

Press Release of 14 October 2020

AN INTERIM APPLICATION IS SUFFICIENT IN ORDER TO CHALLENGE TRANSFERS AND OTHER ACTS CARRIED OUT BY AN EMPLOYER

Provided that it is filed within the time limit prescribed of 180 days, an interim application challenging a transfer or another act carried out by an employer (including dismissal) is capable of preventing the forfeiture of rights provided for under Article 6(2) of Law no. 604 of 15 July 1966, in the same manner as the launch of ordinary court action or a request for attempted conciliation or for arbitration.

This ruling was adopted by the Constitutional Court in [Judgment No. 212](#) filed today (author Giovanni Amoroso), which accepted the question of constitutionality raised by the Employment Division of the *Tribunale di Catania*.

In the case before it, an employee had filed within the applicable time limit - of 180 days as required under the contested provision (Article 6(2) of Law no. 604 of 15 July 1966) - an urgent challenge to the transfer ordered by his employer to a place of work in another region, although had not thereafter also initiated merits proceedings within the same time limit of 180 days (prescribed in order to avoid forfeiture of the right to challenge the measure).

The Constitutional Court held that it would be unreasonable to conclude that the filing of an interim challenge does not prevent the forfeiture of the right to challenge the measure adopted by the

employer. Accordingly, the judgment ruled Article 6(2) of Law no. 604/1966 (Provisions on individual dismissals) unconstitutional “insofar as it does not provide that the challenge is invalid unless, within the following one hundred and eighty days, notice launching merits proceedings is filed with the registry of the court, sitting as an employment court, or the opposing party is served with a request for attempted conciliation or for arbitration, or alternatively an interim challenge is filed pursuant to Articles 669-bis, 669-ter and 700 of the Code of Civil Procedure in advance of the launch of merits proceedings”.

Therefore, following today’s judgment by the Constitutional Court, the *Tribunale di Catania* may decide on the merits whether or not the interim challenge filed by the employee is well-founded. Such a decision would on the other hand not have been possible had the forfeiture been triggered under the terms of the provision ruled unconstitutional in its original wording.

Rome, 14 October 2020