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THE SLAUGHTER OF TUNIS: IS COSTA CRUISE RESPONSIBLE FOR?

The declarations of the victims' relatives of the Bardo Museum attack revive the controversy towards the tour operator, considered by many liable for the fact. Is the hypothesis juridically admissible?

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IUS/09 - ISTITUZIONI DI DIRITTO PUBBLICO
Articolo divulgativo - ISSN 2421-7123

Direttore responsabile
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Pubblicato, Domenica 18 Ottobre 2015

CamminoDiritto.it
ISSN 2421-7123

The dreadful attack of the Bardo Museum (Tunis) and the consequent death of our compatriots has partially reopened the debate on a possible liability for Costa Cruise for what happened. Even though there isn't, for obvious differences, a trend of opinion similar to the case of Costa Concordia (for which the company, besides having refunded 84 million euros, has been sentenced jointly and severally with captain Schettino for over 3 million euros), still, the families' victims have feared the possibility of suing the tour operator, "guilty" of not having expected the risk given that, in the same day, the Tunisian Parliament had planned the approval of anti-terrorist regulations.

The claim, until now only verbal, is, in our opinion, juridically unfounded. **There isn't** , indeed, in our legal system any pretext that allows to plead, in a concrete case, **a liability for Costa Cruise** and, in order to show such case, is sufficient to have a look at the main sources of law in the matter of tourism, starting from those which are international. It was 1970, indeed, when the **international Convention on Travel Contracts** (CCV) was signed at Brussels, then confirmed with the statute n. 1084 of the 27th of September 1977, that states at art. 13 "The travel organiser answers for any prejudice caused to the traveller owing to partial or total breach of his/her duties of organisation [...] save that he /she proves to have behaved as diligent travel organiser ", in order to reassert at art. 27 that "the travel organiser or the intermediary cannot avail themselves of dispositions [...] that exclude the liability or restrict the indemnities due to them , when the traveller proves that a default [...] has occurred with the intent to cause damage or in an implicatory way a deliberate failure of consideration of prejudicial consequences that can derive from such behaviour or an unwarrantable ignorance of these consequences ".

Therefore, the Convention establishes clear and evident principles:

The partial or total breach of the organisation's duties exposes the organiser to the burden of proving his/her own diligence in order to avoid responsibility;

The indemnity from liability is excluded whereas the traveller proves that the organiser's behaviour (or that of subjects referable to him pursuant to artt. 12 and 21) has been, wilfully or not, direct cause of the damage in question.

Therefore, the issue is more consistent: **can we consider Costa Cruise legally responsible for default** of what happened in the museum (being excluded from the start any wilfulness)? And on what conditions? Can we consider "not diligent" the travel organiser's behaviour or the fact goes beyond the field of his/her responsibilities?

It is useful to consider another essential source of law in order to answer these questions,

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ISSN 2421-7123

the directive 90/314/CEE3 of the Council that, to this day, constitutes with the Tourism Code (of which we are going to discuss later on) the most renovated discipline on the matter. After having ruled the importance of a tendential consolidation of the regulations of each individual State in the matter of tourism, the directive states at art. 5 subsection 2:

"For what it concerns the damage caused to the consumer by the breach or the bad fulfilment of the contract, the Member States take the necessary steps so that the organiser and/or the vender are considered responsible for, unless the breach or the bad fulfilment are not chargeable neither owing to them nor owing to another hired person as:

-the failures verified in the fulfilment of the contract are chargeable with the consumer; - these failures are chargeable with a third party not involved with the provision of services provided for by the contract and they show an unforeseeable and insurmountable feature; - these failures are due to a case of force majeure as defined in article 4, paragraph 6, second subsection, point ii , or to an event that the organiser and/or the vender could not expect or solve , with all the necessary diligence". By reasserting and extending the CCV 's principles, art. 5 states, with reference to art. 4, paragraph 6, a satisfactory definition of "the case of force majeure", namely " external circumstances to whom produces them, anomalous and unforeseeable, whose consequences could not have been prevented despite every diligence employed".

In the present case, it's obvious that **there isn't against Costa Cruise any form of responsibility** as the event assumes the characteristics of **unforeseeability** and of **unsolvability** with the employment of all the necessary diligence, likewise by noticing that the same Ministry of Foreign Affairs , through his official portal viaggiaresicuri.it , didn't dictate particular recommendations for Tunis' visit but the use of "strong caution in some suburbs", as opposed to what demanded for borderlands with Libya and Algeria, to whom was "strongly not recommended" to go near. Furthermore, pursuant to the Tourism Code (d.Igs n. 79/2011) too, **there aren't valid justifications that permit to assign responsibilities to the organiser**: the Code, at art.44, states that, in the matter of personal injuries, "the damage caused to the person by the breach or by the inaccurate execution of the services that are object of the package holiday is refundable in accordance with the rules established by the international conventions, to whom Italy and European Union belong to, that regulate the single services that are object of the package holiday, as they are adopted by the Italian system.", then by conforming to what already expressed, in order to rule at art. 46 the exemption from responsibility "when the default or the misfeasance of the contract is chargeable with the tourist or is due to the fact of a third party characterised by unforeseeability or inevitability, namely by a fortuitous event or by a force majeure case.

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ISSN 2421-7123

In the light of the considerations above-mentioned, it can't be possible to appeal to the c.d " ruined holiday damage" ex art. 47, by not surviving formal and substantial prerequisites.
