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Collective redundancy of managers and ban of dismissals due to covid-19 pandemic

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The residual ban on individual and collective redundancies for economic and organisational reasons brought in by the covid-19 emergency laws will end on 31 December 2021.

Apart from isolated rulings, Italian labour courts have largely interpreted these provisions such that top-level executives have been excluded from the ban against individual economic dismissals, but included in the ban against collective dismissals (ie, where there are at least five dismissals within a 120-day period).

The Court of Milan issued two diverging decisions in cases dated 2 July 2021 and 17 July 2021, both of which concerned a collective dismissal of executives that had taken place during the period in which such dismissals were prohibited.

Both of the Court's decisions stemmed from the assumption that the verification of the requirements to activate the collective dismissal procedure should be conducted when the dismissal decision is made and not after employment has been terminated, regardless of any subsequent events (eg, the transformation of the dismissal into a mutual termination by agreement of the parties).

In the first case (2 July 2021), the Court held that a violation of the ban on dismissals nullified the dismissal in question, as it was in breach of the covid-19 emergency laws and, therefore, the employee could be reinstated under article 18(1) of Law 300/1970 (the Workers' Statute).

In the second case (17 July 2021), the Court deemed that a literal interpretation of the covid-19 emergency laws that provided for the dismissal ban was unreasonable where such an interpretation would prohibit the collective dismissal of executives, but allow for individual dismissals of executives.

Based on this decision, the decisive argument for interpreting this law lies in an employer's access to salary integration funds (which is not provided in case of executive's relationships). The outcome of this reasoning is that the violation of the emergency laws on the ban of the collective dismissal of executives does not nullify the dismissal, but only proves its unlawfulness in the event that the consultation with the union, which is provided by law, has not been activated. Therefore, the dismissed executive in the second case was entitled to the indemnity provided by the law, which was 24 months' salary (the highest amount provided by law), as the dismissal procedure was not effectuated.

The ban on redundancies continues to be one of the most debated legal issues that emerged during the covid-19 pandemic. Therefore, the need to resort to redundancies during this period requires careful analysis and assessment.

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