

# ECJ on paid leave in case of unlawful dismissal and reinstatement: Italian viewpoint

05 August 2020 | Contributed by [Stanchi Studio Legale](#)

On 25 June 2020 the European Court of Justice (ECJ) ruled on a dismissed employee's right to receive indemnity for untaken holiday accrued during the period between their dismissal and court-ordered reinstatement (Bulgarian and Italian joined cases C-762/18 and C-37/19).

The question submitted to the ECJ by the Haskovo District Court and the Italian Supreme Court was whether Article 7 of EU Directive 2003/88/EC and Article 32 of the Charter of Fundamental Rights of the European Union preclude national legislation, case law or national practices which do not grant an employee who has been unlawfully dismissed and reinstated by judicial order the right to be indemnified for untaken holiday accrued between the date of dismissal and the date of reinstatement.

With respect to the Italian context, the prevailing case law confirmed by the Supreme Court excluded the dismissed employee's right to accrue holiday after his dismissal until the enforcement of the judicial order of reinstatement.

Moreover, the Supreme Court (Decisions 5624/2000, 13953/2000, 18707/2008 and 1360/2018) maintained that the dismissal, even if unlawful, excluded the employee's need to rest, with which the right to holiday is connected.

The ECJ took the opposite view and confirmed the employee's right to indemnity for the untaken holiday on the following grounds:

- The employee, who had been denied the opportunity to work during the period of dismissal by reason of an unlawful act of his employer, should not lose his right to holiday since had he not been dismissed, he would have worked during the period up until his reinstatement (this view was shared by the advocate general).
- Even according to Italian Supreme Court case law, a judicial decision ordering the reinstatement of an employee has the effect of restoring the relationship as if it had never been terminated.

Given these grounds, the ECJ stated that the right to accrue holiday or receive indemnity for holiday accrued but not enjoyed cannot be excluded even in the period between an employee's unlawful dismissal and their effective reinstatement unless the employee found other employment during said period.

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