

CONSTITUTIONAL COURT

Judgment **174/2026** (ECLI:IT:COST:2026:174)

Proceedings: **INCIDENTAL REVIEW OF CONSTITUTIONAL LEGITIMACY**

President: **AMOROSO** – Reporter: **SCIARRONE ALIBRANDI**

Chamber of Council of **6 July 2026**; Decision of **6 July 2026**;

Filed on **22 October 2026**; Publication in the Official
Gazette

Provisions challenged: Article 8 of Law No. 604 of 15 July 1966.

Headnotes:

Proceedings decided: **Order No. 39/2026**

JUDGMENT No. 174

YEAR 2026

ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

THE CONSTITUTIONAL COURT

composed of: President: Giovanni AMOROSO; Judges: Francesco VIGANÒ, Luca ANTONINI, Stefano PETITTI, Angelo BUSCEMA, Emanuela NAVARRETTA, Maria Rosaria SAN GIORGIO, Filippo PATRONI GRIFFI, Marco D'ALBERTI, Giovanni PITRUZZELLA, Antonella SCIARRONE ALIBRANDI, Massimo LUCIANI, Maria Alessandra SANDULLI, Roberto Nicola CASSINELLI, Francesco Saverio MARINI,

has delivered the following

JUDGMENT

in the proceedings concerning the constitutionality of Article 8 of Law No. 604 of 15 July 1966 (Provisions on individual dismissals), brought by the Ordinary Court of Livorno, acting as a labour court, in the proceedings between I. S. and M. L., by order of 12 February 2026, entered under No. 39 in the 2026 register of orders and published in *the Official Gazette* of the

Having heard the case in chambers on 6 July 2026, with Judge Antonella Sciarrone Alibrandi acting as rapporteur;

decided in chambers on 6 July 2026.

Findings of fact

1.- By order of 12 February 2026 (Order Register No. 39 of 2026), the Ordinary Court of Livorno, acting as a labour court, raised questions regarding the constitutionality of Article 8 of Law No. 604 of 15 July 1966 (Provisions on individual dismissals), with reference to Articles 3(1) and (2), 4(1), 35(1), 41, second paragraph, and 117, first paragraph, of the Constitution, the latter in relation to Article 24 of the European Social Charter (ESC), adopted in Turin on 18 October 1961 and revised, with an annex, in Strasbourg on 3 May 1996, ratified and brought into force by Law No. 30 of 9 February 1999.

2.- The proceedings *before the court of first instance* arise from an appeal brought by I. S. against her dismissal on 4 July 2024 by M. L., who took over (on 1 June 2022) ownership of the dental practice where the appellant had worked as a dental assistant - under a permanent, *part-time* contract - from 1 November 2003 onwards without interruption.

The referring court set out the facts of the employment relationship, explaining that I. S., in the first six months of 2024, had been the subject of three disciplinary complaints, followed by one case being dismissed and two disciplinary sanctions, which were deemed to be spurious and, in any event, contested.

This was followed by a letter of dismissal, for just cause and without notice, on the grounds of alleged failings concerning the sterilisation procedures for work equipment.

The employee had lodged an appeal against the dismissal notice - in which the employment relationship was stated to have commenced only on 1 June 2022 - seeking a ruling on 'the ineffectiveness and/or nullity and/or unlawfulness and/or illegality' of the dismissal, with an order for reinstatement and the payment of compensation 'not less than 6 months' and not more than 36 months' of her last actual total remuneration', as well as 'compensation in lieu of notice', plus interest and indexation.

The employer, in appearing in court, had contested, amongst other things, the applicability of Article 3 of Legislative Decree No. 23 of 4 March 2015 (Provisions concerning permanent employment contracts with increasing protections, implementing Law No. 10 of 10 December 2014, 183): in the employer's view, should the claimant's claim be upheld, the penalty regime set out in Article 8 of Act No. 604 of 1966 should have applied, as the employment relationship predated 7 March 2015, and any compensation should not have exceeded the minimum amount of two and a half months' worth of the last actual total remuneration.

That being said, the referring court considers the following circumstances to be undisputed between the parties: the circumstances surrounding the recruitment with effect from 1 November 2003, the absence of the necessary prior notification of the disciplinary charge, the applicant's exemplary conduct at work during the twenty years prior to 2024, the amount of the agreed monthly remuneration and the fact that the dental practice employed fewer than fifteen staff members.

3.- As regards the substance of the case, the *referring* court, citing the case-law of the Court of Cassation, considers that the dismissal at issue is not void, even if 'marred by unlawfulness

in various respects, some of them serious', such as the lack of prior formal notice of the allegations and the employer's failure to fulfil the burden 'of proving the validity of the allegations'.

However, given the impossibility of granting the claim made in the appeal for compensation of not less than six and not more than thirty-six months' salary, due to the inapplicability of Article 3 of Legislative Decree No 23 of 2015 to an employment relationship that arose prior to 7 March 2015, the referring court identifies the applicable penalty regime as that laid down by the contested provision.

Furthermore, having regard to the seriousness of the defects in the dismissal notice and the subjective circumstances of the party concerned, it considers it necessary to 'impose a dissuasive, deterrent and proportionate penalty', consisting of an order to pay a substantial sum of compensation, 'in any event certainly exceeding the very limited maximum ceiling' referred to in Article 8 of Law No 604 of 1966, according to which, in the case of an employer with fewer than fifteen employees (as in the present case), the amount of compensation due to an unlawfully dismissed worker 'must be limited to a range of between 2.5 and 6 months' wages'.

In the view of the *referring* court, such compensation would be entirely 'devoid of the necessary compensatory and deterrent character', specifically with reference to the criteria set out in the aforementioned Article 8, such as the employee's length of service, conduct and the circumstances of the parties.

This would establish the relevance of the issues raised, not least because, given the 'clear wording of the provision', an adaptive interpretation would not even be permissible.

4. - As regards the issue of non-manifest lack of foundation, the *referring* court criticises Article 8 of Law No 604 of 1966 in so far as, 'by providing for a narrow range (from 2.5 to 6 months' pay), it sets a maximum limit which is, in any event, insurmountable ("six months' pay")'.

More specifically, according to the referring court, the doubts as to constitutional legitimacy arise 'in two directions' and on multiple grounds.

5. - Firstly, the range between a minimum of two and a half months' pay and a maximum of six months' pay of the last actual total remuneration, 'together with the provision of a frankly limited upper limit', would conflict with a number of constitutional principles.

5.1. - First of all, Articles 3(1) and (2) and 41(2) of the Constitution would be infringed, 'in a manner not dissimilar' to that held by this Court in Judgment No. 118 of 2025, with reference to the provisions laid down in Article 9(1) of Legislative Decree No. 23 of 2015, applicable only in the case of recruitment after 7 March 2015.

5.1.1. - Firstly, when comparing the safeguards provided for employees of an undertaking meeting the size criteria set out in Article 18 of Law No. 300 of 20 May 1970 (Provisions on the protection of workers' freedom and dignity, trade union freedom and trade union activity in the workplace, and provisions on employment) and those provided for employees of a so-called 'below-threshold' undertaking, the contested provision would also unjustifiably differentiate, in terms of the sanction imposed, between defects of identical - or at least comparable - gravity, such as the absence of the alleged facts: for workers in large undertakings, depending on the seriousness of the defect affecting the dismissal, on the one hand there would be the possibility - excluded for employees of 'below-threshold' undertakings - of reinstatement alongside compensation, and, on the other hand, the monetary compensation could be quantified 'up to the substantial amount of twenty-four months' pay'.

5.1.2. - From a second perspective, relating solely to 'below-threshold' companies, the contested provision would not allow for a distinction to be made in the protection granted based on the seriousness of the defects that

vitiating the dismissal order, in that the 'most serious are treated as the least serious and vice versa'. Consequently, extremely different defects in the dismissal order would be unreasonably lumped together, such as, for example, a breach of the duty to state reasons and the absence of the alleged offence: regardless of the type of defect affecting the dismissal order, the remedy would always be 'confined to a very limited statutory framework (ranging from a minimum of 2.5 months' pay to 6 months' pay) with no possibility of genuine customisation in relation to the circumstances of the specific case', with the result that 'profoundly different concrete situations' would be treated 'in the same (or extremely similar) way', giving rise to a 'standardised and very limited remedy' that is unsuitable for addressing situations 'giving rise to unequal damages'.

Moreover, such a 'narrow range for determining compensation' would not allow the criteria of individualisation of compensation, nor its adequacy and fairness, to be met, nor would it guarantee 'the necessary deterrent effect that must accompany compensation', according to the principles set out in constitutional case-law (judgements No 150 of 2020 and No 194 of 2018 are cited, from which the referring court quotes at length).

The case at issue in the main proceedings would confirm these assumptions.

Taking into account the worker's remuneration, the range between the minimum and maximum compensation could vary 'from a sum of approximately 3,600 euros to a sum of approximately 8,600 euros', with the result that 'not only would the compensatory function of the compensation be extremely reduced, but its deterrent effect would also be essentially nullified'.

5.1.3. - In this way, and at the same time, freedom and human dignity would be infringed, which Article 41, second paragraph, of the Constitution protects 'even in small businesses'.

5.2. - Secondly, the provision setting a maximum limit of six months' pay would infringe Article 4, first paragraph, of the Constitution, which, whilst recognising the right to work for all citizens, simultaneously provides for the Republic's commitment to ensure the conditions necessary to make that right effective, 'by removing obstacles to stable employment, amongst which the provision of a deterrent penalty in response to unlawful dismissal measures undoubtedly stands out as a predominant factor'.

5.3. - Furthermore, according to the referring court - which, in this regard, cites constitutional case-law (from which it reproduces extensive extracts) - the contested provision would infringe Article 35, first paragraph, of the Constitution, which, by protecting work in all its forms and applications, makes 'the existence of a justifying reason underlying the termination necessary'.

5.4. - Finally, Article 117, first paragraph, of the Constitution is also alleged to have been breached, in conjunction with Article 24 of the CSE, which, particularly in cases not covered by substantive protection, requires the 'necessary adequacy of remedies for compensation' and, therefore, compensation 'that adequately compensates the worker for what they have lost as a result of the unlawful dismissal and acts as a deterrent to the employer responsible for the flawed dismissal'.

In the event of dismissal not supported by just cause, protection should always be ensured in accordance with the principles of effectiveness and reasonableness, whilst this would not appear to be guaranteed 'by the provision setting a maximum limit of six months' pay', all the more so since, in the present case, due to the failure to meet the size-related requirement laid down therein, the provision contained in the final sentence of the same Article 8 of Law No 604 of 1966 would not apply; according to that provision, the maximum amount of compensation may be increased to ten or fourteen months' pay in the event of length of service exceeding, respectively, ten or twenty years.

6. – The objections also take a second line of argument.

The referring court is aware that, according to constitutional case-law, provisions that vary over time, distinguishing the protections applicable to workers on the basis of their date of recruitment, are not constitutionally unlawful, provided that the principle of reasonableness is respected (judgment No 22 of 2024 is cited) and that a deterrent effect against unlawful dismissal is guaranteed (Judgment No. 194 of 2018 is cited again, together with Judgments Nos. 128 and 7 of 2024).

In the view of the *referring* court, the different treatment ‘accorded to long-serving and newly recruited employees’ in smaller enterprises would infringe Article 3, paragraphs 1 and 2, of the Constitution, in terms of equality and reasonableness.

In the judgments referred to, the different treatment introduced by Legislative Decree No. 23 of 2015 for individual dismissals was deemed to comply with the principle of equality, in that it was linked to the reasonable objective pursued by the legislature, namely to enhance opportunities for jobseekers to enter the labour market.

For the referring court, however, ‘the current less favourable treatment of long-serving employees compared with new recruits [...] has no rational basis’, not least because it prevents ‘the element of the “employee’s length of service” – to which the contested provision itself refers – from being taken into account. It would therefore be necessary, at the very least, to ‘bring the levels of compensation under the *pre*- and post-reform safeguards in small businesses closer together’, not least in view of the ‘the tendency for long-serving employees to face greater difficulty in finding alternative employment, with a consequent tendency for the damage to be more severe’.

7. – That being said, the referring court is not asking this Court for ‘the mere removal of the limit represented by the current ceiling of six months’ pay’, because that would otherwise confer on the court the power to ‘order compensation that is essentially unlimited’. In formulating an alternative *claim*, it considers it possible instead to refer to the framework of Article 9 of Legislative Decree No 23 of 2015, which would govern ‘a situation that is not only analogous but entirely comparable, and therefore identical’, to that governed by the contested provision, from which it would differ only in terms of the date of recruitment of the workers covered by the various safeguards.

In the view of the *referring* court, two approaches would be theoretically possible: ‘the so-called fixed reference, or the so-called ‘flexible reference’’, with regard to Article 9 of Legislative Decree No 23 of 2015, as interpreted by this Court’s Judgment No 118 of 2025, from which the referring court reproduces extensive passages of reasoning, considering the principles set out therein to be applicable also to the present case.

The referring court, however, rejects the first approach, which would lead to the replacement of the current limit of six months’ pay with the ceiling of eighteen months’ pay currently provided for in the event of unlawful dismissal of employees hired by small enterprises after 7 March 2015. This is because, with regard to employees hired before 7 March 2015 who are not employed by ‘sub-threshold’ enterprises, ‘the maximum “pure” compensation protection (i.e. completely separate from reinstatement)’ is governed by Article 18 of the Workers’ Statute, which provides for a limit of twenty-four months’ pay. The proposed replacement, on the other hand, ‘would completely undermine the protection of small businesses, which also has a constitutional basis’.

For the reasons set out above, the referring court requests that this Court issue a different substitute ruling, which refers to Article 9 of Legislative Decree No 23 of 2015 only in respect of the ‘halving’ mechanism provided for therein, to be applied, however, to the higher compensation ceiling of twenty-four months’ pay provided for in Article 18(5) of the Workers’ Statute, for the purely financial protection due to workers employed by large enterprises prior to 7

March 2015.

8.- In conclusion, the *referring* court asks this Court to declare Article 8 of Law No 604 of 1966 unconstitutional, in so far as, in defining the compensation range, it provides for ‘a maximum of 6 months’ worth of the last actual total remuneration’ rather than ‘a maximum of 12 months’ worth of the last actual total remuneration’.

9.- None of the parties to the main proceedings have appeared before the Court, nor has the Prime Minister intervened.

10. - On 7 April 2026, the Association Comma2 – Work is Dignity and the Italian General Confederation of Labour (CGIL) filed written submissions.

These submissions were admitted by a presidential decree of 29 April 2026.

Both *amici curiae* agree with the arguments underlying the order for referral, but criticise the proposed solution for the *reductio ad legitimitatem* of the contested provision.

The CGIL, in particular, advocates a substitute measure ‘in accordance with the internal provisions’ to Article 8 of Law No. 604 of 1966 itself, proposing the ‘replacement of the 6-month cap with that of 14 months, also provided for by the current provision’, which would become the general limit within which to assess the specific case in relation to the multiple criteria laid down by the contested provision.

The Comma2 Association – Work is Dignity, on the other hand, considers that, in the absence of ‘mandatory parallels’, the appropriate solution – already available within the legal system – is precisely the compensation cap provided for in Article 9(1) of Legislative Decree No. 23 of 2015, which, following Judgment No. 118 of 2025, ‘provides for compensation ranging from 3 to 18 months’ salary’.

Legal Considerations

11.- By the order referred to in the epigraph (Order No. 39 of 2026), the Court of Livorno, acting as a labour court, raises questions regarding the constitutionality of Article 8 of Law No. 604 of 1966, suggesting that it conflicts with Articles 3, paragraphs 1 and 2, 4, first paragraph, 35, first paragraph, 41, second paragraph, and 117, first paragraph, of the Constitution, the latter in relation to Article 24 of the CSE.

The provision is challenged insofar as, in regulating the consequences of unlawful dismissal—i.e. dismissal without just cause or justified grounds—it imposes on an employer—who does not meet the size criteria set out in Article 18 of the Workers’ Statute and who does not reinstate, within three days, an employee hired before 7 March 2015 – the obligation to compensate for the damage by paying ‘a maximum of 6 months’ worth of the last actual total remuneration’ rather than ‘a maximum of 12 months’ worth of the last actual total remuneration’.

12.- In the proceedings *at issue*, concerning the dismissal on disciplinary grounds of an employee of a small dental practice, there is no dispute between the parties either regarding the date of recruitment – which is undisputedly prior to 7 March 2015 – or regarding the fact that the employer employs fewer than fifteen workers.

Furthermore, in the referring court’s view, multiple defects in the dismissal have been established; whilst these do not constitute grounds for nullity, they are nonetheless characterised by elements of significant gravity, concerning, in

particular, the employer's failure to meet the burden of proof regarding the former employee's responsibility for the alleged misconduct and the failure to issue a prior written notice of the charges.

As neither full reinstatement nor the 'mitigated' reinstatement referred to in Article 18(4) of the Workers' Statute (which is admissible only where employers are 'above the threshold') can be applied, the referring court considers that the applicable compensation regime is that laid down in Article 8 of Law No 604 of 1966, the constitutional legitimacy of which, however, it questions.

13. – As regards the appropriate remedy, given the seriousness of the defects in the dismissal notice and the subjective circumstances of the party concerned, the *referring* court considers it necessary to 'impose a dissuasive, deterrent and proportionate sanction', consisting of an order to pay a substantial sum of compensation, 'in any event certainly exceeding the very limited maximum ceiling' of six months' pay. In the present case, this ceiling cannot be exceeded due to the failure to meet the employment requirement set out in the final clause of the contested provision (the total employment of more than fifteen workers) for the purposes of any increase up to fourteen months' pay.

14. – On the point of non-manifest lack of foundation, the *referring* court challenges Article 8 of Law No 604 of 1966 in so far as it not only provides for 'a narrow range (from 2.5 to 6 months' pay)', but also sets a maximum limit on the compensation payment, which is considered inadequate in light of the various parameters cited.

More specifically, in the referring court's view, the doubts as to constitutional legitimacy arise 'in two directions', taking different forms.

14.1. – Firstly, Articles 3(1) and (2) and Article 41(2) of the Constitution are allegedly infringed.

14.1.1. – In the first respect, when comparing the safeguards provided for workers depending on whether or not the employer meets the size criteria set out in Article 18 of the Workers' Statute, there would be an unjustified disparity in treatment between the two categories of employees, as those in 'below-threshold' enterprises are afforded unreasonably inferior protection against defects in the dismissal notice of identical – or at least comparable – gravity.

14.1.2. – Secondly, with regard to 'below-threshold' undertakings themselves, the contested provision would not allow protection to be differentiated according to the seriousness of the defects vitiating the dismissal decision.

This would prevent 'genuine customisation' of compensation in relation to the circumstances of the specific case, resulting in 'standardised and greatly reduced protection' that is unsuitable for addressing situations 'giving rise to unequal damages'.

Furthermore, such a 'narrow range' would not allow the criteria of adequacy and proportionality of compensation to be met, nor would it guarantee 'the necessary deterrent effect' of the compensation.

This would also infringe upon human freedom and dignity, as safeguarded by Article 41, second paragraph, of the Constitution, 'even in small businesses and not only in cases involving large employers'.

The following would also be infringed: Article 4, first paragraph, of the Constitution, which, whilst recognising the right to work for all citizens, simultaneously provides for the Republic's commitment to promote the conditions necessary to make that right effective; Article 35, first paragraph, of the Constitution, which, by protecting work in all its forms and applications, makes 'the existence of a justifying reason

justifying the termination'; Article 117, first paragraph, of the Constitution, in relation to Article 24 of the CSE, which, particularly in cases not covered by substantive protection, would require the 'necessary adequacy of remedies for compensation'.

The alleged *infringements* would be even more evident when, as in the present case, due to the failure to meet the necessary size requirement (the employment of at least fifteen employees in total), the possible increase in the compensation provided for in the final sentence of Article 8 of Law No. 604 of 1966 does not apply, even where a certain length of service is present.

14.2. - The objections also take a second line of argument, in that the different treatment 'reserved for long-serving and newly recruited staff' in smaller enterprises would be in breach of Article 3, paragraphs 1 and 2, of the Constitution, from the perspectives of equality and reasonableness.

15. - On the basis of these arguments, the referring court asks this Court to replace the current maximum amount of six months' pay, as laid down by the contested provision, with a new limit equal to twelve months' total actual remuneration. According to the *referring* court, this limit should be arrived at by applying the 'halving' mechanism, referred to in Article 9 of Legislative Decree No 23 of 2015, to the upper limit - equal to twenty-four months' pay - of the compensation range which Article 18, fifth paragraph, of the Workers' Statute, reserves for employees of 'above-threshold' employers hired before 7 March 2015.

16. - That being said, without going into detail on the legislative evolution of the protection of workers against unlawful individual dismissals - which has already been summarised on several occasions in numerous decisions of this Court (among the most recent, judgments Nos. 129, 128, 44, 22 and 7 of 2024) - to which reference may be made, we may here confine ourselves to citing judgments Nos. 13 and 12 of 2025. These rulings, in fact, recalled that, for a long time, the remedies provided by the legal system took the form of two types of protection. The first, in the case of 'above-threshold' employers (i.e. those with more than fifteen employees - five in the case of agricultural employers - employed in each production unit or, in any event, within the same municipality, or more than sixty in total), was represented by the so-called reinstatement protection (or 'actual' protection) referred to in Article 18 of the Workers' Statute, centred essentially on an order for the reinstatement of the worker to the post previously held. The second, in the case of 'below-threshold' employers, was instead, subject to specific exceptions, the so-called 'compensation protection' (also known as 'mandatory protection') referred to in Article 8 of Law No 604 of 1966 - the provision now under review - consisting of an order to re-employ the employee or, alternatively, to pay them compensation, expressly defined by the law as intended to 'compensate for the damage'.

Article 18 of the Workers' Statute was subsequently radically amended by Article 1(42) of Law No. 92 of 28 June 2012 (Provisions on labour market reform with a view to growth), which restricted reinstatement protection to the most serious cases: 'full' reinstatement in the event of a null and void or discriminatory dismissal; and 'mitigated' reinstatement in the event of a dismissal based on a 'non-existent fact'. The same reform also restructured the compensation protection, defining it to a greater or lesser extent depending on the defects in the dismissal notice.

Subsequently, Legislative Decree No. 23 of 2015 - with the aim of 'facilitating the entry of "new recruits" into the labour market, by increasing flexibility in terminating employment through the provision of predetermined monetary compensation and, thereby, mitigating the consequences of an unlawful dismissal' (judgement No. 129 of 2024) - introduced the open-ended employment contract with increasing safeguards and laid down a comprehensive framework governing the consequences of unlawful dismissals issued by employers, whether 'above the threshold' or 'below the threshold', against workers

hired on or after 7 March 2015.

Whilst confirming the tiered system of protection introduced by Law No. 92 of 2012 based on the severity of the identified breach, the 2015 legislation, however, established a framework that scales back compensation protection and further restricts reinstatement protection.

As far as is specifically relevant here, the compensation scheme for ‘new recruits’ has been redesigned in both the ‘strong’ and ‘weak’ forms (set out in Articles 3(1) and 4 of Legislative Decree No. 23 of 2015, respectively), by providing for amounts due within a minimum and maximum range.

With regard to these amounts, a ‘halving’ provision was introduced in the case of ‘below-threshold’ enterprises, for which a maximum ceiling of six months’ pay had in any event originally been provided (Article 9).

This ‘rollback of safeguards in favour of flexibility in terminating employment’ (judgement No. 12 of 2025) was subsequently mitigated, in specific respects, by a number of rulings of this Court.

In particular, the compensation protection due was affected by judgments No. 194 of 2018 and No. 150 of 2020, which, irrespective of the size of the undertaking, eliminated the automatic method of calculating compensation – originally linked solely to length of service – provided for in dismissals subject to Legislative Decree No. 23 of 2015.

Subsequently, Judgment No. 118 of 2025 – acting on the warning contained in Judgment No. 183 of 2022, which, whilst declaring the questions raised at that time to be inadmissible, had highlighted the intolerability of any further delay in legislative action – declared the constitutional illegitimacy of the aforementioned Article 9(1) of Legislative Decree No. 23 of 2015, limited to the words ‘and may not in any case exceed the limit of six months’ pay’, thereby removing, with regard to small enterprises, the cap imposed on the compensation due to workers hired after 7 March 2015.

We shall return to this latter decision later (see point 21 *below*), since it is precisely the principles set out therein that the referring court invokes to justify the intervention now sought from this Court.

17. – From *the brief overview* provided in the previous point, it is clear that two sets of legislation currently coexist within the legal system, both concerning the consequences of unlawful dismissals in undertakings that do not meet the size threshold set out in Article 18 of the Workers’ Statute.

For employees hired after 7 March 2015, the relevant provisions are set out in Article 9 of Legislative Decree No. 23 of 2015, as amended by the aforementioned judgment No. 118 of 2025.

For employees hired before that date, the regime remains that provided for in Article 8 of Law No. 604 of 1966, which is criticised here.

For these latter workers – without prejudice to the ‘full’ reinstatement protection provided for, irrespective of company size, by the first two paragraphs of Article 18 of the Workers’ Statute, as reformed in 2012, in cases of discriminatory dismissal, whether verbal or void on other grounds – the employer, as an alternative to reinstatement within three days, may choose to pay compensation set at an ‘amount ranging from a minimum of 2.5 to a maximum of 6 months’ worth of the last actual total remuneration’.

Within this range, the system established by Act No. 604 of 1966 does not provide for a gradation of financial protection in relation to the type and severity of the defect in the dismissal, but sets out criteria to guide the court in determining, in practice,

the amount of the compensation within the specified range.

In particular, again according to the aforementioned Article 8, account must be taken of ‘the number of employees, the size of the undertaking, the employee’s length of service, and the conduct and circumstances of the parties’. In addition, the second sentence of paragraph 3 of Article 30 of Law No. 183 of 4 November 2010 (Powers delegated to the Government concerning arduous work, the reorganisation of bodies, leave, sabbaticals and time off, social safety nets, employment services, employment incentives, apprenticeships, female employment, as well as measures against undeclared work and provisions relating to public sector employment and labour disputes), provides that ‘[w]hen determining the consequences to be attached to dismissal pursuant to Article 8 of Law No. 604 of 15 July 1966, as subsequently amended, the court shall also take into account the elements and parameters laid down in the aforementioned contracts [*that is to say*: collective labour agreements concluded by the trade unions with the highest level of representation, or individual employment contracts where these have been concluded with the assistance and advice provided for in the first sentence] and, in any event, shall take into account the scale and conditions of the employer’s business, the situation of the local labour market, the employee’s length of service and conditions of employment, as well as the conduct of the parties even prior to the dismissal’.

Finally, the last sentence of Article 8 under consideration provides for the possibility of increasing the maximum amount of the indemnity ‘up to 10 months’ pay for employees with more than ten years’ service and up to 14 months’ pay for employees with more than twenty years’ service, if they are employed by an employer who employs more than fifteen employees’.

This final requirement regarding the size of the workforce is to be understood as referring to employment considered as a whole (and not within the context of a single production unit), but within the limit of sixty employees, which would determine the applicability of ‘actual’ protection.

18. – The objections raised today against Article 8 of Law No. 604 of 1966 mirror those raised, in the proceedings concluded by Judgment No. 118 of 2025, against Article 9(1) of Legislative Decree No. 23 of 2015, with the addition of the objection centred on the unjustified difference in treatment ‘accorded to existing and new employees’ in smaller enterprises.

Even now, as then, it can be argued that the complaints, whilst formulated with reference to different criteria, share a common core, which allows them to be examined as a single issue, as aspects of a single matter, which can be summarised as ‘the alleged unreasonable restriction of the right to compensation – provided for in the case of unlawful dismissals by “sub-threshold” employers – which infringes the worker’s right to adequate compensation to safeguard their dignity and freedom’ (judgement No. 118 of 2025).

19. – Turning to the merits, the claim is well-founded in relation to all the parameters indicated.

20. – It is necessary, first of all, to recall that Judgment No. 194 of 2018 laid down a series of general principles regarding compensation, which must be granted – irrespective of the employer’s size – to a worker who has been unlawfully dismissed.

Such dismissal, ‘even if effective, in that it is capable of terminating the employment relationship, nevertheless constitutes an unlawful act, having been carried out in breach of the pre-existing, unamended mandatory provision according to which “the dismissal of an employee may only take place for just cause within the meaning of Article 2119 of the Civil Code or for justified grounds” (Article 1 of Law No. 604 of 1966)’.

The financial compensation to be awarded to the employee must be such as to enable the court to carry out a genuine ‘assessment of the damage suffered by the employee’, since compliance with the

principle of equality enshrined in Article 3 of the Constitution requires that situations which may well be different should not be treated in an unjustifiably uniform manner.

It is also necessary to ensure 'the adequacy of the compensation', so that it may fulfil 'its primary function of redressing and compensating for the damage suffered by the employee' and constitute a fair 'reparation for the actual harm suffered' as a result of the unlawful dismissal.

Finally, 'an adequate deterrent for the employer against unfair dismissal' must be guaranteed, because such conduct undermines 'the balance of the obligations assumed under the contract'.

The objective to be pursued, in fact, is the achievement of a balanced 'reconciliation of the interests at stake: the freedom of the enterprise to organise itself on the one hand, and the protection of the worker who has been unfairly dismissed on the other'.

21. - The principles set out above have been consistently applied in subsequent constitutional case law.

As far as the present case is specifically concerned, they have also found fertile ground in the context of unlawful dismissals of employees of small enterprises, who were recruited after 7 March 2015 and are therefore subject to the 'increasing protection' employment contract regime.

In particular, Judgment No. 118 of 2025, to which today's referral order makes constant reference, concerned Article 9(1) of Legislative Decree No. 23 of 2015.

The latter provided, in addition to 'halving' the amount of compensation awarded to employees of 'above-threshold' companies (within a minimum and maximum range, varying according to the seriousness of the defects in the dismissal notice), for a non-exceedable cap equal to six months' salary.

In view of the legislature's failure to act following the breach of the aforementioned constitutional principles, as already established by Judgment No. 183 of 2022, this Court, in the aforementioned Judgment No. 118 of 2025, declared Article 9(1) of Legislative Decree No. 23 of 2015 to be unconstitutional, limited to the words 'and may not in any case exceed the limit of six months' pay'.

In reaching this decision, it was emphasised that, whilst 'in the specific context of small organisations', the need 'for predictability and cost containment', whilst it may allow for a 'moderation' of the compensation due to the worker 'in the face of an unlawful dismissal which the legal system [...] nevertheless classifies as unlawful', certainly does not authorise its substantial reduction.

Consequently, the imposition of a cap - set at six months' salary as the basis for calculating severance pay and which cannot be exceeded even in cases of dismissal marred by the most serious forms of unlawfulness - was deemed to conflict with the constitutional principles outlined above, 'giving rise to financial compensation that is incompatible with the necessary "individualisation of the damage suffered by the employee" (judgement No. 194 of 2018)'.

22. - That being said, Article 8 of Law No. 604 of 1966 suffers from all the same constitutional defects that Judgment No. 118 of 2025 identified in the compensation cap of a similar magnitude referred to in Article 9(1) of Legislative Decree No. 23 of 2015.

A range of between 2.5 and six months' pay - akin to the essentially similar range cited as a paradigmatic example by Judgment No. 118 of 2025 ('from three to six months' pay in the case

unlawful dismissals referred to in Article 3(1)' of Legislative Decree No. 23 of 2015) – 'excessively restricts the amount of compensation', preventing a genuine assessment of the damage suffered by the worker, 'even in cases of dismissals marred by the most serious forms of unlawfulness'; and is characterised 'as a fixed-sum, standardised statutory severance payment', and as such 'unfit to reflect the specific nature of the individual case and therefore to constitute compensation for the harm suffered by the worker that is adequate to guarantee their dignity, in accordance with the principle of equality'; it proves ineffective in terms of the necessary deterrent function, aimed at dissuading the employer from repeating the offence.

Furthermore, such a narrow range renders the application of the criteria set out in Article 8 of Law No 604 of 1966 devoid of any real practical significance, for the purposes of the necessary individualisation of the remedial and compensatory response to the damage suffered by the worker who has been unfairly dismissed.

Nor can a further aspect be overlooked, as correctly highlighted by the referring court in the present case.

As a result of Judgment No. 118 of 2025, employees hired by 'below-threshold' employers after 7 March 2015 are now generally entitled to a higher level of compensation than that afforded to workers hired by 'small enterprises' prior to that date.

This applies, for example, to the case – governed by the combined provisions of Articles 3(1) and 9(1) of Legislative Decree No. 23 of 2015 – of dismissal where the conditions for justified grounds (objective or subjective) or just cause are not met, as the law now provides for the possibility of setting the compensation at between a minimum of three and a maximum of eighteen months' salary.

It is certainly true that, according to settled constitutional case-law, 'differentiated treatment applied to the same category of persons, but at different points in time, does not in itself conflict with the principle of equality, since the passage of time constitutes a valid factor in the differentiation of legal situations' (Ordinances No. 25 of 2012 and No. 224 of 2011; in the same vein, judgments Nos. 140 and 41 of 2026, No. 254 of 2014; orders No. 61 of 2010, No. 170 of 2009, No. 212 and No. 77 of 2008).

However, that same case-law has held that the legislature's discretion in defining the temporal scope of application of the provisions must always be exercised 'in accordance with the principle of reasonableness' (again, judgment No. 41 of 2026; in the same vein, judgments Nos. 129, 7 and 6 of 2024).

On the basis of these principles, in fact, this Court (judgement No. 194 of 2018) has previously held that the temporal modulation of the application of Legislative Decree No. 23 of 2015 – which at the time had marked a 'rollback of safeguards in favour of flexibility in leaving the workforce' (judgement No. 12 of 2025) – had complied with the principle of reasonableness, 'in light of the justifying reason [...] constituted by the "purpose", openly pursued by the legislature, "to strengthen opportunities for entry into the labour market for those seeking employment" (preamble to Article 1(7) of Law No. 183 of 2014)'.

With the aforementioned shift in perspective resulting from Judgment No. 118 of 2025, which has tended to strengthen the financial protection due to 'new recruits' in 'sub-threshold' enterprises, this justification has lost much of its rational basis, not least in light of the well-known – and, for this reason, precisely highlighted by the referring court – 'greater difficulty in finding alternative employment for long-serving employees, with a consequent tendency for the damage to be more severe'.

23. – Once the *breach* of the constitutional principles referred to has been established, the path to remedying it must be identified.

In this regard, ‘the *relief sought* in the order for referral may clarify the substance of the objections, but does not entail the adoption of a binding solution; this Court, in fact, ‘where it considers the issues to be well-founded, remains free to determine the ruling most appropriate for *restoring the constitutionality* of the provision challenged’ (judgments Nos. 146 and 53 of 2025 and No. 46 of 2024)’ (judgment No. 85 of 2026; in the same vein, judgments Nos. 140, 103, 66, 51 and 30 of 2026).

Now, on closer inspection, the framework proposed by the *referring* court does not, in fact, call for recourse to ‘specific points of reference [...] that already exist’ (judgement No. 236 of 2016), but rather to create a new principle by combining elements from different areas of law. Such a *claim* cannot therefore strictly be classified within the scope of the remedies derivable from the legal system, to which constitutional case-law resorts whenever it is possible to identify a suitable solution to remedy the *infringements* found, provided, however, that it is already present in the legal system.

Rather, even in the present case – as was already the case in Judgment No. 118 of 2025 – it is entirely possible to take a more limited measure, of a purely ablative nature, which is nonetheless sufficient to eliminate the established infringement.

23.1. – In this regard, it is worth noting that the final sentence of Article 8 of Law No. 604 of 1966 already provides for the possibility of increasing the maximum amount of the allowance ‘up to 10 months’ pay for employees with more than ten years’ service and up to 14 months’ pay for employees with more than twenty years’ service, if employed by an employer who employs more than fifteen employees’.

This mechanism is therefore subject to two requirements, which, moreover, must be met jointly (see, amongst recent cases, the Court of Cassation, Labour Section, Order No. 13741 of 22 May 2025): the first relates to the size of the employer’s workforce, which must employ more than fifteen (and up to sixty) employees; the second requires a length of service exceeding ten or twenty years, in order to qualify for the possible increase of up to ten or fourteen months’ pay respectively.

As the scope of application of the legislation in question – which is clearly to be regarded as ‘exhaustive’ – is limited to employees hired before 7 March 2015, the requirement of at least ten years’ service has now been met by all workers subject to the scheme in question, for whom even the twenty-year service requirement – which entitles them to claim an indemnity of up to fourteen months’ total actual remuneration (and which the claimant in the *main* proceedings, moreover, already meets) – will gradually cease to constitute an obstacle.

The real obstacle that continues to stand in the way of the court exercising its discretion within a broader scope is, therefore, the size requirement set out in the final clause of Article 8 under scrutiny.

24. – The ‘*reductio ad legitimitatem*’ of the contested provision can be achieved precisely by removing the aforementioned legislative phrase: ‘if employed by an employer who employs more than fifteen workers’.

The employment threshold provided for therein, in fact, whilst it may have helped to rationalise the system during the period when different size-based criteria laid down by Law No 604 of 1966 and by the Workers’ Statute of a few years later coexisted, with the risk of overlap, it has in truth lost much of its significance following the enactment of Law No 108 of 11 May 1990 (Regulation of Individual Dismissals). This is because

the latter introduced a significant overhaul of the entire framework governing unlawful dismissals: on the one hand, by redefining, through Article 1(1), the scope of application of the ‘actual’ protection referred to in Article 18 of the Workers’ Statute; on the other hand, through Articles 2(3) and 6(2) respectively, by amending the contested provision and, at the same time, repealing Article 11 of Law No. 604 of 1966, which, in the case of employers with fewer than thirty-five employees, excluded from the outset the application of the same ‘mandatory’ protection. This circumstance had made the aforementioned protection available even to workers employed by smaller enterprises.

However, such a generalisation of financial protection in favour of all employees of ‘sub-threshold’ enterprises would remain ineffective unless its practical effectiveness were also ensured: effectiveness which requires compliance with the criteria of individualisation of the damage caused, adequacy of the relevant compensation and the latter’s genuine deterrent effect, without permitting further distinctions based exclusively on the size of the undertaking, even if it remains ‘below the threshold’.

It therefore follows the same logic that underpins the decision already taken by Act No. 108 of 1990 to also remove the only remaining real obstacle to the implementation of the principles outlined above, thereby allowing the scope within which the judge’s discretion may operate to be broadened – in favour of all ‘long-serving employees’ in smaller enterprises.

This discretion will still be guided by the criteria laid down in Article 8 of Law No. 604 of 1966, amongst which, moreover, the ‘number of employees’ will continue to be relevant, although no longer as a barrier to access to at least the first tier of the compensation increase.

Finally, it is not inconsistent with the parameters referred to to make the maximum increase of up to fourteen months’ pay conditional upon at least twenty years’ length of service. It is true that this Court has held it to be unacceptable, in the light of the principles also invoked today by the referring court, to predetermine entirely (and rigidly) the *amount* of the compensation on the basis of the sole criterion of length of service (see again Judgment No. 194 of 2018). However, that same case-law (paragraph 11 of the *Legal Rationale*) – precisely by citing the provision under scrutiny here as an example – has by no means ruled out that length of service may be considered a reasonable parameter, not only to guide, provided it is combined with other factors, the compensation award within a pre-established range, but also ‘to further broaden the judge’s discretion’, that is, to allow for an even wider range of compensation.

25. – Article 8 of Law No 604 of 1966 must therefore be declared unconstitutional, limited to the words ‘, if employed by an employer who employs more than fifteen workers’.

FOR THESE REASONS

THE CONSTITUTIONAL COURT

declares Article 8 of Law No. 604 of 15 July 1966 (Provisions on individual dismissals) to be unconstitutional, in so far as it relates to the words ‘, if employed by an employer who employs more than fifteen workers’.

So decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 6 July 2026.

Signed:

Giovanni AMOROSO, President

Antonella SCIARRONE ALIBRANDI, Registrar Roberto

MILANA, Director of the Registry Filed with the Registry

on 22 October 2026

The Registrar Signed: Roberto

MILANA

The anonymised version is, in its text, consistent with the original

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