JUDGMENT NO. 194 YEAR 2018

In this case, the Court considered a referral order challenging a decree-law on permanent employment contracts with increasing protection over time, which made provision for compensation within fixed bands in the event of unfair dismissal, based solely on the length of service of the dismissed employee. The Court accepted the questions in part, ruling unconstitutional the phrase that automatically tied the amount of compensation to the length of service of the dismissed employee. The Court ruled that, in treating different situations identically, the inflexible criterion violated the principle of equality: "the detriment caused in various cases by unfair dismissal depends upon a variety of factors. Whilst length of service is certainly relevant, it is thus only one of many." The Court also held that the lack of flexibility rendered the mechanism for establishing compensation unreasonable. In addition, the mechanism failed to achieve a balanced settlement between the respective interests of the employer and the employee.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 1(7)(c) of Law no. 183 of 10 December 2014 (Authorisations to the Government concerning the reform of social welfare payments, employment services and active policies, and on the reorganisation of the legislation on employment relations, on inspections and on the protection and reconciliation of the needs of care, life and work) and Articles 2, 3 and 4 of Legislative Decree no. 23 of 4 March 2015 (Provisions on permanent employment contracts with increasing protection over time, implementing Law no. 183 of 10 December 2014), initiated by the Third Employment Division of the *Tribunale di Roma* within the proceedings pending between Francesca Santoro and Settimo senso *s.r.l.* by the referral order of 26 July 2017, registered as no. 195 in the Register of Referral Orders 2017 and published in the *Official Journal* of the Republic no. 3, first special series 2018.

Considering the entry of appearance by Francesca Santoro and the interventions by the CGIL (*Confederazione generale italiana del lavoro*, Italian General Confederation of Labour) and the President of the Council of Ministers;

having heard the judge rapporteur Silvana Sciarra at the public hearing of 25 September 2018;

having heard Counsel Amos Andreoni for the CGIL, Counsel Carlo de Marchis and Counsel Amos Andreoni for Francesca Santoro and State Counsel [*Avvocato dello Stato*] Vincenzo Nunziata for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.− The Third Employment Division of the *Tribunale di Roma* has raised questions concerning the constitutionality of: Article 1(7)(c) of Law no. 183 of 10 December 2014 (Authorisations to the Government concerning the reform of social welfare payments, employment services and active policies, and on the reorganisation of the legislation on employment relations, on inspections and on the protection and reconciliation of the needs of care, life and work); and Articles 2, 3 and 4 of Legislative Decree no. 23 of 4

March 2015 (Provisions on permanent employment contracts with increasing protection over time, implementing Law no. 183 of 10 December 2014).

1.1.− Article 1(7)(c) of Law no. 183 of 2014, for the stated "purpose of enhancing opportunities for entry into the workplace by persons seeking employment", authorised the Government to adopt a legislative decree or several legislative decrees, "in line with EU law and international conventions", in accordance with the principles and directional criteria on the "provision, in respect of newly hired employees, of permanent contracts with increasing protection based on length of service, subject to the exclusion of any right to reinstatement of the worker in his or her job in the event of dismissal on financial grounds, providing for fixed financial compensation that increases in line with length of service and limiting the right to reinstatement to dismissals that are declared void and discriminatory and to specific forms of unjustified dismissal on disciplinary grounds, and establishing certain time limits for any challenges to dismissal".

Articles 2, 3 and 4 of Legislative Decree no. 23 of 2015 − which was adopted by the Government when acting on that authorisation − set out the regime on the protection of workers against dismissal that is, respectively, "discriminatory, void and intimated orally" (Article 2), "based on justified reasons and with good cause" where it is established that the relevant prerequisites do not obtain (Article 3), or affected by "formal and procedural defects" (Article 4).

As is provided for in general terms within the regime on protection against unlawful dismissal introduced by Legislative Decree no. 23 of 2015, also the contested Articles 2, 3 and 4 apply to workers who are employed with the "status of manual workers, office workers or middle managers under a permanent contract of employment after the date of entry into force of the […] Decree" (Article 1(1) of Legislative Decree no. 23 of 2015), and thus to permanent employment relationships established on or after 7 March 2015. Workers hired prior to that date therefore remain subject to the "previous" regime laid down by Article 18 of Law no. 300 of 20 May 1970 (Provisions on the protection of the freedom and dignity of workers, trade union freedom and trade union activity within the workplace and provisions on placement), as amended by Article 1(42) of Law no. 92 of 28 June 2012 (Provisions on the reform of the labour market for the purpose of promoting growth).

1.2.− In the opinion of the referring court, in providing that, in situations involving unlawful dismissal, a worker hired under a permanent employment contract after 7 March 2015 is entitled to compensation "in a […] modest amount", which is established "automatically" − thus to the exclusion of "any discretion in the assessment by the courts" − and in particular which "increases only in line with length of service", the contested provisions violate Articles 3, 4(1), 35(1), 76 and 117(1) of the Constitution.

1.2.1.− The referring court envisages four distinct grounds for unconstitutionality with reference to Article 3 of the Constitution.

By the first ground for challenge, it objects that the contested provisions violate the principle of equality in that they provide for unjustifiably worse protection for workers hired after 7 March 2015 compared to those hired, including in the same business, before that date − who continue to benefit from the more favourable regime of protection laid down by Article 18 of Law no. 300 of 1970, as amended by Article 1(42) of Law no. 92 of 2012 − considering that "the date of hiring is a fortuitous reference that is extrinsic to each relationship, and is entirely incapable of being used to differentiate between one relationship and another, where all other substantive aspects remain the same".

By the second ground for challenge, it argues that the provisions also violate the principle of equality because, amongst workers hired after 7 March 2015, non-director workers enjoy unjustifiably less favourable protection than directors who, "not being subject to the new rules, continue to benefit from much higher minimum and maximum levels of compensation".

By the third ground for challenge, it is asserted that the contested provisions violate, once again, the principle of equality, as the "fixed" nature of the level of compensation provided for thereunder, which "increases only in line with length of service", results in "situations that are highly dissimilar in substantive terms" (regarding in particular the seriousness of the detriment suffered by the worker) being treated in the same manner, without justification.

By the fourth ground for challenge, it is argued that the contested provisions are unreasonable, as the compensation provided for thereunder, being "modest, fixed and increasing only in line with length of service", does not constitute either adequate redress for the specific detriment suffered by the worker as a result of the unlawful dismissal, or an adequate deterrent for the employer from ordering unfair dismissals, with the result that "the test of balancing the countervailing interests in play is not passed".

1.2.2.− With regard to Articles 4(1) and 35(1) of the Constitution, the referring court asserts that the contested legislation cannot be considered to comply with the value vested in work under those constitutional provisions, as it "substantially places a value on the right to work […] that is modest and fleeting […] and moreover fixed, only increasing in line with length of service", considering also that "[p]rotections against dismissal […] lend support to the bargaining power of the worker in everyday relations within the workplace" and "protect the fundamental freedoms of workers" at work.

1.2.3.− Finally, concerning Articles 76 and 117(1) of the Constitution, the referring court asserts that the contested provisions do not respect, as regards Article 76 of the Constitution, the directional criterion laid down by Article 1(7) of Law no. 183 of 2014 of "consistency with EU law and international conventions" and, as regards Article 117(1) of the Constitution, the "constraints resulting from Community law and international obligations" as they are at odds with the provisions of EU and international law that enshrine the rights of the worker "to effective protection against unfair […] dismissal".

The above-mentioned constitutional parameters are claimed to have been violated, in particular, with reference to three interposed rules [*norme interposte*].

The first interposed rule is Article 30 of the Charter of Fundamental Rights of the European Union (CFREU), proclaimed in Nice on 7 December 2000 and adapted in Strasbourg on 12 December 2007 which, in providing that "[e]very worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices", "requires the Member States to guarantee adequate protection in the event of unjustified dismissal".

The second is Article 10 of the Termination of Employment Convention no. 158 of 1982 (Convention concerning Termination of Employment at the Initiative of the Employer), adopted in Geneva by the General Conference of the International Labour Organization (ILO) on 22 June 1982 (but not ratified by Italy), insofar as it provides that, if the competent courts or arbitration authorities find that termination is unjustified but are not empowered, or do not find it practicable given the circumstances, to declare the termination invalid and/or order or propose reinstatement of the worker, "they shall

be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate".

The third interposed rule is Article 24 of the European Social Charter (Revised), done in Strasbourg on 3 May 1996, ratified and implemented by Law no. 30 of 9 February 1999, which stipulates that, "[w]ith a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise: *a*) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service; *b*) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief" (first paragraph).

2.− In the first place, it is necessary to confirm the declaration that the intervention by the CGIL is inadmissible for the reasons indicated in the order read out during the public hearing, which is annexed to this Judgment.

3.− As a preliminary matter, it must be pointed out that Decree-Law no. 87 of 12 July 2018 (Urgent provisions on the dignity of workers and of undertakings), converted with amendments into Law no. 96 of 9 August 2018, entered into force after the referral order. Article 3(1) of that Decree amended one of the provisions to which these proceedings relate, namely Article 3(1) of Legislative Decree no. 23 of 2015, insofar as it stipulates the minimum and maximum limits within which it is possible to set the compensation payable to a worker who has been unfairly dismissed. Article 3(1) of Decree-Law no. 87 of 2018 increased those limits, respectively, from four to six times (minimum limit) and from twenty-four to thirty-six times (maximum limit) the last qualifying monthly salary for the purposes of calculating the end-of-service allowance (TFR, *trattamento di fine rapporto*).

The referring court objects to Article 3(1) of Legislative Decree no. 23 of 2015 in that it provides that, once it has established that there were no grounds for dismissal due to justified objective reasons, due to justified subjective reasons [pertaining to the worker] or for good cause, the court shall order the employer to pay compensation, not associated with a requirement to pay social security contributions, which must be equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service, within minimum and maximum thresholds.

The core of the objection thus does not concern the quantum of the minimum and maximum thresholds within which compensation is set, but rather the mechanism for calculating compensation provided for under the contested provision. The referring court in fact objects that the provision under examination introduces an inflexible and automatic criterion, based on length of service, which is such as to preclude any "discretionary assessment by the courts", in breach of the principles of equality and reasonableness, as it contrasts with the requirement to guarantee adequate redress for the specific detriment suffered by the worker, as well as an adequate deterrent for the employer against unjustified dismissal.

Since the content of the amended legislation may be circumscribed within these limits, this Court may indeed assess, on its own initiative, to what extent the *ius superveniens* impinges upon these interlocutory proceedings and whether it reaches so far as to amend "the contested provision with regard to the part that is objected to as unconstitutional" (Judgment no. 125 of 2018). The contested mechanism has not been altered in the case under examination, which means that the basic terms of the question posed by the referring court have not changed.

As a result, there is no need to remit the case to the referring court in order for it to assess whether or not the doubts regarding the constitutionality of the legislation stated in the referral order still remain.

4.− Before examining the questions of constitutionality raised, it must be pointed out that Francesca Santoro has asserted in her entry of appearance in the proceedings that the contested provisions are unreasonable for another reason, which was not stated in the referral order, namely that they are incapable of fulfilling the stated purpose of "enhancing opportunities for entry into the world of work by persons seeking employment".

This objection concerns a question that was not raised by the referring court, and is therefore inadmissible.

In fact, according to the settled case law of this Court, "'the object of interlocutory constitutionality proceedings is limited to the provisions and to the parameters stated in the referral order. Therefore, it is not possible to consider further questions or aspects of constitutionality invoked by the parties, including those averred but not endorsed by the referring court, as well as those that seek to subsequently expand or alter the content of those orders' (*ex plurimis*, Judgments no. 251 of 2017, no. 214 of 2016, no. 231 and no. 83 of 2015)" (Judgment no. 4 of 2018, section 2. of the *Conclusions on points of law*; see also Judgment no. 29 of 2017).

5.− Again as a preliminary matter, certain issues pertaining to the admissibility of the questions raised by the referring court must be examined *ex officio*.

5.1.− It is necessary to verify first and foremost, in the light of the position stated in the referral order, whether the various contested provisions are actually applicable within the proceedings before the referring court, and consequently whether the questions concerning their constitutionality are actually relevant.

It must be pointed out that, when describing the facts of the case brought before it, the referring court states that the claimant worker had been dismissed on 15 December 2015 "due to an objective justified reason pursuant to Article 3 of Law no. 604 of 15 July 1966" and had challenged the dismissal "invok[ing] the protection provided for under Article 3 of Legislative Decree 23/2015". The referring court then goes on to assert that, "considering the extremely generic nature of the reasons provided and the absolute lack of any evidence that any of the circumstances laconically referred to in the notice of dismissal was well-founded, the defect apparent is the most serious out of those mentioned [by the law], that is the 'failure to fulfil the prerequisites for dismissal due on objectively justified grounds'" and that, since the claimant worker had been hired after 7 March 2015, "she is only entitled to four months' salary".

It is unequivocally clear from the statement of facts provided by the referring court that the main proceedings concern a case of dismissal on objectively justified grounds, that the claimant worker sought the protection provided for under Article 3 of Legislative Decree no. 23 of 2015 for cases in which the prerequisites, *inter alia*, for such grounds do not obtain and that also the referring court considers that the case brought before it for examination can be classified under that scenario and thus entails the relief ("four months' salary") provided for under Article 3(1) of Legislative Decree no. 23 of 2015, as originally enacted.

5.1.1.− In the light of these aspects, as apparent from the referral order itself, it is entirely clear that Article 2 of Legislative Decree no. 23 of 2015 does not apply to the proceedings before the lower court.

That Article, in fact, provides for protection in cases involving dismissal that is discriminatory, void or intimated orally, and the dismissal at issue in these proceedings does not fall under any of these categories.
If follows that the questions concerning Article 2 of Legislative Decree no. 23 of 2015 are irrelevant.
5.1.2.− Article 4 of Legislative Decree no. 23 of 2015 is also inapplicable within proceedings before the referring court.
This Article in fact provides for protection in situations, referred to therein, in which termination intimated by the employer is affected by formal or procedural defects, which is also not the case within the proceedings before the referring court.
The referring court itself considers the formal defect consisting in the failure to state reasons for the dismissal as a mere hypothesis, which that court itself however rejects in favour of the substantive defect of "failure to fulfil the prerequisites for dismissal on objectively justified grounds".
It follows that the questions concerning Article 4 of Legislative Decree no. 23 of 2015 are also irrelevant.
5.1.3.− Moving to Article 3 of Legislative Decree no. 23 of 2015, although the referring court objects to it in its entirety, it is evident that the court is not required to apply either paragraph 2 or paragraph 3 of that Article. In any case, it does not provide any reason as to why it should apply these paragraphs.
5.1.3.1.− As regards paragraph 2, it establishes protection in cases involving "dismissal due to justified subjective reasons or for good cause in which it is directly demonstrated within the proceedings that the specific allegations made against the worker are unfounded", i.e. in situations different from that at issue in the proceedings before the referring court. In addition, Article 3(2) of Legislative Decree no. 23 of 2015 provides for protection consisting in the annulment of the dismissal and an order against the employer to reinstate the worker, in addition to the payment of compensation. This supplementary protection is entirely different from the purely financial protection which the referring court itself states it is required to apply, provided for not under paragraph 2 but under paragraph 1 of Article 3 of Legislative Decree no. 23 of 2015.
It follows that the questions concerning paragraph 2 of that Article are irrelevant.
5.1.3.2.− As regards paragraph 3, it provides that "Article 7 of Law no. 604 of 15 July 1966, as amended, shall not apply" to the dismissal of workers who fall within the scope of Legislative Decree no. 23 of 2015 pursuant to Article 1 of that Decree.
This Article, as replaced by Article 1(40) of Law no. 92 of 2012, provides that dismissal on objectively justified grounds may only be ordered by an employer of the size provided for under Article 18(8) of Law no. 300 of 1970 after the mandatory conciliation procedure has been followed. Article 3(3) of Legislative Decree no. 23 of 2015 therefore provides that this procedure does not apply to dismissals on objectively justified grounds that fall within the scope of Legislative Decree no. 23 of 2015.
The referring court does not state why that paragraph should apply.
Regarding another aspect, it also does not explain why it doubts that it is at odds with the constitutional parameters invoked. Indeed, there is no discussion regarding the non-applicability of Article 7 of Law no. 604 of 15 July 1966 (Provisions on individual dismissals) to dismissals on objectively justified grounds falling within the scope of Legislative Decree no. 23 of 2015, as provided for under Article 3(3) of that Decree.

This means that the questions concerning Article 3(3) of Legislative Decree no. 23 of 2015 are inadmissible due to the failure to establish that they are relevant and that they are not manifestly unfounded.

5.1.4.− It follows from the above that the only contested provision from Legislative Decree no. 23 of 2015 that must actually be applied is Article 3(1).

It provides that "[e]xcept as provided otherwise under paragraph 2, where it is established that the prerequisites for dismissal on objectively justified grounds, on justified subjective reasons pertaining to the worker, or for good cause do not obtain, the court shall terminate the employment relationship as of the date of dismissal and order the employer to pay compensation, not associated with a requirement to pay social security contributions, in an amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service, and in any case equal to no fewer than four and no more than twenty-four months' salary".

In addition, the objections and the related arguments contained in the referral order all concern the incompatibility of the compensation provided for under that provision with the constitutional parameters invoked.

5.2.− Based on this last consideration, a further ground for the inadmissibility of the questions concerning the constitutionality of Article 1(7)(c) of Law no. 183 of 2014 may be assessed.

The only specific reference made by the referral order to Article 1(7)(c) of Law no. 183 of 2014 as the object of the constitutionality proceedings (within the referral order, as noted, Article 1(7) of Law no. 183 of 2014 is also an interposed parameter for the questions raised with reference to Articles 76 and 117(1) of the Constitution) consists in the assertion that the protection provided for under Articles 3 and 4 of Legislative Decree no. 23 of 2015 results from "the authorisation contained in Law no. 183/2014"

This laconic phrase does not evidently constitute sufficient argumentation in support of the alleged violation, by the contested Article 1(7)(c), of the constitutional parameters invoked.

In addition, it must be pointed out that, whilst it clearly does not intend to challenge all of the principles and directional criteria laid down by Article 1(7)(c) of Law no. 183 of 2014 – consider, in addition to the "general" principle, invoked as an interposed parameter, of "consistency with EU law and international conventions", also the "exclusion for dismissal on financial grounds of the possibility of reinstatement of the worker", which the referral order expressly states that it does not wish to challenge – the referring court fails even to specify which of them could violate the constitutional parameters invoked.

As a result, the questions concerning the constitutionality of Article 1(7)(c) of Law no. 183 of 2014 are inadmissible due to a failure to provide reasons as to why they are not manifestly unfounded.

5.3.− It therefore follows from the arguments set out above that the questions concerning the constitutionality of Article 1(7)(c) of Law no. 183 of 2014 and Articles 2, 3(2) and (3) and 4 of Legislative Decree no. 23 of 2015 must be ruled inadmissible, due to irrelevance (Articles 2, 3(2) and 4 of Legislative Decree no. 23 of 2015), due to the failure to provide reasons as to their relevance and as to why they are not manifestly unfounded (Article 3(3)) and due to the failure to provide reasons as to why they are not manifestly unfounded (Article 1(7)(c) of Law no. 183 of 2014).

5.4.− The constitutionality proceedings must therefore be limited only to Article 3(1) of Legislative Decree no. 23 of 2015.

Before considering the merits of the questions relating to that provision, it is necessary to verify the admissibility of the question raised, with reference to Articles 76 and 117(1) of the Constitution, in relation to the specific interposed parameter of Article 10 of ILO Convention no. 158 of 1982 concerning Termination of Employment.
This international convention, which has relevance under constitutional law within the spirit of Article 35(3) of the Constitution, has not been ratified by Italy; therefore, it cannot be considered to be binding and cannot supplement the constitutional parameter invoked, as Article 117(1) of the Constitution refers to compliance with "constraints" resulting from "international obligations".
The conclusion would be no different even if that Convention were to be considered capable of supplementing the principle set forth in Article 76 of the Constitution. Whilst in fact the indent of Article 1(7) of the parent statute, Law no. 183 of 2014, refers to "international conventions" without any further qualification, it is certainly not possible to infer, from that generic wording, an obligation for the secondary legislator to comply with conventions which, not having been ratified, are not binding on Italy.
Since ILO Convention no. 158 of 1982 concerning Termination of Employment, not having been ratified by Italy, is incapable of supplementing Articles 76 and 117(1) of the Constitution, the question raised by the referring court in relation to Article 10 of that Convention is inadmissible.
That conclusion must also be reiterated with reference to the position which the intervener party Francesca Santoro appears to adopt, according to whom Convention no. 158 of 1982 concerning Termination of Employment "takes on direct relevance as an obligation incumbent upon the State, pending ratification, to refrain from implementing any legislation that is at odds with the obligation entered into at international level".
The duty of good faith laid down by Article 18 of the Convention on the Law of Treaties, adopted in Vienna on 23 May 1969, ratified and implemented by Law no. 112 of 12 February 1974, which manifest itself *inter alia* in the requirement for States to refrain from carrying out any acts that may be liable to deprive a treaty of its object and purpose, cannot extend so far as to preclude discretion as to ratification, thus rendering ratification inevitable and, therefore, the treaty binding upon Italy on the international level. The ineligibility of the ILO Convention invoked to supplement the parameter laid down by Article 117(1) of the Constitution is therefore confirmed.
6.− It is now possible to review the first of the questions raised with reference to Article 3 of the Constitution, by which the referring court asserts that Article 3(1) of Legislative Decree no. 23 of 2015 violates the principle of equality as it provides unjustifiably less favourable protection to workers hired after 7 March 2015 compared to those hired, including in the same business, before that date.
The question is unfounded.
It must first and foremost be noted that the prerequisite that the regime of protection under Article 3(1) of Legislative Decree no. 23 of 2015, which applies to workers hired on or after 7 March 2015, is less favourable than that provided for under Article 18 of Law no. 300 of 1970, which is applicable to workers hired before that date – on which basis the referring court objected to that provision − is correct. In fact, once it has been established that the prerequisites for dismissal on objectively justified grounds, due to justified subjective reasons or for good cause are not met, the contested Article 3(1) provides, under all circumstances, only for financial protection consisting in compensation equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service, with a minimum of four (now six) and a

maximum of twenty-four (now thirty-six) months. On the other hand, Article 18 of Law no. 300 of 1970 provides for the specific protection of reinstatement, in addition to protection through equivalent relief consisting in compensation up to a maximum of twelve times the last global *de facto* remuneration in situations involving the "manifest absence of the fact asserted as a basis for dismissal on objectively justified grounds" (seventh paragraph, second sentence, first phrase, according to which the court "[m]ay" apply that provision) and also in the event of dismissal due to justified subjective reasons or for good cause in situations in which "the factual allegations are unfounded" and where the conduct in question "falls under the conduct punishable by a sanction falling short of dismissal on the basis […] of the applicable collective agreements or disciplinary codes" (fourth paragraph, first sentence). In other cases, it provides for protection through equivalent relief consisting in compensation between a minimum of twelve and a maximum of twenty-four times the last global *de facto* monthly remuneration (fifth paragraph, which also refers to the seventh paragraph, second sentence, second phrase).

It must be pointed out that, in objecting to the difference in treatment between newly hired employees (to whom the less favourable regime of protection under Legislative Decree no. 23 of 2015 is applied) and employees hired previously (to whom the more favourable regime of protection under Article 18 of Law no. 300 of 1970 is applied), the referring court fails to object to the substantive provision made under the former regime - in contrast to the other questions raised - but rather objects to the temporal criterion used for its application, consisting in the fact that the worker was hired after the Decree entered into force. The assertion that the less favourable treatment for newly hired employees is unreasonable is in fact based not so much on an objection to the regime of protection laid down for such workers by Legislative Decree no. 23 of 2015 but rather on an objection to the temporary criterion used for applying that regime. It is asserted that "the date of hiring is a fortuitous reference that is extrinsic to each relationship, and is entirely incapable of being used to differentiate between one relationship and another, where all other substantive aspects remain the same".

If this is the content of the objection under examination, it must be recalled that the case law of this Court has been settled in asserting with regard to any delineation in the scope *ratione temporis* of legislation enacted at different points in time – a fact which of which the referring court is also aware – that "the principle of equality will not be breached in itself by a difference in treatment applied to the same facts, but at difference points in time, as the passage of time may constitute a valid reason for a difference in the treatment of legal situations (Orders no. 25 of 2012, no. 224 of 2011, no. 61 of 2010, no. 170 of 2009, no. 212 and no. 77 of 2008)" (Judgment no. 254 of 2014, section 3. of the *Conclusions on points of law*). This Court has repeatedly argued that "[i]t falls to the discretion of the legislator, acting in accordance with the requirement of reasonableness, to delineate the temporal scope of the law […] (Judgments no. 273 of 2011, section 4.2. of the *Conclusions on points of law*, e no. 94 of 2009, section 7.2. of the *Conclusions on points of law*)" (Judgment no. 104 of 2018, section 7.1. of the *Conclusions on points of law*).

It is precisely this "principle of reasonableness" which the referring court considers to have been violated where it is asserted that "the date of hiring is a fortuitous reference that is extrinsic to each relationship, and is entirely incapable of being used to differentiate between one relationship and another, where all other substantive aspects remain the same".

The difference in the application of Legislative Decree no. 23 of 2015 based on a cut-off date, which is objected to by the referring court, does not violate the "principle of reasonableness", and hence the principle of equality, if considered in the light of the justificatory reason – which is entirely disregarded by the referring court – consisting in the stated "purpose" of the legislator "of enhancing opportunities for entry into the world of work by persons seeking employment" (indent of Article 1(7) of Law no. 183 of 2014).

The purpose of the enactment, thereby expressed, demonstrates that the *ex ante* determination and reduction in the severity of the consequences of the unlawful dismissal of permanent workers are measures intended to promote the establishment of employment relations by persons who are unemployed, and in particular to promote the establishment of permanent employment relations.

The temporal regime governing the application of Legislative Decree no. 23 of 2015 is consistent with that purpose. Since the introduction of certain and less severe protection in cases involving unlawful dismissal is intended to encourage the creation of permanent jobs, it is consistent to limit the application of those protections only to workers hired after the entry into force of the Law, namely to those whose engagement may have been encouraged.

Thus, the application of Legislative Decree no. 23 of 2015 to workers hired under a permanent employment contract after the date of its entry into force cannot be considered to be unreasonable as it results from the purpose that the legislator set for itself. Consequently, the less favourable treatment of such workers compared to those hired before that date does not violate the principle of equality.

Having clarified that the contested temporal regime regulating the application of the law is not unreasonable, it does not fall to this Court to venture any assessments concerning the results that the employment policy pursued by the legislator may or may not have achieved.

7.− By the second of the questions raised with reference to Article 3 of the Constitution, the referring court argues that Article 3(1) of Legislative Decree no. 23 of 2015 violates the principle of equality because, amongst workers hired after 7 March 2015, non-director workers benefit from unjustifiably less favourable protection than directors who, "not being subject to the new rules, continue to benefit from much higher minimum and maximum amounts of compensation".

The question is unfounded.

This court clarified some time ago that, whilst a director has the status of an employee pursuant to the express provision of Article 2095(1) of the Civil Code, such roles "are significantly different from the other roles of middle manager, office worker and manual worker" (Judgment no. 228 of 2001, section 2. of the *Conclusions on points of law*). As a result, "the two categories are in no sense homogeneous and the two types of employment relationship are clearly different" (Judgment no. 309 of 1992, section 3. of the *Conclusions on points of law*).

Due to the different nature of the work of directors, this Court has reiterated on various occasions that their exclusion from the scope of the general legislation on individual dismissals, including the requirement that dismissal must be justified, is not at odds with Article 3 of the Constitution (Judgments no. 228 of 2001, no. 309 of 1992 e no. 121 of 1972, Order no. 404 of 1992; these last two rulings concerned in particular Article 10 of Law no. 604 of 1966, which excludes directors from the scope, *inter alia*, of Article 1 of

that Law, i.e. from the provision requiring "good cause" or a "justified reason" for dismissal).
In view of this enduring exclusion, it must be confirmed that directors are not comparable with other categories of worker falling under Article 2095(1) of the Civil Code also under the currently applicable system.
8.− The first of the questions raised with reference to Articles 76 and 117(1) of the Constitution, by which the referring court asserts that Article 3(1) of Legislative Decree no. 23 of 2015 violates those constitutional provisions having regard to the interposed parameters of Article 30 of the Charter of Fundamental Rights of the European Union, is also unfounded.
According to Article 51 CFREU, "[t]he provisions of this Charter are addressed […] to the Member States only when they are implementing Union law." (paragraph 1, first sentence). On the basis of that provision, the Court of Justice of the European Union has been settled in asserting that the provisions of the CFREU are applicable to the Member States "when they act in the scope of Union law" (*ex plurimis*, Grand Chamber, judgment of 26 February 2013 in Case C-617/10, *Åklagaren v. Hans Åkerberg Fransson* and, more recently, Eighth Division, Order of 26 October 2017 in Case C-333/17, *Caixa Económica Montepio Geral v. Carlos Samuel Pimenta Marinh and others*). This Court has therefore asserted that, "in order for the EU Charter of Rights to be eligible to be invoked within constitutionality proceedings, it is thus necessary that the situation covered by national law 'is regulated by European law – insofar as pertaining to legal acts of the Union, national legal acts and actions implementing EU law, or to the justifications proffered by a Member State for a national measure that would otherwise be incompatible with EU law – and not simply of national provisions that lack any link with EU law' (Judgment no. 80 of 2011)" (Judgment no. 63 of 2016, section 7. of the *Conclusions on points of law*; see also Judgment no. 111 of 2017 and Order no. 138 of 2011).
There are no grounds to conclude that the contested legislation laid down by Article 3(1) of Legislative Decree no. 23 of 2015 was adopted in order to implement EU law, and specifically in order to implement the law on individual dismissals.
More specifically, in order for the CFREU to be applicable, Article 3(1) of Legislative Decree no. 23 of 2015 would have to fall within the scope of a provision of EU law other than the Charter itself (*ex plurimis*, Court of Justice, Third Division, judgment of 1 December 2016 in Case C-395/15, *Mohamed Daouidi v. Bootes Plus SL and others*, paragraph 64; Eighth Division, orders of 8 December 2016 in Case C-27/16, *Angel Marinkov v. Predsedatel na Darzhavna agentsia za balgarite v chuzhbina*, paragraph 49, and of 16 January 2014 in Case C-332/13, *Ferenc Weigl v. Nemzeti Innovációs Hivatal*, paragraph 14; Third Division, order of 12 July 2012 in Case C-466/11, *Gennaro Currà and others v. Bundesrepublik Deutschland*, paragraph 26).
The sole fact that Article 3(1) of Legislative Decree no. 23 of 2015 applies within an area of law in which the Union is competent pursuant to Article 153(2)(d) of the Treaty on the Functioning of the European Union (TFEU) cannot result in the applicability of the Charter since the Union has not specifically exercised that competence, and has not adopted any directives laying down minimum requirements for the law on individual dismissals (and no less for the specific situations governed by Article 3(1)) (*ex plurimis*, Court of Justice, Tenth Division, judgment of 5 February 2015 in Case C-117/14, *Grima Janet Nisttahuz Poclava v. Jose María Ariza Toledano*, paragraph 41; Fifth Division, judgment of 10 July 2014 in Case C-198/13, *Víctor Manuel Julian Hernández*

and others v. Kingdom of Spain and others, paragraphs 36 and 46; Seventh Division, Order of 16 January 2008 in Case C-361/07, *Olivier Polier v. Najar EURL*, paragraph 13).

Contrary to the arguments presented by counsel for the intervener party, it cannot be considered that the contested legislation was adopted in order to implement Directive 98/59/EC of 20 July 1998 (Council Directive on the approximation of the laws of the Member States relating to collective redundancies) since, as is clear, Article 3(1) of Legislative Decree no. 23 of 2015 applies to individual redundancies.

In an attempt to establish the existence of a "European dimension" within the contested provisions, the intervener party has argued – in truth, in a highly generic manner − that they fall within the scope of the employment policy of the Union, and in particular of the measures adopted in response to the recommendations of the Council. Those recommendations, provided for under Article 148(4) TFEU following the annual examination by the European institutions of the employment situation within the Union, fall under the discretion of the Council and are thus non-binding.

There are therefore no provisions of EU law that impose specific obligations on the Member States – or on Italy in particular − within the area governed by the contested Article 3(1) of Legislative Decree no. 23 of 2015. It must therefore be concluded that the CFREU is not applicable to the case at hand and that Article 30 of the Charter cannot be invoked as an interposed parameter in relation to this question of constitutionality. It follows from this that the question is unfounded.

9.− The further questions, by which the referring court objects that, in providing for inflexible and inadequate protection against unjustified dismissal, Article 3(1) of Legislative Decree no. 23 of 2015 violates Articles 3, 4(1), 35(1), 76 and 117(1) of the Constitution – the last two Articles in relation to Article 24 of the European Social Charter – are well-founded, subject to the limits set out below.

Before examining them individually, it is important to start from the case law of this Court which has, for a considerable number of years, focused on the aspects that are specific to the law on dismissal when delineating the extent of justification, on the one hand, and protection against unfair dismissal, on the other.

9.1.− In ruling unfounded a question concerning the constitutionality of Article 2118 of the Civil Code raised with reference to Article 4 of the Constitution, this Court asserted that the right to work, which is a "fundamental freedom right of the individual" does not guarantee "the right to remain in work", but nonetheless "requires the legislator […] to adapt […] the rules governing permanent employment relations to the ultimate aim of ensuring continuity of work for all persons, and to subject cases in which it is necessary to dismiss workers to proper guarantees […] and appropriate moderation" (Judgment no. 45 of 1965, sections 3. and 4. of the *Conclusions on points of law*). This general requirement was, as is known, acted on by approving Law no. 604 of 1966, Article 1 of which enshrined the principle that justification is a necessary requirement for dismissal, which must be deemed to be unfair unless it is based on "good cause" or a "justified reason".

The Court subsequently asserted the "right [guaranteed by Article 4 of the Constitution] not to be unfairly or unreasonably excluded from work" (Judgment no. 60 of 1991, section 9. of the *Conclusions on points of law*) whilst also reiterating the "constitutional guarantee [of the] right not to be arbitrarily dismissed" (Judgment no. 541 of 2000, section 2. of the *Conclusions on points of law* and Order no. 56 of 2006).

The "approach entailing the progressive guarantee of the right to work provided for under Articles 4 and 35 of the Constitution, which resulted over time in the introduction of restrictions on the employer's power of dismissal" (Judgment no. 46 of 2000, section 5. of the *Conclusions on points of law*) is apparent within a later judgment in which it is asserted that "individual dismissals are now governed, having regard to Articles 4 and 35 of the Constitution, by the principle that justification must be provided for dismissal" (Judgment no. 41 of 2003, section 2.1. of the *Conclusions on points of law*).

The increasingly clear assertion of the "right to work" (Article 4(1) of the Constitution), alongside the "protection" for work "in all of its forms and applications" (Article 35(1) of the Constitution), has manifested itself *inter alia* in the recognition that the limits imposed on the employer's power of dismissal offset a *de facto* imbalance inherent within the employment contract. Since it has significant effects for the individual – in contrast to the position for other long-term relationships – the right to work is classified as a fundamental right, which the legislator must ensure is afforded specific protection.

9.2.− The developments within the constitutional case law mentioned above have occurred alongside the – parallel and in this case more directly relevant – developments in the protection for workers in cases involving unlawful dismissal.

This case law has duly respected the legislator's discretion in this area.

As early as Judgment no. 194 of 1970, after noting that the principles from which Article 4 of the Constitution draws inspiration "give expression to the need to limit the employer's freedom to withdraw from the employment contract, and hence the need to expand protection for the worker in terms of the maintenance of his or her job", it was asserted that "[t]he implementation of these principles however remains a matter for the discretion of the ordinary legislator as regards the choice of time-scales and procedures, taking account obviously of the general economic climate" (section 4. of the *Conclusions on points of law*).

The subsequent Judgments no. 55 of 1974, no. 189 of 1975 and no. 2 of 1986 contained rulings to the same effect.

More recently, this Court has expressly ruled that the balance between the values underlying Articles 4 and 41 of the Constitution - an area which is inevitably left to the discretion of the legislator - does not require a specific regime of protection to be adopted (Judgment no. 46 of 2000, section 5. of the *Conclusions on points of law*).

The legislator may indeed provide, when exercising its discretion, for a protective mechanism involving only financial compensation (Judgment no. 303 of 2011), provided that the mechanism is structured in a manner that is compliant with the principle of reasonableness. In fact, the right to stable employment "is not conceptually self-standing, and is nothing other than a terminological synthesis of the limits on the power of dismissal, associated with a sanction of invalidity" (Judgment no. 268 of 1994, section 5. of the *Conclusions on points of law*).

10.− This brief examination of the development of constitutional case law in the area of dismissal serves to delineate the scope of protection based on Articles 4(1) and 35(1) of the Constitution, interpreted jointly. The analysis of the protection provided for under the contested Article 3(1) must be conducted against this backdrop.

The protection in question is not a specific protection of the worker's interest in compliance with the permanent employment contract – reinstatement is in fact precluded – but rather protection in equivalent terms, and hence only financial.

It must be clarified from the outset that this protective mechanism underlies the entire normative structure put in place by the legislator, also in cases in which the prerequisites for dismissal due to subjectively justified reasons or for good cause are not met (except in the situations, governed by Article 3(2) of Legislative Decree no. 23 of 2015, in which "it is directly demonstrated within the proceedings that the specific allegations of fact made against the worker are unfounded"). This Court cannot therefore avoid conducting an overall review of the contested Article 3(1), including also cases in which the prerequisites for dismissal on objectively justified grounds are not met, a situation that obtains in the proceedings before the referring court.

The classification as "compensation" of the obligation provided for under Article 3(1) of Legislative Decree no. 23 of 2015 does not preclude its status as a remedy providing redress for dismissal. Although the dismissal is effective, in the sense that it puts an end to the employment relationship, it nonetheless amounts to an unlawful act, having been adopted in breach of the pre-existing - and unchanged - overriding rule that "a worker may only be dismissed with good cause pursuant to Article 2119 of the Civil Code or with justified reason" (Article 1 of Law no. 604 of 1966).

As regards the level of compensation – and hence of the payout awarded to the worker in respect of the harm caused by the unlawful dismissal, which has corresponding impact on the employer's finances – it has been wholly set in advance by the law at a fixed rate of two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service.

Compensation is inflexible owing to the quantification mechanism referred to, as it cannot be tailored with reference to parameters other than length of service, with the result that it is identical for all workers with the same length of service. The compensation thus has the characteristics of a standardised, lump-sum legal settlement - precisely because it is based on the sole parameter of length of service - for the loss caused to the worker by the unlawful dismissal from a permanent job.

The mechanism for quantifying compensation operates within predefined lower and upper limits. The lower limit involves compensation equal to four (now six) times the last qualifying monthly salary for the purposes of calculating the TFR, whilst the upper limit involves a maximum compensation of twenty-four (now thirty-six) times the last qualifying monthly salary for the purposes of calculating the TFR.

This pre-determined lump-sum compensation for the losses resulting from unlawful dismissal cannot be increased, even if the relative evidence is furnished. Although the contested Article 3(1) – in contrast to the applicable Article 18(5) of Law no. 300 of 1970 – does not define the compensation as "all-inclusive", the legislator has in effect clearly sought to set out in advance the full consequences of unlawful dismissal, in accordance with the principle and directional criterion laid down by the parent statute of providing for "certain" financial compensation.

11.− Having thus established the characteristics of the protection provided for under the contested Article 3(1), in setting compensation in "an amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service", [it may be concluded that] this provision violates first and foremost the principle of equality in that it unjustifiably treats different situations in the same manner (the third argument concerning the violation of Article 3 of the Constitution proposed by the referring court).

As noted above, in fully stipulating its *quantum* in advance as a function of the sole parameter of length of service, the provision stipulates compensation that is not only inflexible but also uniform for all workers with the same length of service.
It is a fact of common experience, which has been broadly proven within the case law, that the detriment caused in different cases by unfair dismissal depends upon a variety of factors. Whilst length of service is certainly relevant, it is thus only one of many.
Before Legislative Decree no. 23 of 2015 entered into force, the legislator repeatedly sought to identify those multiple factors.
For example, Article 8 of Law no. 604 of 1966 (as replaced by Article 2(3) of Law no. 108 of 1990) leaves it to the courts to determine the alternative compensatory obligation, albeit subject to a minimum and a maximum number of multipliers of the last *de facto* global monthly remuneration, "having regard to the number of workers employed, the size of the undertaking, the length of service of the worker, along with the conduct and circumstances of the parties". In addition, as confirmation of the requirement to scrutinise closely the level of compensation and to consider the circumstances of the undertaking, that provision gives significance to length of service in order to expand further the court's discretion, in cases involving employers with more than fifteen employees. In fact, in cases involving length of service in excess of ten or twenty years, compensation may be increased respectively to ten or fourteen months' salary. Also Article 18(5) of Law no. 300 of 1970 (as replaced by Article 1(42)(b) of Law no. 92 of 2012) provides that compensation is to be set by the courts between a minimum and a maximum number of monthly salary payments according to criteria that are largely analogous with those previously specified, also having regard to the "scale of the economic activity".
It is thus evident that the legislator has always afforded significance to a variety of factors that impinge upon the scale of the detriment caused by the unjustified dismissal and consequently on the amount of compensation.
The contested provision departs from that approach. This occurs precisely where real protection is removed, which as mentioned above is excluded for workers hired after 6 March 2015, other than in cases falling under Article 3(2) of Legislative Decree no. 23 of 2015.
In a situation that affects the worker as an individual at the traumatic time of his or her dismissal from work, compensatory relief cannot be based on the sole factor of length of service. It is essential for a range of criteria to be provided for the prudent discretionary assessment by the courts called upon to settle the dispute. Such discretion must nonetheless be exercised within limits set out by the legislator in order to guarantee the nuanced calibration of the compensation due, subject to minimum and maximum thresholds.
Within a balanced system of protections that also takes account of the interests of the business, the discretion exercised by the courts must in fact be consistent with the requirement to personalise the harm suffered by the worker, which is also dictated by the principle of equality.
The provision for a uniform level of compensation, irrespective of the specific circumstances of and differences between dismissals intimated by the employer results in the inappropriate treatment as identical of situations that could be – and, according to actual experience, are – different.
12.− Insofar as it provides for compensation in an "amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of

service", Article 3(1) of Legislative Decree no. 23 of 2015 also violates the principle of reasonableness on the grounds that the compensation is incapable of constituting adequate redress for the specific detriment suffered by the worker as a result of the unlawful dismissal and an adequate deterrent for the employer from dismissing employees unfairly (the fourth argument concerning the violation of Article 3 of the Constitution proposed by the referring court).

12.1.− As regards the first aspect, it has been noted above that, in fully stipulating its quantum in advance, the contested provision renders the status of the compensation not only "certain" but also inflexible as it cannot be tailored with reference to factors other than length of service. In addition, since the compensation cannot be increased, even if the relevant evidence is provided, it has the status of a lump-sum legal settlement, based on the sole pre-determined parameter of length of service.

When examining provisions that have introduced lump-sum legal limits on compensation, this Court has asserted on various occasions that "'the general rule of full redress and of [the] equivalence [of such redress] with the detriment caused to the injured party is not mandated by constitutional law' (Judgment no. 148 of 1999), as long as adequate compensation is guaranteed (Judgments no. 199 of 2005 and no. 420 of 1991)" (Judgment no. 303 of 2011, section 3.3.1. of the *Conclusions on points of law*). Therefore, whilst compensation need not necessarily provide redress for the full detriment suffered by the injured party, it must necessarily be balanced.

It is also apparent from these judgments that lump-sum compensation will only be adequate if it is capable of striking an adequate balance between the interests in conflict with one another (Judgments no. 235 of 2014, no. 303 of 2011, no. 482 of 2000, no. 132 of 1985).

The limit of twenty-four (now thirty-six) months' salary, established by the legislator as a maximum threshold for compensation, is not at odds with this notion of adequacy.

Finally, it must be noted that the inflexible correlation between any increase in compensation and the sole factor of increased length of service demonstrates its inappropriateness above all in cases involving service of a short duration, as in the present case. In such cases, compensation for the detriment caused by the unlawful dismissal appears to be even more inadequate, and the position is not necessarily improved by the provision for a minimum level of compensation of four (now six) months' salary.

12.2.− As regards the second aspect, the inadequacy of the lump-sum compensation established under the contested provision, having regard to its primary function of providing redress-compensation for the harm suffered by an unfairly dismissed worker, is in all likelihood liable to undermine also its deterrent function for employers, which should dissuade them from any intention to dismiss a worker without a valid justification and to compromise the equilibrium of contractual obligations.

12.3.− Based on the arguments set out above, it must therefore be concluded that, insofar as it sets compensation in an "amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service", the contested Article 3(1) of Legislative Decree no. 23 of 2015 does not achieve a balanced settlement between the interests in play: the freedom of organisation of the undertaking on the one hand and the protection of the unfairly dismissed worker on the other hand. In providing for economic protection that may not constitute adequate redress for the loss suffered in the specific individual case from dismissal and that does not constitute an adequate deterrent for employers against unfair dismissals, the contested provision

excessively impinges upon the interest of the worker, to the point of being incompatible with the principle of reasonableness.
The legislator thus ends up betraying the primary goal of relief through compensation, which consists in the provision of adequate compensation for the detriment suffered by a worker who has been unfairly dismissed.
13.− A further consequence of the unreasonableness of the contested Article 3(1), insofar as it provides for compensation in an "amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service", is that it also violates Articles 4(1) and 35(1) of the Constitution (a violation which is in effect argued by the referring body to result from the fact - objected to as the principal flaw - of breaching Article 3 of the Constitution).
In the light of the arguments set out above concerning the fact that Article 3(1) of Legislative Decree no. 23 of 2015, with regard to the part cited above, provides for financial protection that may not constitute adequate redress for the loss suffered in the specific individual case from dismissal and that does not constitute an adequate deterrent for employers against unfair dismissals, it is clear that such protection for the worker's interest in stability of employment cannot be regarded as compliant with Articles 4(1) and 35(1)of the Constitution, which protect that interest.
The unreasonable nature of the remedy provided for under Article 3(1) of Legislative Decree no. 23 of 2015 is in actual fact even more striking in view of the particular significance that the Constitution affords to work (Articles 1(1), 4 and 35 of the Constitution) in order to achieve the full development of the human personality (Judgment no. 163 of 1983, section 6. of the *Conclusions on points of law*).
The "right to work" (Article 4(1) of the Constitution) and the "protection" of work "in all of its forms and applications" (Article 35(1) of the Constitution) entail a guarantee that other fundamental rights guaranteed under the Constitution may be exercised in the workplace. The nexus that binds together these spheres of individual rights in cases involving dismissal is apparent in Judgment no. 45 of 1965, cited above, which refers to the "fundamental principles of trade union, political and religious freedom" (section 4. of the *Conclusions on points of law*), as well as in Judgment no. 63 of 1966, where it is asserted that "the fear of termination, i.e. of dismissal, induces or may induce the worker to waive some of his or her rights" (section 3. of the *Conclusions on points of law*).
14.− Insofar as it fixes compensation in an "amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service", Article 3(1) of Legislative Decree no. 23 of 2015 also violates Articles 76 and 117(1) of the Constitution in relation to Article 24 of the European Social Charter.
That Article provides that, with a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Contracting Parties undertake to recognise "the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief" (first paragraph, letter b).
In the decision given in relation to collective complaint no. 106/2014, filed by the *Finnish Society of Social Rights* against Finland, the European Committee of Social Rights clarified that compensation is adequate if it is capable of ensuring adequate redress for the actual harm suffered by the worker dismissed without a valid reason and of dissuading the employer from the unjustified termination of contracts.

The line of argumentation followed by the Committee thus involves an assessment of the system of compensation in terms of its dissuasive effect, and at the same time of its giving due consideration to the loss suffered (paragraph 45).
This Court has already held that the European Social Charter is capable of supplementing Article 117(1) of the Constitution and has also acknowledged that the decisions of the Committee have authoritative status, although are not binding on national courts (Judgment no. 120 of 2018).
In actual fact, Article 24 - which is inspired by ILO Convention no. 158 of 1982, cited above - lays down an obligation on the international level to guarantee adequate specific compensation for unfair dismissal, in line with Article 35(3) of the Constitution, which is in keeping with the finding made by this Court based on the internal constitutional parameter of Article 3 of the Constitution. There is thus an overlap between various sources and – more importantly – a cumulation of the guarantees provided by them (Judgment no. 317 of 2009, section 7. of the *Conclusions on points of law*, according to which "[t]he overall result of the provision of supplementary guarantees by the legal system must be positive").
Accordingly, both Article 76 – by the reference made by the parent statute to compliance with international conventions – and Article 117(1) of the Constitution have been violated through Article 24 of the European Social Charter.
15.− In conclusion, partially accepting the questions raised with reference to Articles 3 (in relation both to the principle of equality, in terms of the unjustified treatment as identical of different situations, and the principle of reasonableness), 4(1), 35(1), 76 and 117(1) of the Constitution (the last two Articles in relation to Article 24 of the European Social Charter), the contested Article 3(1) must be ruled unconstitutional with regard only to the phrase "in an amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service,".
The "monthly salaries" to which Article 3(1) of Legislative Decree no. 23 of 2015 now refers are to be regarded as the last qualifying monthly salary for the purposes of calculating the TFR, as is apparent from Legislative Decree no. 23 of 2015 overall, as regards the calculation of compensation.
Subject to the minimum and maximum limits within which the compensation due to a worker who has been unfairly dismissed must be quantified, the courts will take account first and foremost of length of service – a criterion required under Article 1(7)(c) of Law no. 184 of 2013 and which inspired the reformist spirit of Legislative Decree no. 23 of 2015 – along with the other criteria referred to above, which may be inferred on a systematic basis from the development of the legislation imposing limits on dismissals (number of employees, scale of the business activity, conduct and circumstances of the parties).

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that Article 3(1) of Legislative Decree no. 23 of 4 March 2015 (Provisions on permanent employment contracts with increasing protection over time, implementing Law no. 183 of 10 December 2014) – both in the original wording and as amended by Article 3(1) of Decree-Law no. 87 of 12 July 2018 (Urgent provisions on the dignity of workers and of undertakings), converted with amendments into Law no. 96 of 9 August 2018 – is unconstitutional with regard only to the phrase "in an amount equal to two times the last qualifying monthly salary for the purposes of calculating the TFR for each year of service,";

2) *rules* inadmissible the questions concerning the constitutionality of Article 1(7)(c) of Law no. 183 of 10 December 2014 (Authorisations to the Government concerning the reform of social welfare payments, employment services and active policies, and on the reorganisation of the legislation on employment relations, on inspections and on the protection and reconciliation of the needs of care, life and work) and Articles 2, 3(2) and (3), and 4 of Legislative Decree no. 23 of 2015, raised with reference to Articles 3, 4(1), 35(1), 76 and 117(1) of the Constitution – the last two Articles in relation to Article 30 of the Charter of Fundamental Rights of the European Union (CFREU), proclaimed in Nice on 7 December 2000 and adapted in Strasbourg on 12 December 2007, the Termination of Employment Convention no. 158 of 1982 (Convention concerning Termination of Employment at the Initiative of the Employer), adopted in Geneva by the General Conference of the International Labour Organization (ILO) on 22 June 1982, and Article 24 of the European Social Charter (Revised), done in Strasbourg on 3 May 1996, ratified and implemented by Law no. 30 of 9 February 1999 – by the Third Employment Division of the *Tribunale di Roma* by the referral order mentioned in the headnote;
3) *rules* inadmissible the question concerning the constitutionality of Article 3(1) of Legislative Decree no. 23 of 2015, raised with reference to Articles 76 and 117(1) of the Constitution in relation to Article 10 of ILO Convention no. 158 of 1982 concerning Termination of Employment by the Third Employment Division of the *Tribunale di Roma* by the referral order mentioned in the headnote;
4) *rules* unfounded the question concerning the constitutionality of Article 3(1) of Legislative Decree no. 23 of 2015, raised with reference to Articles 76 and 117(1) of the Constitution in relation to Article 30 CFREU by the Third Employment Division of the *Tribunale di Roma* by the referral order mentioned in the headnote.
Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 26 September 2018.

Annex:
Order read out at the hearing of 25 September 2018
ORDER

Considering the case file of proceedings concerning the constitutionality of Article 1(7)(c) of Law no. 183 of 10 December 2014 (Authorisations to the Government concerning the reform of social welfare payments, employment services and active policies, and on the reorganisation of the legislation on employment relations, on inspections and on the protection and reconciliation of the needs of care, life and work); and Articles 2, 3 and 4 of Legislative Decree no. 23 of 4 March 2015 (Provisions on permanent employment contracts with increasing protection over time, implementing Law no. 183 of 10 December 2014) initiated by the Third Employment Division of the *Tribunale di Roma* by the referral order of 26 July 2017 (Register of Referral Orders no. 195 of 2017).
Having found that the CGIL (*Confederazione generale italiana del lavoro*, Italian General Confederation of Labour) filed an intervention in those proceedings.
Considering that this body is not a party to the proceedings before the referring court;
that, according to the settled case law of this Court, the intervention within interlocutory constitutionality proceedings by persons who are not parties to the main proceedings is

only admissible, pursuant to Article 4(3) of the Supplementary Rules on Proceedings before the Constitutional Court, by third parties with a qualified interest that is directly related to the substantive right averred in the proceedings, and not simply governed, in the same manner as any other, by the contested provision or provisions (*ex plurimis*, Judgment no. 120 of 2018 and the related order read out at the hearing of 10 April 2018, Judgments no. 77 of 2018 and no. 275 of 2017);

that this position has been stated by this Court on various occasions also in relation to requests for intervention by bodies that represent collective or sectoral interests (*ex plurimis*, Judgment no. 120 of 2018 and the related order read out at the hearing of 10 April 2018, Judgment no. 77 of 2018);

that the CGIL is not only a party to the main proceedings but also is not vested with a qualified interest that is directly related to the substantive right averred in the proceedings that could entitle it to intervene, as it does not have any legal interest that is liable to be impaired directly and irremediably by the outcome to the interlocutory proceedings but rather a mere indirect, and more general, interest associated with the purposes indicated in its Statute of protecting the financial and professional interests of its members;

that its intervention in these proceedings must therefore be ruled inadmissible.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

rules inadmissible the intervention by the CGIL (*Confederazione generale italiana del lavoro*, Italian General Confederation of Labour).

Signed: Giorgio Lattanzi, President