



Press Office of the Constitutional Court

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JOBS ACT: WHY COMPENSATION FOR DISMISSALS THAT ARE UNLAWFUL DUE TO FORMAL DEFECTS CANNOT BE LINKED ONLY TO SENIORITY

Calculating the amount of compensation for dismissals that are unlawful due to formal or procedural defects on the basis of job seniority alone “simply emphasises the marginal importance of [such] formal and procedural defects and further devalues the protection they afford to fundamental values of legal civilisation, aimed at protecting the dignity of workers”. Especially when seniority is limited, “both the compensatory role and the deterrent effect of the protection provided through the duty to pay compensation decline remarkably”: the minimum threshold of two months’ salary cannot always remedy the inadequacy of the reparation provided for by law.

This was established in the “Conclusions on points of law” of [Judgment No. 150](#), filed today (Judge Rapporteur: Silvana Sciarra), in which the Constitutional Court declared that the questions raised by the Ordinary Courts of Bari and Rome on the inflexible and uniform nature of the compensation, being linked only to job seniority, were well founded (the challenges did not consider the minimum and maximum thresholds for the payments established by the Legislator).

In particular, the Court declared Article 4 of Legislative Decree No. 23 of 2015 (the so-called Jobs Act) unconstitutional, insofar as it established that the compensation was to be equal to one monthly payment of the last overall salary used to calculate the severance allowance due for each year of service (see the [25 June press release](#)).

In continuity with Judgment No. 194 of 2018, which declared unconstitutional the method for calculating the compensation due for dismissals without a valid reason or without an objective or subjective justification (Article 3 of Legislative Decree No. 23 of 2015), the Court held that the similar criterion

challenged in the present case, concerning compensation for dismissals affected by formal or procedural flaws, also contrasts with the principles of equality and reasonableness, as well as with the need to protect work in all its forms.

The judgment explains that formal requirements relating to the duty to provide reasons for dismissals and to the right to be heard “perform an essential protection role, which is inspired by the values of legal civilisation”, and “can be traced to the principle of protecting work enshrined in Articles 4 and 35 of the Constitution” in that they serve to protect the dignity of workers.

The Legislator – emphasised the Court – can adjust the protective measures established for unfair dismissals in various ways, but cannot ignore “the vast range of variables that directly involve the worker as a person”.

With reference to Article 3 of the Constitution, the Court has noted that the legislation at issue, by reducing “the judge’s assessment to a mere verification of job seniority”, leads to “an undue analogy being found between situations that, in practice, are highly different” and thus contrasts with the principle of equality.

In addition, the Court has found a violation of the principle of reasonableness, here meaning the need for adequate protection: it is necessary to grant “due significance to the act – which is always traumatic in and of itself – of expelling the worker”, by granting proper reparation and safeguarding the dissuasive effect of the protection provided through the duty to pay compensation.

Setting the amount of compensation in advance, in an inflexible manner, based only on job seniority, also violates Articles 4 (1) and 35 (1) of the Constitution, which protect “the fairness of dismissal procedures, which are aimed at fully protecting the dignity of workers”.

Courts – in compliance with the thresholds established today by the Legislator – must determine the amount of compensation taking into account, first and foremost, job seniority, “which is the starting point for the evaluation. Adopting a corrective approach, and with duly reasoned considerations, the courts can also weigh other criteria that can be inferred from the system and that, together, tailor the compensation to the specific case at hand”. This evaluation can take into account the seriousness of the violations found, the number of persons employed, the size of the employing company, and the behaviour and conditions of the parties involved.

Finally, the Court invited the Legislator to “reshape, in a coherent manner, a legal framework of fundamental importance, which currently comprises a diversity of provisions resulting from a succession of piecemeal interventions”.

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