JUDGMENT NO. 150 YEAR 2020

In this case, the Court heard referral orders from two lower courts questioning the constitutionality of a legislative decree on permanent employment contracts with increasing protection over time insofar as it provided that the compensation payable for dismissals made in breach of the requirement to state reasons therefor or to adhere to certain procedures was to be based solely on the dismissed worker's length of service. In essence, the referring courts maintained that the inflexibility in quantifying the compensation infringed the principles of reasonableness and equality enshrined in Article 3 of the Constitution and the right to work protected by Articles 4 and 35 of the Constitution.

The Court ruled that the provision that automatically tied the amount of compensation to the dismissed worker's length of service was unconstitutional because although the legislator is free to decide what the appropriate remedy for dismissal is, it cannot totally ignore the specific circumstances of each case. Doing so implied the same treatment for situations that in practice were profoundly different, thus infringing the principle of equality. The inflexibility of the mechanism for calculating compensation was also held to be unreasonable in that it did not provide a remedy that struck an adequate balance between the competing interests at stake and moreover failed to properly vindicate the right to work.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 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 Ordinary Court of Bari, acting as labour court, with referral order of 18 April 2019, and by the Ordinary Court of Rome, acting as labour court, with referral order of 9 August 2019, registered respectively as Nos. 214 and 235 in the Register of Referral Orders 2019 and published in the Official Journal of the Republic, No. 49, first special series 2019, and No. 1, first special series 2020.

Having regard to the entry of appearance filed by A.P.;

after hearing Judge Rapporteur Silvana Sciarra and Counsel Gianluca Loconsole and Amos Andreoni for A. P. at the public hearing of 23 June 2020, held – in accordance with Articles 1(a) and (d) of the Decree issued by the President of the Court on 20 April 2020 – remotely further to applications in that regard received from Counsel Amos Andreoni and Gianluca Loconsole on 9 June 2020;

after hearing Judge Rapporteur Silvana Sciarra in chambers on 24 June 2020, a session held in accordance with Article 1(a) of the Decree issued by the President of the Court on 20 April 2020;

after deliberation in chambers on 24 June 2020.

[omitted]

Conclusions on points of law

1. – The Ordinary Court of Bari (Referral Order No. 214 of 2019) and the Ordinary Court of Rome (Referral Order No. 235 of 2019), both acting as labour courts, have raised, with reference to Articles 3, 4(1), 24 and 35(1) of the Constitution, questions concerning the constitutionality of Article 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), as regards the part thereof that provides, for

dismissals made in breach of the requirement to state reasons or adhere to the procedure under Article 7 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), that the employer is to be ordered to pay compensation free from social security contributions "of an amount equal to one month's remuneration, based on the last qualifying [monthly] remuneration for the purposes of calculating the end-of-service allowance, for each year of service", thus attributing exclusive importance to the criterion of length of service for the purposes of quantifying the compensation.

1.1. – The Court of Bari maintains that the "automatic device for quantifying the compensation" infringes the "principles of reasonableness and equality enshrined in Article 3 of the Constitution". It is asserted, firstly, that the said mechanism does not take account of the "varying degrees of seriousness" of procedural infringements and the various forms of damage that dismissals that are unlawful due to formal defects can cause "having regard to the conditions of the parties, the seniority of the worker and the size of the undertaking". Secondly, it is asserted that the automatic calculation mechanism does not adequately safeguard the "right to be dismissed solely at the outcome of a regular disciplinary procedure, or in any case on foot of a clear, express, specific and reasoned measure" and neither is it fit "for the purpose of deterring employers from making dismissals vitiated by formal defects".

The referring court maintains that Articles 4(1) and 35(1) of the Constitution are infringed on the assumption that "inadequate protection against unlawful dismissal on procedural grounds is just as damaging to the right to work as the similar inadequate protection, by now declared unconstitutional, against unlawful dismissal on substantive grounds".

According to the referring court, "the unreasonable method of calculating the compensation" is also contrary to Article 24 of the Constitution, which requires appropriate procedural guarantees to be provided "in order to ensure lawful and legitimate dismissal on disciplinary grounds".

1.2. – Likewise, the Court of Rome questions Article 4 of Legislative Decree No. 23 of 2015, since it establishes "a criterion for compensation automatically linked to length of service" and neglects to consider "a number of factors relating to the damage sustained".

The referring court maintains that compensation commensurate with length of service alone contrasts with the "principle of equality/reasonableness" (Article 3 of the Constitution) because it punishes "in the same way infringements not only occasioning different types of damage but also of a gravity that may, in turn, be quite different" and, in cases of modest length of service, would not "adequately deter the employer from unfairly (or in any event unlawfully) dismissing the worker" and would not guarantee "adequate compensation for the actual damage".

For the same reasons, it is asserted that compensation set in an "inflexible and fixed" manner does not respect the guarantees enshrined in Articles 4(1) and 35(1) of the Constitution either.

1.3. – The President of the Council of Ministers did not intervene in the proceedings.

2. – Because the challenged provision and the objections raised are the same in both cases, the proceedings must be joined, heard together and decided by a single judgment.

3. – The referring courts take their cue from the correct premise that the question of constitutionality of Article 4 of Legislative Decree No. 23 of 2015, declared inadmissible for lack of relevance in Judgment No. 194 of 2018, can be raised in different proceedings without being precluded on procedural grounds by this Court.

With regard to the need to apply the provision cited above, the referring courts put forward precise arguments, which makes it possible to reconstruct the actual case at hand

and to grasp the relevance of their doubts as to constitutionality.
3.1. – After ruling out the existence of substantive flaws in the dismissal, the Court of Bari found defects of an exclusively formal and procedural nature, consisting of the failure to state a charge and the failure to inform the worker of the deadline by which he could put forward his defence in relation to all of the charges.
The referring court established the defects in question in a non-final judgment and ruled that the proceedings should continue for the purposes of quantifying the compensation. In that context, of its own motion, the referring court raised the question of the constitutionality of the applicable rules, not without explaining the reasons which – if the challenges were upheld – would lead to the awarding of compensation greater than that commensurate with length of service alone (equal, in this case, to one year).
3.2. – Following a summary ruling, which it acknowledges that it could change *re melius perpensa*, the Court of Rome rejected a preliminary objection that the right to appeal against the dismissal was time-barred and held that the complaints as to the substantive defects raised by the worker were unfounded.
Although the dismissal was made for good cause, from a formal standpoint it was flawed, because the employer took no account whatsoever of the worker's defences, on the erroneous assumption that they were tardy. The referring court therefore takes the view, at the present stage of the proceedings, that it must apply the rules on formal defects in the dismissal and that it cannot resolve the dispute independently of the resolution of the question of constitutionality.
The reasoning on relevance does not appear implausible and therefore passes the admissibility test.
3.3. – Both referring courts state that they had explored the possibility of an interpretation conforming to the Constitution but considered it impractical in the light of the unambiguous wording of the challenged provision.
Also from this point of view, the question is not inadmissible since the practicability of a constitutionally oriented interpretation has been consciously ruled out by both referring courts.
4. – In order to delimit the subject of the issue submitted for examination by this Court, it should be noted that, in the explanatory brief filed in view of the hearing, the party who entered an appearance in the proceedings covered by Referral Order No. 214 of 2019 sought a declaration of ensuing unconstitutionality of Article 4 of Legislative Decree No. 23 of 2015 insofar as it caps compensation at twelve months' remuneration. Likewise for dismissal vitiated by formal or procedural defects, that party claimed that the maximum figure should be increased to the thirty-six months' remuneration that currently applies for dismissals made without good cause or in the absence of an objective or subjective justification, pursuant to Article 3 of Legislative Decree No. 23 of 2015, as amended by Article 3(1) of Decree-Law No. 87 of 12 July 2018 (Urgent provisions for the dignity of workers and undertakings), converted, with amendments, into Law No. 96 of 9 August 2018.
Framed in terms of a declaration of ensuing unconstitutionality, that party's request, reiterated also during the public hearing held remotely, in reality raises a different issue of constitutionality, concerning how formal and substantive defects are treated differently as regards the ceiling [for compensation]. Nor can the question be considered identical on the grounds – highlighted during the hearing – that the challenged provision and the cited constitutional provisions remain the same and that the matter of the adequacy of protection is still at issue.
While the Court of Bari does not challenge the different treatment that the legislator affords to formal and procedural defects in a dismissal, compared to substantive defects,

and – on this assumption – seeks an incidental ruling on constitutionality, on the other hand, the private party doubts the constitutionality of the disparity in treatment and requests this Court to equate the rules on formal defects with those on substantive defects as regards compensation.
The different perspective from which the referring court and the private party raise their doubts as to constitutionality supports the view that the challenge set out by the latter in his explanatory brief is new. Those grounds go beyond and tend to improperly broaden the issue for decision as framed in the referral order and hence, in accordance with this Court's well-settled case law (*inter alia*, Judgment No. 26 of 2020, point 4.3 of the *Conclusions on points of law*), must not be taken into account.
This Court's scrutiny is therefore limited to the issues of unconstitutionality raised by the referring courts.
5. – The questions raised by both referring courts are well founded, with reference to Articles 3, 4(1) and 35(1) of the Constitution.
6. – Firstly, it is necessary to set out the regulatory framework, in light of recent legislative developments, that the challenged provision fits into.
6.1. – Law No. 92 of 28 June 2012 (Provisions on the reform of the labour market for the purpose of promoting growth) sets out separate rules governing the consequences of formal defects in terms of applicable sanctions and differentiates the protection depending on how serious those defects are.
In amending Articles 18(1) and 18(2) of Law No. 300 of 1970, the aforementioned law treats oral dismissal separately, requiring – irrespective of the size of the workforce – that the worker be reinstated and damages be paid equal to "compensation commensurate with the last *de facto* total [monthly] remuneration accrued from the day of dismissal until that of actual reinstatement, less what was received, during the period of dismissal, for the performance of other work activities" subject to a minimum of five times the *de facto* total monthly remuneration.
In confirming that trend, Articles 2(1), last sentence, and 2(2) of Legislative Decree No. 23 of 2015 specify that, for dismissals made orally, compensation is no longer commensurate with the last *de facto* total [monthly] remuneration but with the last qualifying [monthly] remuneration for the purposes of calculating the end-of-service allowance.
Different rules apply for other formal defects and, in particular, for instances of a "dismissal declared ineffective for breach of the requirement to state reasons laid down in Article 2(2) of Law No. 604 of 15 July 1966, as amended, or of the procedure laid down in Article 7 of this Law, or of the procedure laid down in Article 7 of Law No. 604 of 15 July 1966, as amended", provided for in the case of a dismissal made on grounds of an objective justification.
In amending Article 18(6) of the Workers' Statute, Law No. 92 of 2012 (specifically Article 1(42)(b)) provided for redress in purely monetary terms, which is a residual form of protection since it applies solely when the court does not also establish that there was no justification for the dismissal.
In those cases, the court must declare the employment relationship terminated and award the worker "all-inclusive compensation ranging, depending on the seriousness of the formal or procedural infringement committed by the employer, from a minimum of six and a maximum of twelve times the last *de facto* total [monthly] remuneration, subject to stating specific reasons in that regard".
The monetary remedy provided for in the Workers' Statute is applicable, *ratione personae*, "to employers, entrepreneurs or non-entrepreneur, who in each location, establishment, branch, office or separate department where the dismissal takes place,

employ more than fifteen workers or more than five in the case of agricultural entrepreneurs, as well as to employers, entrepreneurs or non-entrepreneurs, who within the same municipality, employ more than fifteen workers and agricultural undertakings that, within the same territory, employ more than five workers, even if each production unit, considered individually, does not reach these limits, and in any case employers, entrepreneurs and non-entrepreneurs who employ more than sixty workers" (Article 18(8) of Law No. 300 of 1970).

Under Law No. 92 of 2012, an employer who does not reach the size referred to in Article 18(8) of the Workers' Statute and is therefore subject to the rules on protection by way of compensation (*tutela obbligatoria*), must pay – in the event of formal defects other than non-compliance with the obligation that the dismissal be in writing – compensation determined in accordance with the provisions of Article 8 of Law No. 604 of 1966, in an "amount ranging from a minimum of 2.5 and a maximum of 6 times the last *de facto* total [monthly] remuneration, having regard to the number of workers employed, the size of the undertaking, the length of service of the worker, the behaviour and conditions of the parties", increased in relation to length of service (Supreme Court of Cassation, Labour Division, Judgment No. 17589 of 5 September 2016).

6.2. – Article 4 of Legislative Decree No. 23 of 2015, applicable to blue-collar workers, white-collar workers or junior executives, hired on a permanent contract of employment as from 7 March 2015, largely reproduces the provisions of Article 18(6) of the Workers' Statute, as amended by Law No. 92 of 2012.

The protection afforded, also under the new regime, is residual in nature and does not apply when the court considers the grounds for dismissal to be discriminatory, null and void, communicated orally, without good cause or devoid of an objective or subjective justification.

The provision governs only the case of dismissal "made in breach of the requirement to state reasons laid down in Article 2(2) of Law No. 604 of 1966 or the procedure laid down in Article 7 of Law No. 300 of 1970".

If the above-mentioned defects are established, the court must declare the employment relationship terminated and order "the employer to pay compensation, free from social security contributions, of an amount equal to one month's remuneration, based on the last qualifying [monthly] remuneration for the purposes of calculating the end-of-service allowance, for each year of service, and in any case for an amount of not less than two and not more than twelve months' remuneration".

Article 9 of Legislative Decree No. 23 of 2015 provides that the amount of the compensation shall be halved, in the case of "small enterprises" that do not meet the size requirements of Articles 18(8) and 18(9) of the Workers' Statute.

7. – The formal requirements, the violation of which the challenged provision intended to penalise in monetary terms, perform an essential protection role, which is inspired by values of legal civilisation. In the regulatory framework governing dismissals, respect for form and procedures takes on even greater significance since it marks the stages of a long journey in the progressive implementation of constitutional principles.

The obligation to state reasons, initially subject to a specific request by the worker, has become ever more stringent following the amendments made by Article 1(37) of Law No. 92 of 2012. In fact, the employer is under a duty to give a prompt and detailed account of the justifications for resorting to the most serious sanction [of dismissal], in accordance with the principle of good faith that permeates every mandatory relationship and binds the parties to unequivocal and transparent conduct.

The obligation to state reasons, which has its corollary the fact that the grounds for dismissal cannot be changed, is an essential feature of a set of rules aimed at delimiting

the unilateral power of the employer in order to thwart any arbitrary exercise thereof.
The provisions of Article 7 of Law No. 300 of 1970, cited in the challenged provision, assign a central role to the *audi alteram partem* principle, more crucial than ever in the exercise of a private power that stretches as far as dismissal (Judgment No. 204 of 1982, point 11.1 of the *Conclusions on points of law*). Being in a position to know the disciplinary rules, communication of the charges in advance and the right of the worker to be heard are not empty formal requirements but contribute to protecting the dignity of the worker, as is also evident from the systemic placement of the rule in Title I of the Workers' Statute headed "On the freedom and dignity of workers". After that intervention by the legislator, disciplinary power, which has not been reduced or suspended at all, takes the form of a procedure: it is exercised in compliance with precise rules and through successive stages (Judgment No. 204 of 1982, point 11.1 of the *Conclusions on points of law*).
The guarantees afforded by Article 2 of Law No. 604 of 1966 and Article 7 of the Workers' Statute consist in requiring the parties to state their respective cases in order to clarify the disputed points and favour, where possible, out-of-court settlements. These guarantees are a prelude to a more effective exercise of the right of defence during the judicial phase that the worker may choose to pursue subsequently.
A violation of formal and procedural requirements, at the origin of possible and wider litigation related to the employer's termination of the employment, risks dispersal of the evidence that can be gathered in the immediacy of the facts and through a prompt adversarial procedure. It thus impacts on the efficacy of the worker's right of defence.
8. – The obligation to state reasons and the *audi alteram partem* rule can be traced back to the principle of protecting work enshrined in Articles 4 and 35 of the Constitution, which requires the legislator to make the employer's termination of employment subject to "proper guarantees" and "appropriate moderation" (Judgment No. 45 of 1965, point 4 of the *Conclusions on points of law*), as this Court recently reiterated in Judgment No. 194 of 2018 (point 9.1 of the *Conclusions on points of law*).
Likewise, the formal and procedural constraints also fall within the scope of the guarantees prescribed by the rules cited just now, read together, precisely because they are intended to broaden the scope of protection afforded to workers.
This Court has long held that failure to observe the *audi alteram partem* principle and the procedural stages laid down by Article 7 of the Workers' Statute "may affect the moral and professional sphere of the worker and create obstacles or even impediments to the new employment opportunities which the dismissed person must then necessarily find. All the more serious is the harm that occurs if the dismissed person is not able to defend himself or herself and have it ascertained that there are no 'disciplinary' grounds, moreover unilaterally raised and charged by the employer" (Judgment No. 427 of 1989). The *audi alteram partem* principle "expresses an essential value for the worker" (Judgment No. 364 of 1991, point 2 of the *Conclusions on points of law*) and the obligation to state reasons also responds to similar needs for protection. Breach of that obligation, in fact, not only entirely precludes the adversarial process from taking place but also offends the dignity of the worker, who is subjected to dismissal without having adequate knowledge of the reasons justifying it.
9. – The rules governing dismissal vitiated by formal or procedural defects, precisely because of the interests of constitutional importance mentioned above, must hinge on observance of the principles of equality and reasonableness, so as to ensure adequate protection.
While the legislator, in the exercise of its prudent discretion, can modulate the protection in eminently monetary terms by predetermining the amount due to the worker, it cannot

dispense with an assessment of the specificity of the case at hand. This assessment is far from marginal if one considers the vast range of variables that directly involve the worker as a person. In compliance with constitutional requirements, the predetermination of the compensation must tend, with reasonable approximation, to reflect that specificity and cannot deviate appreciably from it, as happens when an inflexible and uniform mechanism is adopted.

10. – The challenged provision does not strike an adequate balance between the competing interests at stake.

11. – Both referring courts take their cue from Judgment No. 194 of 2018, whereby this Court declared Article 3(1) of Legislative Decree No. 23 of 2015 to be unconstitutional insofar as it calculated the compensation for dismissal made without good cause or in the absence of an objective or subjective justification in an "amount equal to two times the last qualifying monthly salary for the purposes of calculating the end-of-service allowance for each year of service".

The challenges are largely based on the arguments set out in the above-mentioned judgment of this Court concerning the inflexibility of the compensation, which infringes the principles of equality and reasonableness (Article 3 of the Constitution) and the right to work (Articles 4 and 35 of the Constitution), protected by the Constitution in all its forms and practices.

11.1. – The reasons why this Court declared Article 3 of Legislative Decree No. 23 of 2015 to be unconstitutional must be retraced along a continuum, in order to examine the rules on the compensation payable for dismissal vitiated by formal and procedural defects.

11.2. – The case examined today is also one involving a criterion for the calculation of compensation commensurate solely with length of service and ranging between a minimum of two months' remuneration and an insuperable maximum of twelve months' remuneration.

11.3. – In addition to the significant factor of the identity of the criterion devised by the legislator in both cases, consideration is also given to the *ratio decidendi* of the Court's ruling, which serves as a guide in resolving today's doubt as to constitutionality.

In the proceedings culminating in Judgment No. 194 of 2018, the objections did not concern the limits set by the legislator but the "mechanism for calculating" the compensation, since it was "inflexible and automatic" (point 3 of the *Conclusions on points of law*). On that basis, the Court considered that the amendments introduced by Decree-Law No. 87 of 2018, as converted, were irrelevant, since they did not go beyond making corrections to the limits set by the legislator (raised from four to six months' remuneration as regards the minimum and from twenty-four to thirty-six months' remuneration as regards the maximum), without affecting the mechanism complained of by the referring court and without, thus, changing the essential terms of the questions raised.

The lack of a substantive justification for the dismissal brings the aspects that clash with the cited constitutional provisions into even sharper focus and reveals even more clearly how unreasonable the criterion adopted by the legislator is, due to the inflexibility that characterises it.

11.4. – The difference between purely formal or procedural defects and substantive defects in a dismissal cannot lead to different conclusions. In fact, that difference is reflected in the distinct manner in which the law calculates compensation, but it does not operate to transform a criterion that lends itself to criticism of intrinsic unreasonableness into a criterion that is reasonable and adequate. A system which, solely for formal defects, leaves unchanged a criterion calculating compensation based solely on length of service could only accentuate the inequalities and the fragmentation of a set of rules on dismissals

that is already peppered with multiple distinctions.
12. – Length of service, freed from any corrective criteria, is unsuited to expressing the changeable repercussions that any dismissal produces in a worker's personal and economic sphere and does not even exhibit a reasonable correlation with the wrongfulness of dismissal vitiated by formal and procedural defects, which the legislator intended to combat. Such wrongfulness cannot be tackled through the mere arithmetical calculation of length of service.
The challenged provision does not take into account other no less significant factors, already taken into account by the legislator, such as the varying seriousness of the violations committed by the employer, which is emphasised by the 2012 legislation in the field of protection by way of reinstatement (*tutela reale*) (Article 18(6) of the Workers' Statute, as amended by Law No. 92 of 2012), or the more flexible criteria of the number of workers, the size of the undertaking, and the behaviour and conditions of the parties (Article 8 of Law No. 604 of 1966), applicable in the field of protection by way of compensation, as defined by Law No. 92 of 2012.
In reducing the court's assessment to verifying length of service alone, the provision in question leads to an undue equivalence between situations that in practice are profoundly different, and thus contrasts with the principle of equality.
13. – Article 3 of the Constitution is also infringed from the point of view of reasonableness, which this Court, in the context of the law governing dismissals, views as requiring that remedies be appropriate in terms of striking an adequate balance between the various interests at stake and taking account of the special nature of the safeguards provided for by labour law (Judgment No. 194 of 2018, points 12.1 and 12.2 of the *Conclusions on points of law*).
Although the legislator can adapt the remedies against unlawful dismissals relying on various criteria, including taking account of the various historical phases, it must still safeguard their overall adequacy, attributing due significance to the act – always traumatic in and of itself – of dismissal of the worker.
Adequacy must be assessed in the light of the multiplicity of functions that characterise the compensation governed by law. In fact, in addition to repairing the damage caused by unlawful dismissal, it also serves to punish and act as a deterrent (Judgment No. 194 of 2018, point 12.3 of the *Conclusions on points of law*).
In a prudent balance between the constitutionally important interests, the need for uniformity of treatment and predictability of the costs of an act, which the legal system classifies as unlawful, one cannot disproportionately sacrifice an assessment of the specificities of the case at hand, moreover accompanied by constraints and guarantees aimed at ensuring its transparency and rational basis.
13.1. – The challenged provision clashes with those principles.
In the case of a dismissal vitiated by a formal defect, the diminishing of protection by way of reinstatement of the dismissed worker is matched by a progressive weakening of protection by way of compensation, which is not sufficient to achieve an adequate balance between the conflicting interests. In the overall framework devised by the legislator, a criterion anchored exclusively to length of service simply accentuates the marginal standing of such formal and procedural defects and further devalues the function that they serve in guaranteeing fundamental values of legal civilization, aimed at protecting the dignity of the worker as a person.
The inconsistency of a uniform and immutable measure is even more evident in cases of modest length of service, such as those examined in the main proceedings. In those cases, both the reparatory function and the deterrent effect of the protection, in the form of the obligation to pay compensation, are appreciably reduced. Nor can the inadequacy of the

compensation provided by law always be remedied by the minimum amount thereof, set at two months' remuneration.

Such a mechanism does not, therefore, make good the damage caused by the breach of the fundamental guarantees. Nor does it constitute an effective sanction capable of deterring the employer from breaching the safeguards prescribed by law. Precisely because it is structurally inadequate, the mechanism conceived by the legislator infringes the canon of reasonableness.

14. – Due to their inadequacy, the remedies provided for in the challenged provision are also detrimental to the protection of work in all its forms and practices (Articles 4(1) and 35(1) of the Constitution). These constitutional principles, previously referred to by this Court in its Judgment No. 194 of 2018 (point 13 of the *Conclusions on points of law*), must also be reaffirmed for fair dismissal procedures, aimed at fully safeguarding the dignity of the worker as a person.

15. – It is therefore necessary to declare that Article 4 of Legislative Decree No. 23 of 2015 is unconstitutional, limited to the words "of an amount equal to one month's remuneration, based on the last qualifying [monthly] remuneration for the purposes of calculating the end-of-service allowance, for each year of service".

The allegations of infringement of Article 24 of the Constitution made by the Court of Bari alone are absorbed.

16. – In compliance with the minimum and maximum limits currently set by the legislator, the courts, in determining compensation, must first and foremost take into account the length of service, which is the starting point for the assessment. Adopting a corrective approach and stating the reasons for its assessment, the court may also weigh up other criteria that can be inferred from the system and that together tailor the compensation to the case at hand.

In this regard, the assessment can take into account the seriousness of the violations, as set out in Article 18(6) of the Workers' Statute, as amended by Law No. 92 of 2012, as well as the number of workers, the size of the undertaking, and the behaviour and conditions of the parties, referred to in Article 8 of Law No. 604 of 1966, a provision applicable to formal defects in the area of protection by way of compensation redefined by Law No. 92 of 2012.

17. – It is the responsibility of the legislator, also in the light of the indications given on several occasions by this Court, to reshape, in a coherent manner, a legal framework of fundamental importance that currently comprises a patchwork of provisions stemming from piecemeal intervention.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

declares that Article 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) is unconstitutional limited to the words "of an amount equal to one month's remuneration, based on the last qualifying [monthly] remuneration for the purposes of calculating the end-of-service allowance, for each year of service".

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 24 June 2020.

Signed by: Marta CARTABIA, President

Silvana SCIARRA, Author of the Judgment