



## **New rules on dismissal in Italy: some issues of compliance with European principles\***

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**Abstract** - *This article looks at recent Italian reforms which have modified the safeguards against unjustified dismissal, evaluating their compliance with values transposed in the EU Charter of Fundamental Rights and in relevant international sources. The new rules can be pictured through two significant steps: first the 2012 reform that reduces the scope of reinstatement provisions in favour of compensation guarantees and secondly the 2015 reform (named “Jobs Act”) that expands the remedy of compensation in case of dismissal for economic reasons of employees hired with the so-called “increasing protection open-term contract” and reduces compensation allowances. This paper discusses some controversial issues stemming from analyzing the reforms in the light of fundamental principles of guarantees against unlawful dismissal stated both in the European and supranational framework and reaffirms the crucial role of the judicial function in balancing different values within the employer-worker relation in cases of contested dismissal.*

**Riassunto** - *Lo scritto considera le recenti riforme italiane del sistema sanzionatorio dei licenziamenti alla luce dei relativi principi contenuti nelle fonti internazionali e dell'Unione Europea. A tal stregua, vengono in esame le innovazioni introdotte dalla l. n. 92/2012 con riferimento alla tutela per il licenziamento ingiustificato e le ulteriori modifiche previste al riguardo dal decreto attuativo del Jobs Act (d. lgs. n. 23/2015) per i lavoratori assunti con il contratto a tutele crescenti. In tale prospettiva, si evidenziano problematici profili rispetto al diritto sovranazionale e la centralità del ruolo giudiziale nella dimensione multilivello di tutela dei diritti fondamentali.*

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**Keywords** – *EU Charter of Fundamental Rights (CFREU); European Social Charter (ESC); unfair dismissals; Italian reform; Article 117, par. 1 of the Italian Constitution; Licenziamento ingiustificati; Riforma italiana del mercato del lavoro (Jobs Act), Art. 117 co. 1 Cost.*

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## 1. SOME LIMITS TO THE POWER OF DISMISSAL IN EUROPEAN SECONDARY LEGISLATION.

It is well known that EU Legislative competence in the social field includes the “employee’s protection in case of termination of an employment contract” (currently, Art. 153, par. 1, lett. d, TFEU). Nevertheless, this competence has not been exercised as it is a subject, regarding which it has proved very difficult to come to an agreement among the member states even about minimal standards, especially considering that any decision should be taken unanimously.

However, some limits to the power of dismissal stem from the broad ensuing legislation by other legislative bodies, particularly due to interpretations supplied by EU Court of Justice, namely: unwillingness to transform one’s own full-time contract into a part-time one cannot be a cause of dismissal (Art. 5.2, Directive 1997/81/EC)<sup>1</sup>; the transfer of a company’s seat is not in itself a cause for dismissal by the transferor or by the transferee (currently, Art. 4.1, Directive 2001/23/EC); dismissal because of requested or exercised parental leave is not allowed (Art. 5.4, Directive 2010/18/EU)<sup>2</sup>. The aforementioned conditions, which cannot motivate dismissal, add or give specifications to the general ban on employer’s discriminations, both direct and indirect, concerning nationality (EU Regulation No. 492/2011; Directive 2014/54/EU), sex (currently, Directive 2006/54/EC), and other protected areas such as race, ethnic origin (Directive 2000/43/EC), religion, personal opinions, handicaps, age and sexual orientation (Directive 2000/78/EC)<sup>3</sup>.

These limits, set to reasons for dismissal in the context of provisions focusing on other subjects, go together with procedural requirements such as the prior information and consultation of trade unions, as established by the directive on collective redundancies (currently, Directive 1998/59) in the context of deriving legislation aiming to reconcile national provisions on the topic of trade union participation (Art. 153, par. 1, lett. e, TFEU) now broadly dealt with at a European level in the perspective of employees’ physiological participation in organization decisions<sup>4</sup>.

<sup>1</sup> The EU Court of Justice has considered national legislation in line with the framework agreement of the directive, allowing the employer to transform a contract into part-time without the employee’s consent in case of objective causes: Judgment of European Court of Justice, Case: 221/13 *Mascellani v. Ministero della Giustizia*.

<sup>2</sup> ADINOLFI, *Disciplina del licenziamento individuale e fonti europee: quali limiti ed obblighi per il legislatore nazionale?*, in *Riv. dir. internaz.*, 2015 n.4, pp. 1117-1120.

<sup>3</sup> ELLIS, WATSON, *EU anti-discrimination law*, Oxford, 2012.

<sup>4</sup> FICARI (ed.), *Società europea, diritti di informazione e partecipazione dei lavoratori*, Milano, 2006.

## 2. THE SUPRANATIONAL FRAME OF PROTECTION AGAINST UNJUSTIFIED DISMISSAL.

### 2.1. THE RIGHT TO PROTECTION AGAINST UNJUSTIFIED DISMISSAL IN THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION.

As regards European Union framework, the EU Charter of Fundamental Rights (CFREU) – first approved in Nice in 2000 and bearing since 2009, after Lisbon, the same legal value as the Treaties (Art. 6.1.1 TEU) – contains a specific provision about the basic limits to dismissal. In general, this list of fundamental rights is stated in the perspective of a greater social European integration<sup>5</sup>. Specifically, among the rights centred on the fundamental principle of “solidarity” (heading IV)<sup>6</sup>, the Charter avails the worker with the “right to protection against unjustified dismissal, in adherence to community law and to national legislation and procedure” (Art. 30). This provision, not present in the Community Charter of fundamental social rights of workers of 1989, is explicitly inspired to the more specific one included in the updated version of the European Social Charter of 1961 (ESC), a well known body of law of the Council of Europe – not of the EU – and, therefore, acting as international agreement for member states in the European Council. The ESC, which aims to be complementary, in the field of social rights, to the European Convention on Human Rights of 1950 (ECHR)<sup>7</sup>, provides for – at Article 24, included in the revised version of 1996<sup>8</sup> – the commitment to recognize “the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service” as well as “the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief” and “the right to appeal to an impartial body”.

A part from their unquestionable relevance on the ground of principles, these two provisions have characteristics that can limit their effectiveness and that remind of

<sup>5</sup> ROEDL, *The Labour Constitution*, in VON BOGDANDY, BAST (eds.), *Principles of European Constitutional Law*, München, 2010, p. 642.

<sup>6</sup> BARBERA, *La Carta di Nizza e le politiche sociali europee*, in NAPOLI (ed.), *La Carta di Nizza. I diritti fondamentali dell'Europa*, Milano, 2004, p. 41.

<sup>7</sup> LARRALDE, *Charte sociale et Convention européenne des droits de l'homme*, in AKANDJI-KOMBÉ, LECLERC (eds.), *La Charte sociale européenne*, Bruxelles, 2001, p. 105.

<sup>8</sup> VANDAMME, *Les droit protégés par la Charte sociale, contenu et portée*, in AKANDJI-KOMBÉ, LECLERC (eds.), *La Charte sociale européenne*, Bruxelles, 2001, pp. 20–21.

the complex relationship between European regulation, international treaties and national constitutions and legislations.

A general limit in the CFREU consists of the fact that its provisions are not freestanding as they apply to member states “exclusively in the application of Union Law” (Art. 51.1). This horizontal clause, which hinders the exercise of the rights protected by the Charter, unless the EU itself takes action, goes together with the specific content of Art. 30 granting protection from unjust dismissal “along the lines of community law and national legislations and procedures”. In fact, this formulation occurs also in other provisions and seems to connect operational application of Art. 30 to the ensuing enforcement by supranational or national legal order<sup>9</sup>. This leads to state that in order to take root in the European Union territory, solidarity outlined in the fundamental rights has to be filtered by Union or national law, meaning that its effectiveness is left to member states’ “legislative good will”<sup>10</sup>.

Specifically, as EU competences on dismissal have not been received, the relative national provisions, Italy included, can hardly be disputed before the EU Court of Justice as a violation of Art. 30 CFREU, nor could a national judge find illegitimacy of termination upon that violation. There could be doubts about collective dismissal as regulated by Directive 98/59 but only in the context of a competence referring to the different topic of trade unions’ participation. As a consequence, in the absence of harmonization rules, the regulation of dismissal remains mostly, if not completely, out of the field of applicability of the CFREU. Little would it be worth to highlight the self-executing character of Art. 30, whose terse content should be integrated by other international sources, mainly Art. 24 ESC<sup>11</sup>. A direct effect on national legislations is, however, precluded by Art. 51.1 in the CFREU. Moreover, at the moment and as far as dismissal is concerned, the EU Court of Justice does not show adherence towards a more flexible interpretation in the “application of Union

<sup>9</sup> MARI, *La Carta di Nizza: contenuto e principi ispiratori*, in NAPOLI (ed.), *La Carta di Nizza. I diritti fondamentali dell’Europa*, Milano, 2004, pp. 11–12; CALCATERRA, *Diritto al lavoro e diritto alla tutela contro il licenziamento ingiustificato. Carta di Nizza e Costituzione italiana a confronto*, in *Working Papers CSDLE “Massimo D’Antona”*. INT. 2008, n. 58, p. 38.

<sup>10</sup> RODIÈRE, *Actualité des solidarités sociales en droit européen*, in SUPLOT (ed.), *La solidarité. Enquête sur un principe juridique*, Paris, 2015, p. 329.

<sup>11</sup> KENNER, *Art. 30*, in PEERS, HERVEY, KENNER, WARD, *The EU Charter of Fundamental Rights. A Commentary*, Oxford, 2014, p. 825; PEDRAZZOLI, *Tutela dei lavoratori in caso di licenziamento ingiustificato*, in MASTROIANNI, POLLICINO, ALLEGREZZA, PAPPALARDO, RAZZOLINI, *Carta dei diritti fondamentali dell’Unione Europea*, Giuffrè, 2017, p. 576.

Law”, which could consider not only the transposition rules of a directive but also the coinciding areas between European and national law<sup>12</sup>.

All this, however, does not exclude the relevance of Art. 30, which raises the protection against unfair dismissal to a fundamental right in the process of European integration. Along these lines, first of all, some convergence can be traced within the EU towards standards internationally recognized by the ESC and, outside of the system of European sources, by the ILO Convention No. 158 of 1982 (Termination of Employment Convention). Secondly, in the field of negative integration, it is envisaged that foreign law can be prevailed upon by those national rules, which express that fundamental right, with significant reverberations in the field of transnational posting of workers<sup>13</sup>. Finally, national and European judges are provided with an interpretation instrument they can use in the multilevel dimension of judicial protection of fundamental rights<sup>14</sup>. However, with regard to positive integration, it is still necessary that the EU Court of Justice elaborates towards a wider concept of national implementing legislation.

## 2.2. THE ROLE OF THE EUROPEAN SOCIAL CHARTER.

As regards international framework, it should be recalled the importance of the recommendations set down by Art. 24 of ESC, as explicit international source of Art. 30 as stated by Art. 6.1.3 TEU, referring to the interpretation of the drafters’ “explanations” about the original version of the Charter, and Art. 52.7 of the same Charter, which binds national judges to give due regard to those explanations. Moreover, just as relevant are the two Charter provisions concerning the “scope of the guaranteed rights” and the “standards of protection”. As for the former, Art. 52.1 requires that possible limitations must be prescribed by law and must abide with the essential substance of the rights and to principles of proportionality. As for the latter, Art. 53 guides the interpretation of fundamental rights towards the pursuit of the

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<sup>12</sup> Judgment of European Court of Justice, Case: 117/14 Poclava v. Toledano (Taberna del Marqués); Case: 323/08 Mayor and Others v. Herencia yacente de Rafael de las Heras Dávila and Others; Case: 361/07 Polier v. Olivier Polier v. Najar EURL For the matters, in which the Court of Justice has sometimes enhanced criteria of connection with European law in order to widen the applicability of fundamental rights: BUFFA, *La nuova disciplina del licenziamento e le fonti internazionali*, in *Arg. dir. lav.*, 2015 n. 3, pp. 573–575.

<sup>13</sup> ORLANDINI, *La tutela contro il licenziamento ingiustificato nell’ordinamento dell’Unione europea*, in *Giorn. dir. lav. rel. ind.*, 2012, n. 4, pp. 644–646.

<sup>14</sup> SORRENTINO, *La tutela multilivello dei diritti*, in *Riv. it. dir. pubbl. comun.*, 2005, n. 1, p. 79.

most extensive protection among those guaranteed by member states at the different relevant systems of law, such as European, international, and constitutional.

Apart from Art. 24 of ESC, which is an essential interpretation reference, Art. 30 CFREU, despite its generic wording, does not merely forbid discriminatory or simply unmotivated dismissal, but it refers, because of its international source, to a specific set of valid reasons and to the necessity of an appropriate remedy. It is still true, however, that a cautious interpretation in the field of application set by Art. 51.1, which the EU Court of Justice still seems to prefer, does not contrast cases of national regulations inspired to the model of “employment at will”.

Hence, two features are evident: the self-standing relevance of Art. 24 of ESC, and its problematic effectiveness mainly due to its complicated enforcement. The ESC, in fact, requires signatory states to enforce protection against dismissal according to Art. 24, but possible inaction or non-compliance are not guarded by any institution even remotely similar to the ECtHR, judge of ECHR<sup>15</sup>, as those inaction or non-compliance remain in the responsibility of the European Committee for Social Rights (ECSR). This is a technical independent expert body instituted by the ESC entrusted with institutional monitoring and control tasks and operating according to two procedures: one concerns the analysis of, and feedbacks to, periodic national reports that states are obliged to keep, while the other one, that may be called judicial only in a very broad sense, implies to decide on collective complaints about the application of the ESC, forwarded by national and European trade unions or by national or international non-governmental organizations<sup>16</sup>. In this system, where the consequences of a breach do not exceed recommendation or resolutions addressed by the Committee of Ministers to the states failing to comply thereof, the procedure of collective reclaims has been accepted by a limited number of signatories. Some of them, in turn, have not yet ratified the revised version of 1996, while others, in doing so, have entered reservations precisely regarding Art. 24<sup>17</sup>.

This international conventional rule, therefore, does not stand among those useful to seek the best possible protection of the fundamental rights recognized by the CFREU, as useful rules are only the ones signed by all the EU member states (Art.

<sup>15</sup> LARRALDE, *Charte sociale et Convention européenne des droits de l'homme*, in AKANDJI-KOMBÉ, LECLERC (eds.), *La Charte sociale européenne*. Bruxelles, 2001, p. 123.

<sup>16</sup> BRILLAT, *Le système de contrôle de l'application de la Charte sociale*, in AKANDJI-KOMBÉ, LECLERC (eds.), *La Charte sociale européenne*. Bruxelles, 2001, p. 45.

<sup>17</sup> LECLERC, *Les restrictions et limitations à l'application de la Charte sociale*, in AKANDJI-KOMBÉ, LECLERC (eds.), *La Charte sociale européenne*, Bruxelles, 2001, p. 75, which highlights how this “possibilité d'un engagement “à la carte” is to be eliminated (pp. 90–91).

53 CFREU). Nor can the ESC identify the general principles, for EU law as Art. 6.3 TEU only recalls what stated in the ECHR<sup>18</sup>.

In those States that have completed the procedures for its inclusion into their own legal stipulations, the enforcement of ESC is widely conditioned by trends to exclude its provisions as self-executive and consequently, to prospect only indirect “useful effects” through complying interpretation by ordinary judges. From this perspective, a sort of precedence principle – like the one that belongs to European law – is recognized to ESC in its protection function of fundamental rights<sup>19</sup>.

Indeed, in Italy, where ESC has been ratified and executed by Act of 9 February 1999 No. 30, international agreements may be expected to act as parameters of constitutionality for national laws<sup>20</sup>. Following the rewording of 2001 of Art. 117 of the Italian Constitution, the national legislator has to abide by international agreements included in the body of law. As a consequence, internal rules, which may conflict with international law, although cannot be disabled by the common judge, can be submitted to the Constitutional Court for indirect violation of Art. 117 as the received agreement acquires, in the assessment of constitutionality, the role of interposed rule.

### 3. EU AUSTERITY POLICY STRATEGIES, LABOR LAW REFORMS AND THE DIMINISHED ROLE OF THE JUDICIAL FUNCTION IN ITALY.

In general, they have been considered incompatible with the lasting context of crisis which has put under strain a vast number of firms whose capacity to recover and compete should be supported also by adequate, to the changed context, regulation policies<sup>21</sup>. In some cases, as in Italy for example, and in the general context of fiscal rigor that has characterized the EU policy stance since many years, labor law re-

<sup>18</sup> On the complex relationship between ECHR and EUCFR: CELOTTO, *Convenzione europea dei diritti dell'uomo e/o Carta dei diritti fondamentali*, in DI BLASE (ed.), *Convenzioni sui diritti umani e corti nazionali*, Roma, 2014, p. 69.

<sup>19</sup> BONNECHÈRE, *Charte sociale et droit nationaux*, in AKANDJI-KOMBÉ, LECLERC (eds.), *La Charte sociale européenne*. Bruylant, 2001, p. 114-121.

<sup>20</sup> GUIGLIA, *La rilevanza della Carta sociale europea nell'ordinamento italiano: la prospettiva giurisprudenziale*, in *Federalismi.it*, 2013 n. 18; SERGES, *I trattati internazionali diversi dalla Convenzione europea dei diritti dell'uomo nell'ordinamento italiano*, in DI BLASE (ed.), *Convenzioni sui diritti umani e corti nazionali*, Roma, 2014, p. 187.

<sup>21</sup> ESCANDE VARNIOL, LAULOM, MAZUYER (eds.), *Quel droit social dans une Europe en crise?*, Bruxelles, 2012.

forms have been prompted by EU itself, with methods somewhat unusual and problematical for the institutional competences of the European governance and with disruptive consequences on the management of measures of social protection that were considered acquired<sup>22</sup>. This prompts to reconsider European social policy in the changed present context characterized by austerity policy strategies<sup>23</sup>.

As for Italy, however, this legislative phase occurs in a general context already characterized by critical adjustments of national labor legislation to the production transformations connected to market changes and globalization. Only recently, firstly with Act No. 92, 28 June 2012 (Art. 1, par. 42, lett. b, and par. 46) and later with the legislative decree No. 23, 4 March 2015, reforms have been widened in our country to soften protection from dismissal. This approach has been considered very controversial, especially with reference to the possible beneficial effects on the labor market. These legislative amendments are relevant and complex to assess, particularly because they are part of a wider plan allegedly aiming at goals of flexicurity that European institutions have long suggested and that the national system has proved very slow in achieving.

As for the internal scientific debate, whose background of policy choices is marked by some rhetoric of competitive growth, the relevant question is whether the level of protection granted by the new rules for unfair dismissal can be considered in line with the principles stated by supranational sources.

In 2012, the national legislator introduced a thorough revision of the regulation on dismissal with special reference to the applicable sanctions, in order to diminish reinstatement protection in favor of monetary compensation. This occurred modifying the provision that since 1970 in medium-large companies (more than 15 employees per productive unit and more than 60 in total) had granted reintegration of employees dismissed without adequate cause (Art.18, Law No. 300/1970). The present wording of the provision preserves reinstatement only in particularly significant cases, characterized by inconsistency of the facts contested against the worker or a dismissal due to business reasons, while in other cases unfair dismissal calls for compensation, which is set between a minimum of 12 and a maximum of 24 monthly wages.

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<sup>22</sup> CHIECO, “*Riforme strutturali*” del mercato del lavoro e diritti fondamentali dei lavoratori nel quadro della governance economica europea, in *Giorn. dir. lav. rel. ind.*, 2015, n. 3, p. 359 ss.; LO FARO, *Europa e diritti sociali: viaggio al termine della crisi*, in CORAZZA, ROMEI (eds.), *Diritto del lavoro in trasformazione*, Bologna, 2014, p. 215.

<sup>23</sup> TREU, *Le istituzioni del lavoro nell'Europa della crisi*, in *Giorn. dir. lav. rel. ind.*, 2013, n. 4, pp. 623–633.



Thereby medium-large companies cease to differ from the small employers hiring staff below the aforementioned limits set by the law, who are still compelled to provide for compensation in case of unjust dismissal, even though with a lower minimum limit (2,5 monthly wages) and maximum limit (6 monthly wages that can be raised to 14 by the judge) (Art. 8, Law No. 604/1966).

It must be noted that the previous provisions already granted reinstatement in case of discriminatory dismissal with no distinction between employers according to the number of employees and that rule has been preserved in both reforms of 2012 and 2015.

The same act of 2012 modified the remedy for collective dismissal prompted in violation of legal trade unions procedures, substituting reinstatement with 12 to 24 monthly wages compensation. The new national legislation, like the previous one, does not contain a remedy for the inconsistency of the cause for collective dismissal, also because this case is included in the violation of procedural requirements to inform trade unions about the causes of dismissal. The fact remains, that under the same circumstances, in case of individual dismissal, the judge may order reinstatement. Although Directive 98/59 does not mention sanctions, doubts should be raised about the due respect of the “equivalence principle”, according to which national arrangements to protect positions deriving from EU law cannot be less favorable than the national ones applicable in similar contexts. This potential contradiction could be considered by the EU Court of Justice also with a reference to the interpretation criterion set by Art. 30 CFREU along with Art. 24 ESC, or could lead to an action before the Constitutional Court for probable violation of Art. 117 par. 1 of the Constitution, provided the referring judge claims internal law cannot be compliantly interpreted on the matter<sup>24</sup>.

To give effect to the broad legislative delegation about a number of labor law matters (law n.183/2014), the Government has passed eight legislative decrees (the so-called Jobs Act), one of which has once more modified the protection against unfair dismissal of workers employed after entry into force of that decree (7 march 2015), this time regulating also the small employers (legislative decree No. 23/2015). As to unfair dismissal, monetary compensation has been made general, saving reinstatement only in case of dismissal for disciplinary reasons proved as non-existent, although this rule applies to employers above the threshold laid down by the law. There are new minimum levels of compensation for workers, much lower than be-

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<sup>24</sup> DE SIMONE, *L'effettività del diritto come obiettivo e come argomento. La giurisprudenza della Corte di Giustizia Europea, tra interventismo e self restraint*. in *Lav. e dir.*, 2014, n. 2-3, p. 513; CELENTANO, *La tutela indennitaria e reintegratoria: compatibilità costituzionale e comunitaria*, in *Riv. it. dir. lav.*, 2015, n. 3, p. 411.

fore in the case of employers above the threshold (4 monthly wages instead of 12), and below those applicable to workers employed before March 7, 2015.

However, particularly meaningful in this discussion appears the newly devised criterion named “increasing protection” introduced to determine the estimated compensation in cases of dismissals. This criterion, on the one hand establishes the principle that the amount of due compensation grows proportionately to in job seniority<sup>25</sup>, and is no longer gradable according to the special cases envisaged in previous regulation which no longer applies to newly employed staff. On the other hand, it provides for fixed maximum limits, beyond which the job seniority is not considered. As a consequence, the judge is allowed no discretion in establishing the dimension of the economic sanction, which is meant to be insusceptible to variations and always set low for workers with short in job seniority.

The new (current) levels of compensation for unjust dismissal appear therefore rigidly fixed and, even when compared to the ones firstly introduced by Law No. 604/66 and considered modest, have shrunk to ridiculous amounts in the case of small employers. Hence, reasonable doubts could be raised as to whether this sort of protection may be still considered an “equivalent” compensation for the unjust prejudice suffered by the worker<sup>26</sup>. Under this profile, the Italian situation differs from other compensatory models existing in other European legislations that recognize, or at least do not exclude, a thorough reparation for unjust dismissal<sup>27</sup>. Additionally, it does not seem to match the standards of adequate and effective compensation set by Art. 30 of CFREU and Art. 24 of ESC. Those standards not only are often recalled by the ECSR<sup>28</sup>, but constitute parameters established by EU Court of Justice in order to assess whether national remedies for breaching of rights granted by EU law are compliant with EU law<sup>29</sup>.

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<sup>25</sup> According to the dimensional threshold in which the employer is, in case of unjust dismissal the measure establishes one or two monthly wages for every year of service.

<sup>26</sup> PERULLI, *La disciplina del licenziamento individuale nel contratto a tutele crescenti: profili critici*, in *Riv. it. dir. lav.*, 2015, n. 4, pp. 415–416.

<sup>27</sup> CRUZ VILLALÓN (ed.), *La regulación del despido en Europa. Régimen formal y efectividad práctica*, Valencia, 2012; PEDRAZZOLI (ed.), *Le discipline dei licenziamenti in Europa*, Milano, 2014.

<sup>28</sup> The ECSR in its evaluations of national cases has consistently pronounced against fixed limits to compensation, recalling the principle that it should be such as to deter the employer from unlawful behavior and proportionate to the damage occurred to the worker. Digest of the case law of the European Committee of Social Rights, September 2008, <http://www.coe.int/it/web/turin-european-social-charter/case-law>.

In this respect, the wording of the new national Italian law excludes any possibility of compliant interpretation by a national judge. Then again, any attempt to affect national law referring to Art. 30 of the CFREU is doomed to failure as long as a biased reading of Art. 51 prevails at the EU Court of Justice. It seems, however, possible to carry on an attempt based on Art. 24 ESC, suggesting that internal legislation may be in contrast with it and that, as a consequence, according to the standards constitutionality fixed by implemented international law as interposed law, national legislation should be considered unlawful because of incompliance with Art. 117, par. 1 of the Constitution.

#### 4. CONCLUSIONS.

This paper argues that, despite the overall EU austerity policy stance of the most recent years, it is still vital to analyze labour law reforms in the light of acquired legal principles of the European solidarity social model and more specifically, in the case of recent reforms in Italy, restates the critical relevance of research about the compliance of these reforms with still valid supranational sources.

The evolution of supranational sources has long converged in recognizing legal safeguards against unjust dismissal as a workers' fundamental right protected by effective, adequate and deterring sanctions. However, there are strict application limitations within national systems, stemming both from difficulties in balancing different sets of rules, and because of an increasing tolerant attitude towards social rights' compression in favor of economic companies' performance. In this complex context, it is important to consider the key role that referring to standard safeguards can play in the judicial function according to a perspective which emphasizes the multilevel legal sources potential in ensuring satisfactory protection of fundamental rights.

This last perspective indeed implies a “strong” configuration of social rights, serviceable at their real effectiveness, which should be grounded both upon the sensibility for “integrated protections” taking into account internal and supranational laws, and on the necessary balance with other regulations and fundamental principles already present in the national legislation. Both sensibility and balance are more than ever necessary in a time when regulation contradictions and widespread self-interests are undermining solidarity<sup>30</sup>. It is, therefore, more than crucial to use them as

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<sup>29</sup> See, for instance, Judgment of European Court of Justice, Case: 383/92 Commission v. United Kingdom; Case: 50/13 Papalia v. Comune di Aosta (par. 20).

<sup>30</sup> On the trend towards “la déconstruction des solidarités”, see SUPIOT, *Introduction*, in SUPIOT (ed.), *La solidarité. Enquête sur un principe juridique*, Paris, 2015, pp. 19–24.

a reference in order to preserve those principles of solidarity as founding values of the European social model and citizenship.

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