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Gig Economy Case Law

In January 2019, the Court of Appeal of Turin has issued the last out of the very few case law in Italy concerning the extremely topical matter of platform workers' status (freelancers versus employees).

Six "riders" working for the well-known food delivery app Foodora have made a claim for the requalification of their status from freelancers to employees. The basis of their argument was that, despite their roles being officially recognised as autonomous, the nature of their work was consistent with that found in an employer-employee relationship. For example, among other obligations, they were subject to Foodora's organisational, directive and disciplinary powers, and had to comply with the company's working hours and place of work.

The Labour Tribunal of Turin, which heard the proceedings, has rejected the claims on the following main bases:

- there was no obligation on the riders to carry out the work, as they were free to control their own availability, while employees must perform their duties over specified working hours;
- riders' working hours were not unilaterally set by the management (as is the case in an employment agreement), since Foodora offered shifts in advance, for which riders were able but not obliged to make themselves available to work; and
- there was no evidence of disciplinary action taken against the riders by Foodora, even in instances where riders had indicated their availability to work during a shift but did not actually perform the work.

The decision was challenged by the claimants before the Court of Appeal of Turin.

In January 2019, the Court confirmed the first instance ruling, to the extent that the relationship between Foodora and its riders does not constitute an employment agreement. However, the Court also found that the riders' working hours and workplace were both established by Foodora, and they therefore had to be paid in accordance with employees' remuneration. The Court of Appeal ordered Foodora to pay its riders the difference between the minimum hourly wage (as established by the collective bargaining agreement for this sector) and the gross hourly wage actually paid to them (EUR5.60 per hour).

This decision clearly opens the door for further litigations by riders and platform workers: the outcome of these cases may, however, be different from that outlined above.

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