



Press Office of the Constitutional Court

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## DISMISSALS DUE TO ECONOMIC REASONS: REINSTATEMENT IS MANDATORY WHEN FACTS ARE CLEARLY UNFOUNDED

Whenever, by informed choice of the legislator, importance is assigned to the common prerequisite of unfounded reasons and the availability of workers reinstatement is conditioned to this prerequisite, the non-mandatory status of such a remedy for dismissals due to economic reasons only is “disharmonious and violates the principle of equality”, if reasons provided for are “manifestly” unfounded, hence involve a far more serious connotation than for other cases of dismissals.

This is stated in a passage from [Judgment no. 59](#) filed today (author Silvana Sciarra). As already mentioned in the [press release of 24 February](#), the Constitutional Court ruled that Article 18 of the Workers Statute – as amended by the so-called “Fornero Law”, named after the labour Minister of the time – is unconstitutional due to a violation of Article 3 of the Constitution. In particular, the Court banned the provision insofar as it rules that, once it has been ascertained that facts supporting the dismissal on objective grounds are clearly unfounded, the court “may also apply” rather than “also applies” the reinstatement. In particular, the principle of equality is violated if reinstatement, in the event of economic dismissals, is not mandatory – whereas it is mandatory for dismissals with good cause and justified subjective reasons – when the fact that caused them is clearly unfounded. A different treatment for economic dismissals is unjustifiable, despite the more severe classification of the non-existence of the fact, qualified by the legislator as “manifest”.

The distinguishing criterion adopted, in violation of the principle of equality, is also inherently unreasonable, thus leading to further unjustified differences in treatment.

In cases involving dismissals due to economic reasons, the law provides that reinstatement is optional, without offering any clear guiding criterion. The choice between two completely different remedies – reinstatement, albeit in a mitigated form, and mere compensation – is left to the discretion of the courts, in the absence of accurate points of reference.

Nevertheless, the discretion reserved to the courts must not “cross over into a review of congruity and opportunity”, and cannot get anywhere near employers decisions. “A review of the authenticity of entrepreneurial choices ensures that dismissal still represents a last resort, not the result of an unquestionable arbitrary decision.”

Rome, 1 April 2021