



Communications and Press Office of the Constitutional Court

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## UNLAWFUL DISMISSALS IN SMALL BUSINESSES: URGENT REFORM OF THE JOBS ACT REQUIRED TO ENSURE ADEQUATE PROTECTION

The reform of the law governing dismissals, a matter of essential importance in view of its connection with the individual rights of workers and its repercussions on the overall economic system, cannot be postponed any longer.

So states the Constitutional Court in its Judgment No 183 filed today (Vice President Silvana Sciarra, author of the judgment), a ruling that declared the Court of Rome's challenge to the compensation provided for by the so-called Jobs Act for unlawful dismissals in small businesses to be inadmissible while at the same time addressing a warning to the legislator to intervene urgently in this matter so as to ensure adequate protection.

The Court found that "compensation confined within the narrow range of a minimum of three and a maximum of six months' remuneration frustrates the need to adjust the amount to the specific circumstances of each individual case" and is not a fair remedy consistent with the requirements of adequacy and dissuasiveness laid down in the Court's Judgments Nos 194/2018 and 150/2020.

"The narrow interval between the minimum and the maximum set by law gives preeminent, if not exclusive, importance to the number of employees" but

that criterion, “in a framework dominated by the incessant evolution of technology and the transformation of production processes”, is not indicative of the actual economic strength of the employer. Moreover, it does not even offer significant elements to assess the amount of the compensation depending on the circumstances of each individual case.

That said, it is up to the legislator in the exercise of its discretion to choose the most appropriate solutions to ensure adequate protection. Hence the urgency of reform, urged by the Court.

The referring court itself envisions multiple solutions to remedy the unconstitutional aspects, alternatives that range from the reformulation of a distinctive criterion, centred on the number of employees, to the elimination of the special regime for small business and the resetting of the thresholds.

Each of the conceivable choices corresponds to “different legislative policy options”, the result of “discretionary assessments”, writes the Court. In declaring the inadmissibility of the questions raised, the Court points out that “prolonged legislative inaction would not be tolerable” and hence will directly act in relation to the contested provisions of law should the matter come before it again.

Rome, 22 July 2022