



Angelo Zambelli

The Italian Constitutional Court declares the invalidity of the “arithmetic rule” to quantify indemnities against unlawful dismissals

In November 2018, the Italian Constitutional Court has declared the invalidity of the statutory “algorithm” which was to be adopted by the Judge when quantifying the indemnity which employees unlawfully dismissed are entitled to.

Under Italian law, remedies against unlawful dismissals vary depending on the relevant employees’ qualification (executive status employees are entitled to protections other than those which apply to middle managers, white-collars and blue-collars) and their date of hiring (remedies to which employees hired before March 7, 2015 are entitled diverge from those which apply to employees engaged as of said date) as well as the size of the employer’s business (different regulations apply to “big” companies, namely those which employ more than 15 employees within the same business unit/municipality or are staffed with overall 61 or more employees, and “small” companies, these being the ones which do not meet the above size requirements).

As far as employees not holding the qualification of executive hired by “big” companies as of March 7, 2015 are concerned, Legislative Decree no. 23/2015 - as it was in force before the Italian Constitutional Court’s case-law at issue - set forth that employees unlawfully dismissed, except for very limited cases (such as dismissals orally served, those relying on discriminatory reasons, the ones served in breach of the relevant statutory procedure, disciplinary dismissals whereby the breach by the employee is directly demonstrated not to have taken place, etc.), were entitled to the payment of an indemnity amounting to 2 months of salary per each year of service, within a minimum and a maximum cap equal to - respectively - 6 and 36 months of salary (both such caps have been recently increased pursuant to Legislative Decree no. 87/2018, converted into law by Law no. 96/2018).

According to that declared by the Italian Constitutional Court, the above statutory “algorithm” (2 months of salary per each year of service) is in breach of provisions under Italian Constitution as - by applying this - the actual amount of the indemnity:

- is quantified without taking into account the actual circumstances characterizing each dismissal, including the size of the employer’s business, the overall number of employees in force at the latter or the parties’ conditions and behaviours;
- is rather little whenever the relevant employee has accrued a short company seniority, thus being as such as to neither compensate damages actually suffered by the relevant employee due to his/her dismissal nor actually prevent the employer from serving unjustified dismissals.

As the statutory “arithmetic rule” at issue has been declared invalid by the Italian Constitutional Court, this is no longer effective: therefore, the actual amount of indemnities against unlawful dismissals is now established by the Judge within the above caps (6-36 months of salary), thus taking into account general criteria provided for by Italian law such as the relevant employee’s company seniority, the size of the employer’s business, the overall number of employees with whom the latter is staffed as well as conditions and behaviours of both the employer and the employee.

Angelo Zambelli

Partner

azambelli@grimaldilex.com

O + 39 02 30309390

F +39 02 30309340

Grimaldi Studio Legale

Corso Europa 12

Milan, Italy 20122

www.grimaldilex.com