

JUDGMENT NO 8 YEAR 2023

In this case, the Court considered referral orders from the Labour Division of the Ordinary Court of Lecce and the Labour Division of the Court of Cassation challenging a provision of the Civil Code dealing with cases of undue payment of social security benefits and wages. The referring courts alleged that the provision was unconstitutional since it failed to make undue public payments unrelated to pensions unrecoverable in cases in which they were received in good faith and the issuing institution created a legitimate reliance on the part of the recipient. Under the referring courts' view, attempts to recover such payments amounted to disproportionate interference in the property rights of the recipients. The referring courts' allegations rested on the Constitution in reference to supranational law, as interpreted by the European Court of Human Rights (ECtHR).

The Constitutional Court held that the questions as to constitutionality were unfounded. The Court first identified the prerequisites that constitute legitimate expectation with regard to undue benefits payments, then turned to identify the mechanism put in place by the Italian system to protect such expectations and to determine whether it were suitable to avoid any conflict with the European Convention and the Italian Constitution. The Court found that the Italian system has a general clause that places due emphasis on the specific elements established by the ECtHR as the basis of legitimate expectation, and that there is a sufficiently protective structure in place to overcome any question as to a potential conflict with Article 117(1) of the Constitution. The existing protections were held to be sufficient to prevent disproportionate interventions, and, even where the debt was not extinguished, this does not necessarily mean that the remedy fails to meet the threshold of not-disproportionate interference. These remedies include the requirement that recovery of undue funds be allowed in instalments, time-limited, or limited to a partial recovering in view of the debtor's circumstances and, in particular, their primary life needs. In light of all this, the Court held that the provision's failure to make debts of this kind non-recoverable did not make the provision unconstitutional.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

[omitted]

The facts of the case

[omitted]

Conclusions on points of law

1.– By a referral order of 21 January 2022, registered as No 9 of the 2022 Register of Referral Orders, the Labour Division of the Ordinary Court of Lecce (*Tribunale ordinario di Lecce, sezione lavoro*) has raised questions as to the constitutionality of Article 2033 of the Civil Code, “to the extent it fails to provide for the non-recoverability of unduly paid wages unrelated to pensions (unemployment payments in this case) where the payments were received in good faith and the conduct of the institution that issued the payments created a legitimate reliance on the part of the recipient concerning their right to the received amount,” in reference to Articles 11 and 117(1) of the Constitution, the latter in relation to Article 1 of Protocol No 1 of the European Convention on Human

Rights (ECHR).

The referring court states that an employee, P. D.R., sued National Social Security Institute INPS (*Istituto Nazionale della Previdenza sociale*, INPS) for a judgment affirming the non-recoverability of payments received in the form of unemployment benefits, on grounds that the public institution created a reasonable expectation concerning their entitlement to the funds, which were intended for the purchase of food.

1.1.– According to the referring court, Article 2033 of the Civil Code applies to cases of undue social welfare payments not related to pensions, including unemployment benefits, and would mandate the rejection of the applicant’s claim.

Nevertheless, in the referring court’s view, where a natural person has legitimately relied on the expectation of a benefit issued by a public institution (unemployment payments in this case), then the institution’s demand for restitution of the funds amounts to a breach of Articles 11 and 117(1) of the Constitution, in that it violates Article 1 of Protocol No 1 ECHR, as interpreted by the ECtHR.

On these grounds, the referring court asks this Court for an additive ruling holding that Article 2033 is unconstitutional to the extent described above.

1.2.– The President of the Council of Ministers has intervened in the case, represented by State Counsel, and INPS has appeared as a party to the proceedings before the referring court. Both have objected that the questions as to constitutionality are inadmissible as well as unfounded on the merits.

2.– By a referral order of 14 December 2021, registered as No 21 of the 2022 Register of Referral Orders, the Labour Division of the Court of Cassation (*Corte di Cassazione, sezione lavoro*) has raised questions as to the constitutionality of Article 2033 of the Civil Code, “to the extent to which, in the event of undue wages paid by a public institution and of legitimate reliance on the definitive nature of the payments on the part of the receiving public employee, it allows for disproportionate interference in the individual’s property rights, in reference to Articles 11 and 117(1) of the Constitution, the latter in relation to Article 1 of Protocol No 1 ECHR.”

2.1.– The referring court states that an employee, L. P., brought suit in the Court of Florence (*Tribunale di Firenze*), asking for a judgment affirming the non-recoverability of the 49,203.03€ total sum that was paid out to her in the form of position-related compensation.

The Court of Cassation holds that INPS’s claim for restitution of funds conflicts with the holdings of the ECtHR in the *Casarin* case, which also involved an action for the recovery of unduly paid compensation. The referring Court, therefore, alleges a violation of Article 1 of Protocol No 1 ECHR, as interpreted by the ECtHR, and, as a consequence, amounts to a violation of Articles 11 and 117(1) of the Constitution.

2.2.– The President of the Council of Ministers has intervened in the case, represented by State Counsel, and the Municipality of Campi Bisenzio appears as a party to the proceedings before the referring court. Both have objected that the questions as to constitutionality were inadmissible as well as unfounded.

L.P., a party to the proceedings before the referring court, has also appeared in this case, making the same allegations of the referring court and petitioning for this Court to uphold the questions as to constitutionality.

3.– By a referral order of 25 February 2022, registered as No 29 of the 2022 Register of Referral Orders, the Labour Division of the Court of Lecce has raised questions as to the constitutionality of Article 2033 of the Civil Code, “to the extent it fails to provide, for public sector employees, the non-recoverability of undue payments where the

payments were received in good faith and the conduct of the employer authority created a legitimate reliance on the part of the recipient concerning their entitlement to the received benefit”, in reference to Articles 11 and 117(1) of the Constitution, the latter in reference to Article 1 of Protocol No 1 ECHR.

3.1.– The referring court states that an employee, M. O., sued the Tax Authority (*Agenzia delle Entrate*), in its capacity as employer, as well as the Ministry of Economy and Finance (*Ministero dell’Economia e delle Finanze*), requesting a judgment ruling that the sum of 17,492.17€ is not due to the Authority, which had claimed it on the basis of undue enjoyment of benefits granted under Law No 104/1992.

The referring court, having categorized the benefits as *sine titulo* compensation issued by a public institution, holds that, where a natural person has formed a legitimate reliance on the assumption the payments are apposite, the claim to recover the funds violates Articles 11 and 117(1) of the Constitution, due to its conflict with Article 1 of Protocol No 1 ECHR, as interpreted by the ECtHR.

For these reasons, the Court of Lecce petitions this Court to issue an additive ruling declaring that Article 2033 of the Civil Code is unconstitutional in the ways described above.

[omitted]

7.– On the merits, the questions as to constitutionality are unfounded.

8.– As a preliminary matter, it bears revisiting the case law of the ECtHR. The Court has addressed the recoverability of undue payments and compensation issued by public institutions, providing an interpretation of Article 1 of Protocol No 1 ECHR, which the referral orders in this case indicate as the interposed rule breached in violation of Article 117(1) of the Constitution.

According to this provision of the Convention, “every natural or legal person is entitled to the peaceful enjoyment of his possessions”. The ECtHR has ascribed the protection of legitimate expectations, a subjective circumstance, to the important notion of possession of one’s property, with clear boundaries to separate it from simple expectations or mere hope.

In particular, in various cases involving undue payments and compensation issued by public institutions, including the aforementioned *Casarin*, *Romeva*, *Čakarević* and *Moskal* cases, the ECtHR has laid out the prerequisites for determining that the recipient of a benefit (who must be a natural person) has a legitimate expectation, and identified the conditions under which a *condictio indebiti* becomes a disproportionate interference in such an expectation.

The ECtHR has held that the elements of legitimate expectation include the following situations: the payment was issued in response to a good-faith request by the beneficiary or on the spontaneous initiative of the issuing authority; the payment comes from a public authority and is based on a decision made pursuant to a procedure founded on a legal, regulatory, or contractual provision which the beneficiary believes to be the source of the benefit, the amount of which can also be identified; the payment is not manifestly lacking in a category-based justification or based on mere clerical error; the payment is made in relation to regular work activity, and not occasional or isolated provision of services, and for a period of time long enough to give rise to the reasonable belief that the payment is stable and definitive, and; there is no clause reserving the right to recovery.

A finding of legitimate expectation does not, for that reason alone, imply the non-recoverability of the benefit a person has received.

The ECtHR recognizes the general interest undergirding claims for recovery of undue payments and, in general, sees them as legitimate. Only rarely do they have no legal basis (Judgment of 12 October 2020, *Anželika Šimaitienė v. Lithuania*, paragraph 115).

Review by the ECtHR tends, rather, to focus on whether the interference was proportionate, evaluating whether it involved a correct balancing of the interests involved in recovery of improperly issued payments with the need of protecting the innocent expectation of their recipient.

To make this assessment, the ECtHR grants Contracting States a narrow margin of appreciation, to avoid placing an excessive individual burden on natural persons, with regard to the particular context of the individual case (Grand Chamber, Judgment of 5 September 2017, *Fábián v. Hungary*, paragraph 65, and Judgment of 10 February 2015, *Béláné Nagy v. Hungary*, paragraph 166). In particular, the circumstances that bear on the disproportionate character of interference include the specific way in which the recipient of the payment is required to repay it (in the *Čakarević* case, for example, the applicant was ordered to pay statutory interest on mistakenly issued payments, despite the fact that the authorities were responsible for the error, paragraphs 86 and 87; in *Casarin*, the rate of repayment was not suitable to the life conditions of the payer, paragraph 72). More generally, the Court has pointed to the lack of or inadequate consideration of recipients' precarious socio-economic or health status in making demands for repayment (see *Casarin*, paragraphs 72 and 73; *Romeva*, paragraph 75, *Čakarević*, paragraphs 87-89; *Moskal*, paragraphs 74 and 75). Last, the failure to attribute liability to the authority responsible for the error is undoubtedly relevant (*Casarin*, paragraph 71; *Čakarević*, paragraph 80).

In essence, the case law of the ECtHR offers an interpretation of Article 1 of Protocol No 1 ECHR which tends to penalize interference which is disproportionate with respect to the legitimate expectation created by public authorities through the payment of social security benefits, whether pensions or other forms of payments, even though they are recoverable.

9.– In light of the ECtHR interpretation of Article 1 of Protocol No 1 ECHR, the Italian system has established a set of protections which, if adhered to, overcome any potential for conflict between Article 2033 of the Civil Code and Article 117(1) of the Constitution, in relation to the aforementioned interposed ECHR rule.

In particular, with respect to the types of undue payments envisaged by the case law on the European Convention, the Italian system provides a complex structure of remedies, functioning on various levels.

10.– For some specific types of undue payments, included among those addressed by the ECtHR in its case law, but different from the ones at issue here, the domestic rules prohibit recovery of the payments *tout court*. This offers particularly strong protection, which, for the sake of thoroughness, merits further description.

10.1.– This level of protection applies, first of all, to social, pension, and insurance benefits made non-recoverable by the Italian legislator, excepting only cases in which the recipient knew they were receiving an undue payment and, therefore, acted intentionally (Article 52(2) of Law No 88 of 9 March 1989, “Restructuring the *Istituto Nazionale della Previdenza Sociale* and the *Istituto Nazionale per l’Assicurazione contro gli Infortuni sul Lavoro*”, as modified by Article 13 of Law No 412 of 30 December 1991, “Provisions on public finance”, within the implementation limits established by this Court’s Judgment No 39/1993, as well as Article 55(5) of the same Law No 88 of 1989, which extends the

rules to undue benefits paid by the National Institute of Workplace Injury Insurance (INAIL – *Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro*), in cases of workplace injuries and work-induced illness).

A similar framework also comes from a set of provisions on social security financial assistance (Article 37(8) of Law No 448 of 23 December 1998, “Public finance measures for workforce stabilization and development”, Article 3-*ter* of Decree-Law No 850 of 23 December 1976, “Provisions on benefits for deaf mutes and the legally blind”, converted, with modifications, into Law No 29 of 21 February 1977; Article 3(10) of Decree-Law No 173 of 30 May 1988, “Urgent provisions on public finance for the year 1988”, converted, with modifications, into Law No 291 of 26 July 1988), concerning which the Court of Cassation, recalling this Court’s Order No 264/2004, has acknowledged the existence of “an area-specific principle, by which regulation of the recoverability of an undue benefit is excluded from the general rules of the Civil Code” (Sixth Civil Division – Labour, Order No 13223 of 30 June 2020; see also Court of Cassation, Labour Division, Judgments Nos 28771 of 9 November 2018 and 1978 of 3 February 2004).

No proof of expectation is required by the above-mentioned cases; therefore, the expectation is (together with the constitutional relevance of the type of benefits granted, pursuant to Article 38 of the Constitution) the inspiration underlying the scheme, which takes the form of an exception, produced by an evaluation that this Court has relegated many times to legislative discretion (Judgments Nos 148/2017 and 431/1993).

10.2.– Likewise, Article 2126 of the Civil Code, which refers to the payment of wages, also falls among the specific and particularly strong protections that forbid recovery of payments made. The basis of this special regulatory scheme is consideration in cases in which a work-related service has been concretely carried out, irrespective of any proof that it was not required by law. The unusual level of protection for consideration of this kind, which is reciprocal with regard to the undue payment, justifies both a claim for compensation and, where payment has already been made, the non-recoverability of compensation. This remains true regardless of the nullity or the annulment (total or partial) of the work contract and even where the subject-matter or consideration of the contract are illegal, as long as worker protection laws have been breached.

Article 2126 of the Civil Code, therefore, safeguards against an employer’s claims for restitution, including those of the public administration (Court of Cassation, Labour Division, Orders Nos 32263 of 5 November 2021 and 21523 of 31 August 2018), but only on condition that the undue payment corresponds to a specific service which has, in fact, been carried out (Court of Cassation, Labour Division, Order No 36358 of 23 November 2021). On the contrary, the rule does not apply to services that amount to a mere increase of the position-related payment connected with a managerial role, and, therefore, does not have a reciprocal relationship to a distinct, additional, work-related service, amounting to “the transformation of the job that was originally assigned into a radically different service” from the qualitative, quantitative, and temporal points of view (Court of Cassation, Order No 36358 of 2021).

11.– Beyond the scope of the special provisions which, in the Italian system, provide that already-paid benefits are non-recoverable in the areas of compensation, social security, and social assistance payments, the general rules regulating payments of sums that are not due under Article 2033 of the Civil Code apply. These general rules provide that, if a person has “made an undue payment, they have the right to recover what they have paid. They are, moreover, entitled to any dividends and interest, calculated from

the day of payment if the recipient of the payment was in bad faith, or, if the recipient was in good faith, from the day of the request”.

The broad scope of this rule, which includes the undue payments reviewed by the ECtHR, has elicited the referring courts’ doubts as to constitutionality.

Both Referral Order No 9 and Referral Order No 21 of the 2022 Register of Referral Orders allege that Article 117(1) of the Constitution has been breached, as mentioned above, in relation to Article 1 of Protocol No 1 ECHR, as interpreted by the case law on the Convention, because the general provision on undue payments applies to social security payments not relating to pensions and to wages, which clearly cannot be ascribed to Article 2126 of the Civil Code.

Article 2033 of the Civil Code also provides, however (as is evident from its wording), that, where the recipient of an undue payment was in good faith, dividends and interests must be calculated only from the date the request for repayment was made. This eliminates one potential way that interference could be disproportionate, identified in the case law of the ECtHR (particularly in *Čakarević*, paragraph 86).

Also, and above all, the Italian system has a general clause that places due emphasis on the specific elements established by the ECtHR as the basis of legitimate expectation, and there is a sufficiently protective structure in place to overcome any question as to a potential conflict with Article 117(1) of the Constitution.

12.– The lynchpin of the regulatory scheme lies, in particular, in the clause concerning objective good faith or correctness, which, for one, uses Article 1175 of the Civil Code to shape the implementation of the obligation and, therefore, to influence the execution of the duty of repayment – considering the interests in play as well as the concrete circumstances – pursuant to Article 2033 of the Civil Code. Second, and *ab imis*, objective good faith, in Article 1337 of the Civil Code, provides the foundation for the very possibility of recognizing a legitimate expectation, such as would trigger protection, both in the form of interest which, *ex fide bona*, pursuant to Article 1175 of the Civil Code, affects the implementation of the obligation, and in the form of a subjective legal position that may merit pecuniary protection, precisely by means of the rules regulating pre-contractual offenses.

12.1.– With respect to these general elements, it is necessary, first of all, to examine the conditions which allow for identifying a legitimate expectation in the case under review.

The living law has a longstanding interpretation of Article 1337 of the Civil Code, from which it has extrapolated a possible general model for protecting legitimate expectations. The Article refers to the protection of expectations with respect to the conclusion of a contract, or with respect to the fulfilment of a contract that is neither invalid nor marred by a so-called incomplete flaw. In addition, depending on the type of conflict, the Article operates on the basis of procedures developed gradually by the courts. Over time, and in specific contexts, the case law has found the aforementioned provision, which gives weight both to the relationship between the relevant subjects and to the concrete circumstances, to contain the prerequisites that allow for finding that an expectation exists which merits protection. Examples of such prerequisites include that a lawful and proper provision was made by a public authority (see, *ex multis*, Court of Cassation, Joint Divisions, Judgments Nos 615 of 15 January 2021 and 12635 of 13 May 2019), and that the expectation refers to the precision and correctness of the information provided by the professional figures involved (see, *ex multis*, Court of Cassation, First

Civil Division, Judgment No 32026 of 9 December 2019, and Third Civil Division, Judgment No 3003 of 28 February 2012).

A close reading reveals that the cases reviewed by the ECtHR add a further type of legitimate expectation, which concerns entitlement to an undue benefit. To find this kind of expectation, the case law of the ECtHR looks to the relationship between the subjects involved and the concrete circumstances surrounding the undue payment.

It follows that the objective good faith to incorporate consolidated judicial rulings allows for finding, in Article 1337 of the Civil Code, the judicial framework that can assign relevance, at the national level, to conditions that effectively correspond to the ones identified by the ECtHR as laying the foundation for a finding of legitimate expectation in connection with one's entitlement to an issued undue benefit.

In essence, upon examination, the elements that are relevant *ex fide bona* for purposes of a finding of legitimate expectation concerning an undue benefit issued by a public entity turn out to correspond to the ones used by the ECtHR in its findings of legitimate expectation.

The ECtHR's work of specification gives weight, first of all, to the relationship between the parties, an emphasis also found in Article 1337 of the Civil Code. In particular, there is no doubt that an apparent entitlement based on the conferral of the payment (an entitlement that must, in any case, be based on a regulatory or legal provision, or on a contract) is not enough to create a legitimate expectation of an undue benefit. Rather the type of relationship between the *solvens* (payer) and the *accipiens* (payee) is of primary importance. And it is clear that, where the *accipiens* is a natural person and the *solvens* a public entity, trust concerning the former's entitlement to a benefit issued to them is high, not only on the basis of the professional competence of the issuing entity, but also because of its role in pursuing the general interest. In any case, even this is not enough for a finding of expectation since, *ex fide bona*, the concrete circumstances must always be taken into consideration. Similarly, the case law of the ECtHR holds that it is the type of benefit issued (compensatory or in the form of social security benefits) and the legal character of the benefit, as well as its continuation over time that generate the reasonable conviction that the benefit is due. At the same time, legitimate expectation always presupposes that the *accipiens* has acted in good faith, and this must, in turn, be supported by objective indicators. In making this determination, the ECtHR gives weight to the fact that the benefit was issued spontaneously or that it was requested in good faith, that payment was not made in the manifest absence of any purported entitlement or on the basis of a mere calculation error or clerical error, and the fact that no clause reserving the right to repayment was provided.

In sum, this Court must hold that the confluence of the elements drawn from ECtHR case law and the kind of criteria that objective good faith gives weight to as a basis for legitimate expectation, as relates to entitlement to an undue benefit, confirm that the interest protected by the ECHR, as interpreted by the ECtHR, may be found in the Italian system within the general framework of objective good faith.

12.2.– Having identified the prerequisites that constitute legitimate expectation with regard to undue benefits, this Court now turns to identifying the remedial mechanism put in place by the national legal system to protect this expectation, and to determining whether or not it is suitable to avoid any conflict with Article 1 of Protocol No 1 ECHR and, concomitantly, with Article 117(1) of the Constitution.

12.2.1.– Non-recoverability plays a fundamental role and is rooted in the general provision of Article 1175 of the Civil Code, which, as mentioned above (point 12),

requires both parties to the obligatory relationship to act correctly or in objective good faith. This canon of behaviour, *inter alia*, binds the creditor to make its claim in a way that gives due consideration to the sphere of interests concerning the debtor, in relation to the concrete circumstances.

This gives rise to the importance that may attach, in implementing the obligations involved in recovery of the undue payment, both to the legitimate expectation created on the part of the recipient and to the recipient's circumstances.

The first precaution required *ex fide bona* in the event of a legitimate expectation of entitlement to a benefit received by an *accipiens* is that the creditor must allow for repayment of the claimed amount in instalments, taking into consideration the financial circumstances of payers who find themselves *ex abrupto* in the position of needing to repay money they believed to have legitimately received. The claim is, therefore, non-actionable unless made in ways that the judicial authorities hold to be in keeping with objective good faith (see, *ex multis*, Council of State, Second Section, Judgment No 7889 of 10 December 2020; Opinion No 3010 of 31 December 2018; Plenary Assembly, Judgment No 11 of 26 October 1993).

The concrete circumstances and, in particular, consideration of the personal circumstances of the debtor are so important that they have also led interpreting courts to give weight to different forms of non-recoverability, such as time-limited and partial non-recoverability, of the payment. In this way, non-recoverability is used to temper the rigidity of a repayment obligation where impossibility to pay is not at work as a cause to extinguish the debt. In particular, non-recoverability does not touch the origin of the obligation, but serves as a reason to exempt the debtor where implementing the creditor's claim enters into conflict with an interest of greater value and, therefore, amounts to an abuse of law.

Non-recoverability may have a variety of consequences.

The debtor's particular personal situation may be such that repayment could have an immediate negative impact on their quality of life, to the extent that temporary non-recoverability is justified. More specifically, the balancing of relevant interests could justify temporary non-recoverability of the payment, and, consequently, the delay in payment cannot legitimize a repayment claim by the creditor.

Moreover, the personal conditions of the debtor, when they correspond to inviolable rights, could even lead a court to hold that only partial repayment is justified on a permanent basis, with near-total repayment of the amount owed due only in outlier cases. The Council of State has ruled importantly on this issue, expressly calling for "avoiding [...] recovery methods that compromise primary life needs" (Council of State, Third Section, Judgment No 57 of 30 January 1990; and, applying what is described above, Sixth Section, Judgments Nos 5315 of 27 October 2014, 6787 of 12 December 2002, and 2899 of 28 May 2001).

In essence, where an expectation has been created on the part of the *accipiens*, the objective good faith clause allows for the *quomodo* of payment of restitution of the benefit to be adjusted, first of all through instalments, bearing in mind the financial circumstances and wealth of the debtor. Furthermore, where the *accipiens* has particular personal circumstances or, potentially, where inviolable rights come into play, objective good faith may lead to a ruling of temporary non-recoverability or even only partial recoverability, depending on the seriousness of the scenario.

Where non-recoverability does not extinguish the debt, this does not necessarily mean that the remedy prevents it from meeting the threshold of non-disproportionate interference, as the ECtHR has stressed.

Indeed, the ECtHR judgments cited above identified violations of Article 1 of Protocol No 1 ECHR in cases of repayment claims which failed to give due consideration to debtors' legitimate expectations, assets, and financial and personal circumstances. This, however, does not mean that they require a general right of non-recoverability of payments.

12.2.2.– Finally, this Court definitively rejects the referring courts' suspicion that the domestic structure of remedies is an inadequate fix for disproportionate interference in cases of legitimate expectation. This Court also holds that, in the Italian system, once the characteristics of such expectation are established, in the event of infringement, potential protection in the form of compensation exists in the context of pre-contractual liability, assuming that the additional, relevant prerequisites for infringement apply.

This additional remedy also overcomes another of the ECtHR cases' grounds for objecting to the interference as disproportionate. This objection, found in the aforementioned cases *Casarin* (paragraph 71) and *Čakarević* (paragraph 86), as well as in *Lelas v. Croazia* (20 May 2010, paragraph 77), points to the failure to assign liability to the State or public entity responsible for the erroneous payment.

13.– In light of the set of remedies available within the domestic system described above, the rule that serves as the general source for objective undue payments, i.e. Article 2033 of the Civil Code, does not contain the alleged constitutional flaws, in reference to Article 117(1) of the Constitution, with respect to the interposed rules found in Article 1 of Protocol No 1 ECHR, as interpreted by the ECtHR.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

[omitted]

3) *declares* that the questions as to the constitutionality of Article 2033 of the Civil Code, raised by the Labour Division of the Ordinary Court of Lecce, with Referral Order No 9 of the 2022 Register of Referral Orders, and by the Labour Division of the Court of Cassation, with Referral Order No 21 of the 2022 Register of Referral Orders, in reference to Article 117(1) of the Constitution, in relation to Article 1 of Protocol No 1 ECHR, are unfounded.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 30 November 2022.

Signed:

Silvana SCIARRA, President

Emanuela NAVARRETTA, Judge Rapporteur