination of the workers and the framing of the protest as a lawful exercise of the right to critique and satire.

Decision Overview

The issues before the court border on the assessment of the severity of choice to hang a dummy

The Supreme Court observed that although the right to critique, when manifested in the form of the right to satire, allows for strong language and even excessive images, this does not entail the proper escape of any legal limit. This is because satire always involves two colliding interests: namely, the interest of the person who is exercising their right to freedom of expression (protected under Article 21 of the Italian Constitution) and the interest in the human dignity of the individual targeted (protected under Article 2 of the Constitution). It is thus necessary to strike the right balance between the two conflicting interests. Hence, satire shall not consist of unjustified contempt and disdain towards the person targeted.

In light of this, the Judges observed that a close consideration of all the elements of the "theatrical performance" of the employees (i.e., the gallows, the hanging dummy with the picture of Sergio Marchionne, the fake will, and the workers' coveralls covered in red paint indicating blood) resulted in the attribution to the CEO of "reprehensible and morally dishonorable personal qualities, which exposed the addressee to public ridicule (…) in such a way as to arouse indignation, disdain as well as derision and mockery and *thus exceeding the limit of the protection of human dignity provided for by Article 2 of the Constitution*". According to the Supreme Court, therefore, the protest exceeded the limits of democratic civil coexistence and the physiological dialectic between workers and employers, giving origin to a violent discussion in which the opinion of the counterparty is not truly valued.

Further, the Judges ruled that not only did the workers' behavior break the trust underlying every employee-employer relationship, but it also constituted a just cause for termination, contrary to the Court of Appeal's evaluation. Although workers hold a constitutional right to critique the employer's decisions (Articles 21 and 39 of the Italian Constitution), the critique shall not overcome the limits of protecting the employer's human dignity. In the case at hand, as observed above, the Court considered the limits to have been overstepped.

The Supreme Court differs from the Court of Appeal's interpretation. As a result, on June 6, 2018, the Judges reversed the Court of Appeal's ruling.

Decision Direction

The ruling, rather than contracting expression, establishes boundaries to the right of satire of the employee by clarifying that critique and satire are lawfully exercised only when the right to the human dignity of the addressee is not violated.

Significant

Lower courts shall conform to the Supreme Court's decision regarding the boundaries of the right to the satire of the employee.