EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

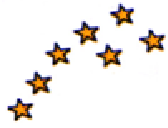
24 May 2018

Case Document No. 1

Sindacato autonomo Pensionati Or.S.A. v. Italy
Complaint No. 167/2018

COMPLAINT

Registered at the Secretariat on 11 May 2018



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Object: Collective Complaint by S.A.Pens. Or.S.A. concerning a violation of Article 12 of the Charter by the Italian State in relation to the provisions contained in Article 1 of Decree-Law no. 65 of 2015 and Article 1(483)(e) of Law no. 147 of 2013

By this complaint, the trade union Sa.Pens. Or.S.A. , with registered office in Rome at Via Magenta 13, represented by its General Secretary Mr Daniele Gorfer, objects – pursuant to the 1995 Additional Protocol to the European Social Charter – to the violation and inadequate application of Article 12 of the Charter by the Italian State in relation to the provisions contained in Article 1 of Decree-Law no. 65 of 2015 and Article 1(483)(e) of Law no. 147 of 2013, which introduce unjustified regressive measures in the area of social security, and asks that it be allowed to use the Italian language – in addition to English –in these proceedings.

Admissibility

The undersigned trade union is a representative association of pensioners based in Rome within Confederazione Or.S.A., has more than 15,000 members including 3,302 pensioners, and

carries out intense trade union activity in order to protect the interests of workers and pensioners.

It is based on the principles of internal democracy and pluralism and is structured into 30 provincial units and 16 regional units, with the result that it is widely disseminated throughout the whole of Italy.

The Confederation concerned is a signatory to National Collective Labour Agreements and national protocols within strategic sectors such as public and rail transport.

The complaint is filed by Mr Daniele Gorfer, who was elected Secretary General on 10 November 2017 at the Congress held in Montesilvano (PE), who is therefore fully entitled to lodge it.

The complaint is directed against the Italian Republic which – exercising its legislative powers – enacted Article 1 of Decree-Law no. 65/2015 and Article 1(483)(e) of Law no. 147/2013.

That legislation restricted – going even so far as to abolish – the automatic annual adjustment of pensions in line with the cost of living, imposing mechanisms that have *de facto* resulted in a definitive reduction in pensions, also as a result of the so-called "carry-over effect".

In order have a better understanding of the matter, it is necessary to set out the context in which the legislation to which this complaint relates was enacted.

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By Article 24(25) of Decree-Law no. 201 of 6 December 2011, as co-ordinated with the conversion Law no. 214 of 22 December 2011 (known as the "Save Italy Measure"), the Italian Republic suspended the automatic annual adjustment of pensions in line with the cost of living for two years in relation to most pensions.

That provision in fact stipulated that: "*In consideration of the prevailing financial situation, the <u>automatic increase in pension payments</u> in accordance with the mechanism laid down by Article 34(1) of Law no. 448 of 23 December 1998 shall occur <u>for the years 2012 and 2013</u> exclusively in relation to pensions having an overall value <u>of up to three times the INPS [National Institute for Social Security] minimum pension</u>, in the full amount of that increase. The increase in line with the cost of living shall also be applied for pensions higher than*

three times the INPS minimum pension, as well as those lower than that amount duly raised by the automatic increase as specified in this paragraph, up to the amount of the aforementioned increased limit. Article 18(3) of Decree-Law no. 98 of 6 July 2011, converted with amendments into Law no. 111 of 15 July 2011, as amended and supplemented, is hereby repealed".

The Italian legislature had introduced similar measures on various occasions in the past, which were however less far-reaching, broad and lasting compared to that at issue in these proceedings; the constitutionality of these provisions was questioned due to the suspected violation of Articles 3, 36 and 38 of the Constitution.

In particular, the Constitutional Court was requested to rule on the constitutionality of Article 59(13) of Law no. 449 of 1997 and Article 1(19) of Law no. 247 of 2007.

The first of these Articles provided as follows: "*Pensions greater than five times the INPS minimum pension payable out of general mandatory invalidity, old-age and survivors' insurance or out of forms of insurance that replace or preclude it shall not be automatically increased in line with the cost of living for the year 1998. The automatic annual increase for the year 1998 for pensions higher than five times the aforementioned minimum pension, as well as those lower than that amount duly raised by the automatic increase, shall in any case be allocated up to the amount of the aforementioned increased limit. With effect from 1 January 1999 and for a period of three years thereafter, the automatic annual adjustment of pensions in line with the cost of living:*

a) shall be applied in the amount of 30% to retirement pensions falling between five and eight times the INPS minimum pension;

b) shall not be applied in respect of pensions whose amount is greater than eight times the aforementioned minimum pension"

On the other hand, Article 1(19) of Law no. 247 of 2007 provided that: "*For the year 2008, pensions higher than eight times the INPS minimum pension shall not be automatically increased in accordance with the mechanism laid down by Article 34(1) of Law no. 448 of 23 December 1998. The automatic annual increase for the year 2008 for pensions higher than eight times the aforementioned minimum pension, as well as those lower than that amount duly raised by the automatic increase, shall in any case be allocated up to the amount of the aforementioned increased limit*".

The rulings issued by the Court concerning the constitutionality of the above-mentioned provisions (order no. 256 of 2001 and judgment no. 316 of 2010) set out the parameters of the position adopted by the Italian Constitutional Court.

An exhaustive discussion of the constitutional case law on the automatic annual adjustment of pensions in line with the cost of living is offered in judgment no. 12055 of 2003 of the Court of Cassation. In this case, ruling on a dispute concerning, *inter alia*, also the potential unconstitutionality of the valuation criterion used in the system for the automatic annual adjustment of pensions in line with the cost of living and the mechanism for increases according to bands, the court held that: "*the Constitutional Court has held (**judgment no. 173 of 1986**) that 'the requirement of proportionality and adequacy must not only be met at the time of retirement but must also be ensured at all times thereafter, having regard to any change in the purchasing power of money'. And subsequently, in **judgment no. 501 of 1988**, it reiterated that, according to the principle laid down by Article 36 of the Constitution, 'pensions must constantly be adjusted in line with remuneration from gainful activity'*".

The Court of Cassation also asserted that "*in the event that a merely partial automatic annual adjustment of pensions in line with the cost of living were to be protracted over time, this would inevitably cause the pension to fall below the threshold of adequacy*".

Regarding this issue, by **judgment no. 42 of 93** the Constitutional Court held that pensions could not be "crystallised" (i.e. frozen for an extended period of time). Moreover, it foreshadowed in particular – in the event that pay were to increase differently from pensions at a rate that was not "reasonable aligned" – **the possible emergence of a question concerning the constitutionality of** the "*failure to put in place any mechanism for establishing linkage between pay increases for public sector workers and the calculation of pensions*" (on account of a violation of the principle of adequacy).

There must therefore be "***a reasonable alignment (thereby preventing the emergence of any intolerable imbalance) between pension increases and pay increases***" (**judgment no. 226 of 1993**); in other words there is "*a need for linkage between pay increases and pension increases not in the sense of a constant or periodic alignment of pensions with pay, but in the sense that the occurrence of such an outcome (an unreasonable imbalance rather than reasonable alignment) suggests – in the absence of any substantial change in the nature of work - that the specific mechanism chosen is not appropriate to ensure that pensions are at all times sufficient in order to 'guarantee that the worker and his or her family receive resources that*

are appropriate for the necessities of life in order to ensure a free and dignified existence"' (again judgment no. 226 of 1993).

By another order (**no. 241 of 2002**), the Constitutional Court acknowledged the discretion available to the legislature in choosing the mechanisms for the automatic annual adjustment of pensions in line with the cost of living, whilst subjecting it to the limit that ***"THE ADEQUACY OF THE RESOURCES INTENDED TO ENSURE A FREE AND DIGNIFIED EXISTENCE TO WORKERS MUST BE GUARANTEED"***.

Judgment no. 316 of 2010 is part of the same line of case law referred to above. This case concerned the constitutionality of Article 1(19) of Law no. 247/2007 with reference to Articles 38(2), 36 and 3 of the Constitution.

The Constitutional Court asserted once again the constitutional status of the principle that *"PENSIONS MUST BE ADEQUATE AND PROPORTIONAL"*. It also clarified that *"the permanent suspension of the adjustment in line with the cost of living, or THE FREQUENT REPETITION OF MEASURES INTENDED TO FREEZE IT, would expose the system to evident tensions with the inderogable principles of reasonableness and proportionality (on which, in relation to old-age pensions, see judgments no. 372 of 1998 and no. 349 of 1985), insofar as pensions, even those of a higher amount, could be insufficiently protected in view of changes in the purchasing power of money"*.

In point of fact, the Constitutional Court had already held as follows in judgment no. 30 of 13-23 January 2004: "*The percentage variation with reference to which automatic annual pension increases in line with the cost of living are to be calculated is stipulated annually by decree of the Minister for the Economy and Finance, acting in concert with the Minister of Employment. Whilst this change in the law is clearly intended to safeguard purchasing power over time and to ensure that pensions are adequate solely according to the mechanism involving the automatic annual adjustment of pensions in line with the cost of living, it is essentially also consistent both with the prevailing contributory nature of the pension system following the reform introduced by Law no. 335 of 8 August 1995 (Reform of the mandatory and complementary pension system) and with the far-reaching reform of public sector employment, and in particular the regime applicable to public sector directors, the ancillary part of whose remuneration is related to the powers vested in them, the related responsibilities and the results achieved (Article 24 of Legislative Decree no. 165 of 30 March 2001 laying down "General provisions to regulate work in the employment of the public administrations"). Whilst all of this makes it more difficult to invoke any imbalance between pensions and subsequent changes to the various salary elements, owing to the ongoing requirement to abide*

by the principles that pensions must be sufficient and adequate, the legislature is obliged to identify a mechanism that is capable of ensuring a genuine and effective adjustment of the amount of pensions in line with changes in the cost of living, whilst exercising its discretionary power to strike a balance between the various requirements of economic policy and the availability of financial resources (order no. 241 of 2002; order no. 439 of 2001; order no. 254 of 2001). This means that the emergence of unreasonable imbalances between changes to the level of pensions compared with actual variations in the purchasing power of money would appear to suggest that the specific mechanism chosen is not sufficient in order to guarantee that workers and their families receive resources that are adequate for a free and dignified existence, in accordance with the rights enshrined in Articles 36 and 38 of the Constitution."

The block on the automatic annual adjustment of pensions in line with the cost of living referred to above led the legislature to suspend the automatic increase of a large proportion of pensions due to the overriding need to preserve financial equilibrium in the budget.

In this regard, in the broader context of a decree known – not by chance – as the "Save Italy" decree, the legislature justified its choice by reference to the prevailing financial circumstances and the resulting imbalances owing to increases in the cost of financing public debt, in view of the high interest rates at the time this decree was issued, when the block was implemented in December 2011.

Various objections were made to the constitutionality of the cancellation of the automatic annual adjustment of pensions in line with the cost of living, including multiple challenges filed on the initiative of the undersigned trade union through its members.

In particular, in one of the cases brought by our members, the courts at first instance decided to refer the provision in question to the Constitutional Court for review, seeking a ruling that it was unconstitutional.

That ruling was issued in judgment no. 70 of 2015, which effectively endorsed the challenges mentioned above brought – albeit indirectly – by the undersigned trade union.

When confronted with that judgment, the Italian Republic did not in fact illegitimately apply the adjustment mechanism which had been struck down by the Constitutional Court; on the contrary however, it enacted new legislation that reiterated the very same mechanism, albeit with different thresholds and with different rates of reduction.

This is the legislation that is objected to in this complaint.

In place of the original cancellation stipulated in relation to all "*ultra triplum*" pensions [i.e. those higher than three times the INPS minimum pension] pursuant to Article 24(25) of Decree-Law no. 201/2011, which that paragraph – as amended by Article 1 of Decree-Law no. 65 of 2015 – required for the 2012-2013 two-year period, the legislation provides for the following automatic annual adjustment of pensions in line with the cost of living:

- for pensions amounting to between three and four times the INPS minimum pension, the automatic annual adjustment of pensions in line with the cost of living is applied at 40% of the full amount, rather than at 90% as provided for under Article 69 of Law no. 388/2000, which was applicable prior to Decree-Law no. 201/2011;

- for pensions amounting to between four and five times the INPS minimum pension, at 20% of the full amount, again as compared with a previous level of 90%;

- for pensions amounting to between five and six times the INPS minimum pension, at 10% of the full amount, in this case as compared with a previous level of 75%;

- for pensions higher than six times the INPS minimum pension, the automatic annual adjustment of pensions in line with the cost of living was excluded not only for the 2012-2013 two-year period but also – pursuant to Article 1(483) of Law no. 147/2013 – also for 2014, whereas Article 69 of Law no. 388/2000 (mentioned above) guaranteed an automatic annual adjustment of pensions in line with the cost of living at 75% of the full amount.

These are very far-reaching changes, both qualitatively and quantitatively, which clearly infringe the right to social security, worsening the circumstances of pensioners whose purchasing power is significantly reduced.

In fact, had no blocks or limitations been applied, the adjustment in line with the cost of living should have been applied as follows:

- for the year 2012: at 2.7% (pursuant to the decree of the Minister of the Economy and Finance of 16 November 2012, Official Gazette of 27 November 2012);

- for the year 2013: at 3% (pursuant to the decree of the Minister of the Economy and Finance of 20 November 2013, Official Gazette of 29 November 2012);
- for the year 2014: at 1.1% (pursuant to the decree of the Minister of the Economy and Finance of 20 November 2014, Official Gazette of 2 December 2014);
- for the year 2015: at 0.2% (pursuant to the decree of the Minister of the Economy and Finance of 19 November 2015, Official Gazette of 1 December 2015);
- for 2016: at 0%.

However, it should be considered that these increases have a compound effect, which results for example in an adjustment of 5.78% over the period 2012-2013 and of 6.94% over the period 2012-2014.

This means that, as a result of Article 1 of Decree-Law no. 65/2015, the purchasing power of the pensions of the complainants in these proceedings was safeguarded only to a minimal extent, thereby resulting in a lower increase of overall social security payments:

- for pensions between three and four times the INPS minimum pension, of 1.08% for 2012 and 1.2% for the following year, rather than 2.43% and 2.7% respectively, which would have been guaranteed under Article 69 of Law no. 388/2000;
- for pensions between four and five times the INPS minimum pension, of 0.54% for 2012 and 0.6% for the next year, rather than 2.43% and 2.7% respectively, which would have been guaranteed under Article 69 of Law no. 388/2000;
- for pensions between four and five times the INPS minimum pension, of 0.27% for 2012 and 0.3% for 2013, rather than 2.025% and 2.25% respectively, which would have been guaranteed under Article 69 of Law no. 388/2000;
- for pensions higher than six times the INPS minimum pension, of zero for both years, rather than 2.025% and 2.25% respectively, which would have been guaranteed under Article 69 of Law no. 388/2000.

It should be considered in this regard that the adjustment was cancelled for those pensions also for 2014 pursuant to Article 1(483)(e) of Law no. 147/2013.

It should also be added that further, far-reaching detriment has been caused to all pensions higher than three times the INPS minimum pension pursuant to Article 24(25-bis) of Article 24 of Decree-Law no. 201/2011, as amended by Article 1 of Decree-Law no. 65/2015: under the "carry-over" effect intended by that provision, after the 2012-2013 two-year period the increases in line with the cost of living (which were moreover applied only in part) roll over into 2014 at only 20% of their actual value.

This means that, although the cost of living rose by 5.78% during the 2012-2013 two-year period, in actual fact on 1 January 2014 the pensions of these persons had increased compared with the previous two years by only 0.46%, 0.23% or 0.11%, depending on the band they fell into: consequently, even in the best case scenario, they had not risen by even one tenth of the above-mentioned increase in the cost of living, as against an increase of 90% that would have been guaranteed to them under the original Article 24(25) pursuant to judgment no. 70/2015 of the Constitutional Court.

It is an established principle of national law that "*the requirement of proportionality and adequacy must be met not only at the time of retirement but must also be ensured at all times thereafter, having regard to any change in the purchasing power of money*" (judgment no. 173/1986). *In addition, although "Article 38 of the Constitution does not require that pension benefits be adjusted in line with changes in purchasing power in accordance with automatic mechanisms…*", as this may by contrast "… *occur also by the periodic enactment of legislation…*" (judgment no. 337/1992), such adjustments are in themselves not only indispensable but must also enable pensions "… *to be protected sufficiently in relation to changes in the purchasing power of money*" (judgment no. 316/2010).

These guarantees constitute inviolable limits, as they guarantee the maintenance of social security arrangements that (and this is a matter of greater interest within these proceedings) are expressly recognised – also from a progressive point of view –in the Social Charter.

The legislation submitted by us to this Committee for consideration in fact amounts to a violation of the Italian Republic of Article 12 § 3 of the European Social Charter.

That Article provides as follows:

"*With a view to ensuring the effective exercise of the right to social security, the Parties undertake:*

1 - to establish or maintain a system of social security;

2 - to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

3 - to endeavour to raise progressively the system of social security to a higher level;

4 - to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a) equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties."

In addition to the above, it is noted that Article 4 § 1 of the Additional Protocol provides as follows

Part I

"*4 All elderly persons have the right to social protection*"

Part II

"*Article 4 – Right of elderly persons to social protection*

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

§1 to enable elderly persons to remain full members of society for as long as possible, by means of:

a. *adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life; […]*"

At the same time, Article 31 of the Social Charter provides the following:

"*Article 31 – Restrictions*

§1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

§2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed".

The measures adopted by the Italian Republic to the detriment of pensioners violate Article 12 of the 1961 Charter in that they fail to comply above all with the requirement of proportionality.

It should be noted first and foremost that these measures were not by any means necessary at the time they were adopted, i.e. in 2015.

It must be clarified that they were in actual fact adopted in relation to a package of urgent measures that was based on assumptions dating back to more than four years previously, which at the time the legislation was enacted had been broadly superseded, so much so that it was precisely during that period that beneficial tax rules that were not applicable to pensioners were introduced, and subsequently rolled over; as a result, the right of pensioners to maintain a standard of living that was adjusted in line with increases in the cost of living was violated in two respects.

It was precisely during the period in question that the so-called "80 euro" tax bonus was introduced, which was however limited only to persons in employment. During 2014 – according to 2015 tax returns – it resulted in a revenue shortfall of around €6.1 billion whilst in 2015 – according to 2016 tax returns – it resulted in a revenue shortfall of around €9 billion (www.finanze.gov.it).

This scheme was then put on a permanent footing, with a result that in 2017, 2018 and subsequent years, it will have an impact much higher than that which the full application of the automatic adjustment of pensions in line with the cost of living would have had.

In addition it is not clear (and no explanation is provided as to) why, instead of the measures adopted, other action was not taken to shore up the budget that did not impinge upon social security, such as: combating tax evasion (which was by contrast rewarded through tax amnesty mechanisms such as the so-called "scrapping" of overdue tax demands), increasing taxes on financial intermediation (a sector which was rewarded as a whole with measures beneficial to failing banks) or increasing taxes on capitalised assets.

These are alternative measures to those objected to in this complaint. On the contrary, the measures objected to here have resulted in the substantial impoverishment of socially more vulnerable classes who are unable to generate income from gainful activity. The alternative measures on the other hand would have been entirely compatible with the provisions of the Social Charter, which not only places limits on rights and values that must receive negative protection, but also lays down commitments – which are equally binding – which signatory States must bear in mind when choices have to be made.

It is in fact an established principle that in acceding to the Social Charter, States agree to endeavour to achieve, using all means possible and most appropriate, social conditions that guarantee the right to health, to an adequate pension, to medical assistance and effective welfare.

As a consequence of the above, it has been asserted that "*the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need protection the most*" (General introduction to Conclusions XIX-2, 2009).

This position has recently been reiterated by the clarification that: "*doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection*" (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, § 18).

This Committee has therefore stated on various occasions regarding the obligation incumbent upon States to take action to progressively increase the level of protection for social rights provided for under the Charter that, even if achieving the protection objective proves to

be exceptionally complex and particularly costly, States are in any case required to deploy the necessary resources to enable progress to be achieved as quickly as possible.

The progressive nature of the provisions contained in the Charter of Social Rights – which is expressly referred to in relation to the right to social security in Article 12, § 3 – does not in any way undermine its directly enforceable status, or its actionability before the Committee and the competent national courts.

As a result, it must not be forgotten that the progressive nature of the provisions to protect economic and social rights – and also cultural rights – does not preclude them from having binding effects. In addition, it must be recalled that the Committee has inferred from this obligation, reasoning *a contrario*, the principle of non-regression. This enables it – *inter alia* – to carry out a close review of the reasonableness of any regressive measures adopted by States and of the balances struck by them between the guarantees of the rights concerned and other primary interests, in addition to financial constraints: "*The Committee recalls, as stated in its decision relative to Complaint No.1/1998 (International Commission of Jurist v. Portugal, § 32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.*"

In the light of these assertions, it may be concluded that the regressive measures aimed at consolidating the public finances are legitimate only insofar as they may be deemed to be necessary in order to guarantee the maintenance and sustainability of the social security system over the medium term and only where a series of prerequisites are met, such as compliance with the criteria that allow for an external review of the adequacy and proportionality of the regressive measures adopted.

In the instant case, the measures adopted were not intended to ensure the sustainability of the social security system, but to achieve a contingent and non-structural saving, the need for which is moreover contradicted – as illustrated above – by the fact that, during the same period in which they were adopted, measures entailing a significant loss of revenue were introduced for

the benefit of a category of person that is certainly socially less vulnerable than pensioners.

There is no doubt as regards the outcome of the changes applied to pensioners that they have had a significant negative effect, as has been set out in detail above.

As regards the reasons for the changes and the social and economic policy context within which they were adopted, there is no doubt that the overall outlook for 2015 was stable and reassuring, being characterised by low interest rates in general and, more specifically, low public debt refinancing costs, along with forecasts of an economic recovery that were reiterated a number of times by the Italian Government itself.

As regards the necessity of the reform and its adequacy having regard to the circumstances that gave rise to it, that is the objectives pursued, the stance taken by the Italian Republic is objectionable.

It took action with the specific aim of negating and thwarting a ruling of the Constitutional Court, which had been correctly based on the same substantive principles that are claimed within these proceedings to have been violated, as embodied in the Social Charter.

It should be added that, as mentioned above, there was no need for the reform – in 2015 – given the fact that the macroeconomic and financial framework was more than stable, so much so as to allow for the introduction of tax breaks entailing a revenue shortfall of tens of billions.

The Committee holds that the Charter subjects Contracting States to both "positive obligations", i.e. "obligations as to the means", as well as "obligations as to the result". Moreover, as is more of interest in these proceedings, Article 12 expressly requires them to avoid any regression within their respective social security systems, which means that economic crises – although there was none in 2015 – cannot justify regressive measures: "*the Committee recalls that under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most*".

It is entirely evident that these obligations – in terms of both the progressive aspect and the requirement of non-regression – have been unjustifiably violated since the regression implemented, which is highly significant both qualitatively and quantitatively, appears to lack any possible justification in the light of the criteria laid down by this Committee.

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In view of the above, the undersigned Mr Daniele Gorfer, acting in his capacity as General Secretary, asks the Committee to declare this complaint well-founded, and to rule that the Italian Republic has violated and is continuing to violate Article 12 of the European Social Charter by limiting or precluding, in the terms set out above, the automatic annual adjustment of pensions in line with the cost of living.

Rome Strasbourg, 30 April 2018

Ref. 84 /sg/dg

S.A.Pens. Or.S.A.

The General Secretary

Mr Daniele Gorfer