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The resolution of the European Parliament on the 31st May 2018: on the fight against the precariousness and the abusive use of fixed term contracts and the role of the trade union.

On May 31st 2018, the Parliament voted in a plenary session, with a very large majority, the Resolution on the fight against precariousness and the abuse of fixed-term contracts, in response to the numerous petitions presented by citizens of various Member States.

It was an initiative that saw Italy a particular protagonist, because Italian MEPs, Italian citizens with their petitions about job instability and precariousness, trade union organizations like ANIEF that promoted the petitions on school system, they managed to make a portrait, in an official text of the EU Parliament, the inertia of the European Commission towards the correct and right application, by the Member States, of the Directive 1999/70 / EC on fixed-term employment, creating also a very dangerous legal precedent, which, in case of further inactivity of the Commission in supervising and activating the infringement procedures, would provoke a proliferation of actions for compensation for damages of both public and private precarious workers, for non-contractual liability of the European Union pursuant to Article 588 TFEU.

The resolution of the EU Parliament seems to incorporate the indications given in my report *"The principle of non-discrimination and measures to prevent and sanction the misuse or the abuse of fixed-term contracts in light of the EU Court of Justice case laws"* presented on the 22nd November 2017 as an expert at the European Parliament among the Petitions Committee, in the open session to discuss on the main theme *"Protection of the rights of workers in temporary or precarious employment, based on petitions received"*, in which I pointed out the EU Commission as the main one responsible for the precariousness of bad employment relationships on EU territory.

The Commission will, now, have to activate all infringement procedures for the clear violation of the Directive 1999/70 / EC, including those previously filed, thinking again about its operational choices and abandoning, what has already happened, the EU-pilot pre-infringement procedure.

It is a Parliament's official guideline with a formidable political issue, because it changes the European institutions' targets, especially those of the Council and the Commission, to move towards the effective implementation of the European Social Pillar and towards the abandonment of flexibility policies of labor relations, to promote the competitiveness of those Member States, such as Germany, where the administrative machinery of public services for public employment coordinated with the economic protection against unemployment status, allows fair and dignified social welfare conditions and also a rapid reallocation of dismissed workers.

As a matter of fact, the precarious employment condition was born, as is known, in 2003 in Germany in the Hartz II laws as part of the reform of the Agenda 2010 proposed by the Schröder's Government, and in Italy with the legislative decree n.276/2003 (so-called Biagi law), also legitimizing the contractual practice in the Anglo-Saxon law of "zero-hour" contracts or "on-call" contracts *("labor zero"*).

The resolution is a very hard official guideline towards the Member States, to adapt the internal legislation to the rule of permanent employment as a general form of employment relations, applying the case law of the Court of Justice, as the Mascolo Judgment of 26th November 2014, explicitly included in note 1, which, in paragraph 55, provides as effective measure to remove the abusive use of fixed-term contracts also in the public sector, and the permanent transformation of the contract after 36 months of service, even non-continuous, with the same employer.

The resolution of 31st May 2018 follows the other important resolution of the 19th January 2017 on a European Pillar of Social Rights, in which the Parliament called on the Commission to review the social acquis and the EU employment and social policies to put forward proposals on a European Pillar of Social Rights (EPSR) that reinforces social rights through concrete and specific legislative and financial instruments, to be applied to all that countries taking part in the single market, in order to maintain equal conditions and the respect for the principles of equal treatment, of non-discrimination and equal opportunities through employment and social policies, recalling the risk of a dichotomy in the labor market, because << European labor markets are increasingly evolving towards "atypical" or "non- standard" forms of employment, called on the Commission to extend the directive on written declarations to workers (91/ 533/ EEC) in order to cover all forms of employment and working relations.

Shortly thereafter, the European Parliament approved the resolution of 4th July 2017 on working conditions and precarious employment (2016/2221 (INI)), calling for a revision of Directive 91/533/ EEC on informing workers of the conditions of work, in order to take account of the new forms of atypical work and the increase in precariousness.

In its resolution of 4th July 2017, the European Parliament proposed as a definition of "precarious employment" an occupation in which the rules and provisions of the EU are not respected, international and national, and/or that do not offer sufficient means for a dignified life or an adequate social protection and notes that some atypical forms of employment may pose greater risks of insecurity and uncertainty, for example in the case of involuntary part-time work, fixed-term work, zero-hour contracts as well as unpaid internships and apprenticeships.

Clear is the goal of the European institutions to revive the community welfare using as a model no more, and not only, the good social practices observed within the Member States, but also the natural (althought explicitly and always denied) tendency to harmonize the internal labor regulations, which is the effect of the transposition of the social directives in its corrections and additions, through the jurisprudence of the Court of Justice, also thanks, on one hand, to the relaunch of collective action taken by trade unions, of a quasi-judicial nature, on the protection of the workers' rights guaranteed by the European Social Charter (referred to in art.151 TFEU) in collective complaints before the European Committee of Social Rights at the Council of Europe, and on the other hand, to a significant listening and mediating activity on the demands of European citizens-workers promoted by the Commission for Petitions of the EU Parliament, pursuant to Article 20, paragraph 2, letter d, of the TFEU.

It is evident that now, in Europe, the labor policies will have to change and the social-political objectives of the supranational Institutions, as well as the national ones, and the trade union

organization will have to be the biggest player and the main driver of this change, whose central role has been underlined on the Resolution of 31st May 2018.