



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

27 March 2019

**Case Document No. 1**

***Associazione Medici Liberi v. Italy***  
Complaint No. 177/2019

**COMPLAINT**

**Registered at the Secretariat on 7 March 2019**



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and  
Rule of Law Council of Europe**

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**Executive Secretary of the European Committee of Social Rights, acting on behalf  
of the Secretary General of the Council of Europe**

**COLLECTIVE COMPLAINT**

**CONCERNING A**

**VIOLATION OF THE REVISED EUROPEAN SOCIAL CHARTER**

**BY THE ITALIAN STATE**

**Associazione Medici Liberi**

**v.**

**ITALY**

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**The Association Medici Liberi**, represented by its President and current legal representative Federica d'Ambrosio and the Board Member D'Apuzzo Nunzia, represented by **Counsel Giovanni Romano** and **Counsel Egidio Lizza** and with service address for the purposes of this Complaint at Studio Legale Romano at Via Valadier 43, Rome, asks the European Committee of Social Rights to rule that **the Italian legislation on pensions applicable to doctors practising their profession as self-employed workers does not comply with the principles laid down by Article 12 of the Revised European Social Charter.**

**a) Introduction.**

By this complaint, the **Association Medici Liberi**, a representative body of workers from the healthcare professions, and in particular self-employed doctors, wishes to complain concerning the circumstances of doctors who are self-employed (i.e. not employees) with regard to their pension rights under Italian law.

The national association Medici Liberi is one of the most representative bodies at national level of self-employed doctors working in the Italian National Health Service and wishes to complain to the European Committee of Social Rights (hereafter the "ECSR" or the "Committee") concerning the violation of Article 12 of the Revised European Social Charter.

First of all, it must be pointed out that the Association has standing to launch these proceedings as it fulfils all of the requirements laid down by Article 1(c) of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, as interpreted by the Committee.

In fact, in its ruling on the admissibility of previous complaints filed by Italian organisations, the ECSR has developed a broad interpretation of "*organisation representative of workers*", asserting in that regard that, under Italian law, "*there are no registration procedures and formally trade unions do not possess legal personality; they have the status of 'non-recognised associations' subject to [...] the Civil Code*". Accordingly, given the lack of any formal prerequisite, status as a trade union must be assessed with reference to objective indications (cf. the case of *ANGP v. Italy*), **which are present in the case under examination in the light of the objectives defined in the Statute of the Association "Medici Liberi"**. The ECSR has demonstrated that it refers to self-standing criteria also as regards the requirement of the representative nature of the complainant association, unrelated to any definitions or concepts laid down in national legal systems. In point of fact, the Committee has reiterated on various occasions that the concept of "representativeness" pursuant to Article 1 of the Protocol on Collective Complaints does not necessarily coincide with representation at national level, but requires an overall assessment by the Committee: "*The complainant organisation must be real, active and independent; representativeness requires an assessment of the aims of the association and of the activities it carries out*" (see *Confédération française de l'Encadrement "CFE-CGC" v. France*, Complaint no. 9/2000, decision on admissibility of 6 November 2000, § 6).

In view of the above, it must be pointed out with regard to the alleged violation that a doctor exercising the healthcare profession on a self-employed basis, who is therefore not working as an employee, is registered automatically and mandatorily with

the General Social Security Fund ENPAM upon enrolment with the medical council, irrespective of the type of activity actually carried out, and above all irrespective of whether he/she actually exercises his or her professional activity. However, that mandatory registration does not secure a pension that can guarantee him/her a dignified standard of living when he/she reaches the retirement age (with the result that pension and social security cover is inadequate), in breach of fundamental principles of international law and the national constitution. On this point, it must be clarified that pension provision in Italy for self-employed work performed by doctors and dentists (the law governing which has evolved over time) is ensured by the Doctor's National Social Security and Welfare Body (*Ente Nazionale di Previdenza ed Assistenza Medici*, hereafter ENPAM) through the mandatory registration of all doctors and dentists enrolled with professional councils with the General Social Security Fund which, as mentioned above (and as will be clarified in the following sections), does not guarantee a pension that is consistent with the principles enshrined in international law and in Italian constitutional law.

#### **b) The legislation governing the pension system for doctors exercising the healthcare profession**

Social security cover in Italy for self-employed activity by doctors and dentists is provided by ENPAM through mandatory registration with the General Social Security Fund by all doctors and dentists enrolled with professional councils.

Social security cover in Italy is provided not only by ENPAM but also by other pension schemes, depending upon which specific professional activity is carried out and the level of income earned. If the doctor works as an employee in the public or private sectors, pension contributions are paid to the National Institute for Social Security (*Istituto Nazionale Previdenza Sociale*, INPS). On the other hand, every self-employed worker must pay those contributions to ENPAM in accordance with the arrangements set out in the relevant internal regulations.

ENPAM is a non-profit foundation with legal personality under private law, which was established in 1937 as the Assistance Scheme for the Fascist Trade Union of Physicians [*Cassa di Assistenza del Sindacato Fascista Medici*]; in 1950, implementing Legislative Decree of the Provisional Head of State no. 233 of 13 September 1946 on the reconstitution of professional councils for the healthcare professions, ENPAM was transformed into a body governed by public law. In particular, this Decree (no. 233/46) laid down an obligation for all persons enrolled with provincial medical councils to register with ENPAM, along with the related obligation to pay pension contributions.

Decree no. 233/46 also provided for the recognition of the power of the national councils of ENPAM and of the National Federation of the Councils of Doctors and Dentists [*Federazione nazionale degli Ordini dei medici chirurghi e odontoiatri*] to establish and levy contributions.

In particular, Article 21 of Legislative Decree of the Provisional Head of State no. 233/46 provided that “*Persons enrolled with the councils are obliged to register with and to pay the related contributions to the national pension and welfare institute established heretofore or to be established hereafter for each category.*”

By Law no. 70 of 20 March 1975, ENPAM was classified as one of the bodies responsible for the management of mandatory pension schemes whilst subsequently in 1994, with the issue of Legislative Decree no. 509, ENPAM was granted the possibility (along with 15 other bodies) of opting to privatise and to transform itself into a private law foundation.

Pursuant to Article 1(3) of Legislative Decree no. 509 of 30 June 1994, *“The transformed bodies shall continue to provide pensions and welfare to the categories of workers and professionals for which they were originally established, without prejudice to the mandatory requirement to register and pay contributions.”*

Accordingly, Legislative Decree no. 509/1994 confirmed: a) the mandatory requirement to register with a pension scheme and to pay the related contribution; b) management, organisational and accounting autonomy, subject to the limits of and in relation to the public nature of the activity carried out; c) subjection to oversight by the Ministry of Labour, acting in conjunction with the Treasury Ministry.

Accordingly, following the issue of those provisions, all doctors and dentists were mandatorily registered with the ENPAM General Social Security Fund as an automatic consequence of their enrolment with a professional council, irrespective of whether they actually practised the profession or registered with other mandatory pension funds.

The operation and organisation of the institute are governed by the so-called Regulations on Welfare Provision by the General Social Security Fund, Article 1 of which provides as follows: *“Pursuant to Article 5 of the Statute approved by Decree of the Ministry of Labour and Social Policies acting in conjunction with the Ministry for the Economy and Finance of 17 April 2015, the pensions and welfare due to the members as a whole of the General Social Security Fund of the ENPAM Foundation – hereafter referred to as the Fund – and to their family members and survivors shall be provided in accordance with the provisions of these Regulations.”*

In particular, the General Social Security Fund provides for the mandatory registration of all doctors and dentists enrolled with a professional council involving the payment of two levies:

1) **Levy A** is a levy which any person registered as a doctor and/or dentist is obliged to pay, irrespective of whether or not he/she chooses to practise the profession or whether or not he/she is registered with other pension schemes, even if these other schemes are mandatory.

2) **Levy B** must be paid by all doctors and/or dentists who practise the profession on a gainful basis. That levy is calculated as a percentage of the income earned by the self-employed worker during the previous year and relates not only to income from pure self-employed activity but also to income earned by employee doctors who engage in private practice within or outside a public health-care facility, as well as all income earned from occasional medical services and under co-ordinated and continuous co-operation agreements. Specifically, that levy is charged at a rate of 16.50% (for the year 2018) in the event that the net professional self-employed income earned 2017 exceeds:

- €4,770.00 per annum for active insured members younger than 40 years of age or those eligible for the reduced “Levy A” contribution;

- €8,809.33 per annum for active members older than 40 years of age.

On the other hand, a reduced rate of 8.25% is stipulated for active insured members who contribute (on the basis of a stable and continuous relationship) also to other mandatory pension schemes, including the ENPAM Special Fund.

However, the legislation on mandatory contributions is contained in Article 3(1) of the Regulations, according to which *“The mandatory annual contribution levied on each member registered with the Fund pursuant to Article 21 of Legislative Decree of the Provisional Head of State no. 233 of 13 September 1946, ratified by Law no. 561 of 17 April 1956, Article 1(3) of Legislative Decree no. 509 of 30 June 1994 and Article 5(1) of the ENPAM Statute shall be equal to the percentage of the professional income earned during the year as reported in the tax return for income tax on natural persons along with the definitive findings mentioned in the appended Table A. With effect from the entry into force of these Regulations, members younger than 35 years of age shall be required to pay the mandatory contribution provided for under this paragraph, or the reduced mandatory contribution provided for under Article 4 below, exclusively on any professional income falling under paragraph 2 of this Article in excess of the level of annual income corresponding to the contribution provided for under paragraph 3(c), as revalued from year to year pursuant to paragraph 8.”*

The amount of the mandatory contribution is stipulated in paragraph 3 of that Article: *“A contribution shall be due under all circumstances from each member in the following minimum annual amounts, which shall be equal for the year 2018 to:*

*a. €221.09 for all members under 30 years of age;*

*b. €429.16 for all members over 30 years of age but under 35 years of age;*

*c. € 805.35 for all members over 35 years of age but under 40 years of age;*

*d. €1,487.33 for all members over 40 years of age but under 65 years of age in the event that they exercise the option provided for under Article 18(1-bis) below, or until such time as they reach the relevant age limit indicated in Table B appended to these Regulations.*

*Members under 40 years of age may request permission to pay the contribution provided for under letter d) above in the amount applicable during the year in which the relevant request was made; such an option is irrevocable. Until 31 December 2012 such members, along with those over 40 years of age, may request that they be allowed to pay supplementary contributions in order to align any previous year or years of reduced contribution with the above-mentioned contribution. Eligibility for the payment of supplementary contributions, calculation arrangements and the deadlines for paying the amounts due are set forth in paragraph 5 et seq of Article 10 below.”*

As regards the duration of the mandatory contribution, Article 8 of the Regulations provides that *“The contribution pursuant to Article 3(1) must be paid in the*

*amount specified therein for the full duration of enrolment with the professional councils of doctors and dentists with effect from the month following registration and until the month during which the 65<sup>th</sup> birthday falls in the event that the option provided for under Article 18(1-bis) below is exercised, or until the age limit indicated from time to time in Table B appended to these Regulations, or until the cancellation on any grounds by the professional council or until the month prior to that in which a pension becomes payable on the grounds of disability or following the accumulation of contributions paid to different schemes [...].”*

For the purposes of establishing the amount of the pension, the ENPAM Regulations provide that the “Levy A” pension relating to contributions due until 31 December 2012 shall be determined by multiplying the notional average annual income (equal to 8 times the annual contribution) by the total rates pertaining to each year of contribution, allocating:

- 1.10% for each year until 31 December 1997;
- 1.75% from 1 January 1998 until 31 July 2006;
- 1.50% from 1 August 2006 until 31 December 2012.

The amount thereby determined is revalued at 75% of the ISTAT [Italian National Institute of Statistics] index in the event that it is lower than four times the minimum INPS pension, and at 50% if it is higher than that level, from the year 2013 until the year prior to that in which payment of the pension commences.

The “Levy A” pension relating to contributions due from 1 January 2013 is established according to the defined contribution system pursuant to Law no. 335/1995 by multiplying the total individual contributions by the transformation coefficient (Law no. 247/2007) for the age of the member upon retirement as stated in Table E appended to the Fund Regulations.

Accordingly, self-employed doctors are obliged to pay the Levy A contribution, whilst they will also be obliged to pay the Levy B contribution only in the event that the income earned is greater than €4,770.00 per year, or €8,809.33, depending upon whether they are older or younger than 40. In the event that the income earned is lower than the limits mentioned above, the pension of the self-employed doctor will be established exclusively from the (lump sum) contributions payable as Levy A and the level of the pension will be determined in accordance with the criteria set out above; in addition, even if he/she has already ceased practising the medical profession before that time, he/she will be entitled to receive the pension only after fulfilling the conditions laid down by the regulations for old-age pensions.

**It is therefore evident that the system, as designed, does not guarantee a dignified pension – due to its reduced amount – to doctors working in the healthcare profession in a self-employed capacity, and thereby violates their dignity.**

### **c) The relevant international law**

**1) The Universal Declaration of Human Rights, approved by the United Nations General Assembly on 10 December 1945** enshrines in Article 25 the universal

right to an adequate standard of living, and accordingly encapsulates the essence of the articles on human dignity. Paragraph 1 of that Article, which is relevant for the case under examination, provides as follows:

“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

2) The **International Convention on Economic, Social and Cultural Rights** (better known as the International Covenant on Economic, Social and Cultural Rights, ratified by Italy on 15 September 1978), a United Nations treaty resulting from the experience of the Universal Declaration of Human Rights, which was adopted in 1966 and came into force on 3 January 1976, devotes two provisions to the issue of social security:

Article 9: The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

Article 11(1): The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

3) The **European Code of Social Security** of 16 April 1964, ratified by Italy on 20 January 1977 provides as follows in Articles 65, 66 and 67:

Article 65(1) (by way of example for skilled labourers). “In the case of a periodical payment to which this article applies, the rate of the benefit, increased by the amount of any family allowance payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this part, at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his breadwinner and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.” Article 65(10) provides that: “The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.”

Article 66(1) (by way of example for ordinary labourers). “In the case of a periodical payment to which this article applies, the rate of the benefit, increased by the amount of any family allowance payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this part, at least the percentage indicated therein of the total of the wage of an ordinary adult male labourer and of the amount of any family

allowances payable to a person protected with the same family responsibilities as the standard beneficiary. [...]"

Article 66(8): "The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living."

Article 67: "In the case of a periodical payment to which this article applies: [...] (c) the total of the benefit and any other means, after deduction of the substantial amounts referred to in sub-paragraph b of this article, shall be sufficient to maintain the family of the beneficiary in health and decency, and shall be not less than the corresponding benefit calculated in accordance with the requirements of Article 66."

4) The **Treaty on the Functioning of the European Union ("TFEU")** provides as follows in relation to social policy:

Article 151(1): The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

Article 153: With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: [...] j) the combating of social exclusion; k) the modernisation of social protection systems without prejudice to point (c) (social security and social protection of workers).

5) **Charter of Fundamental Rights of the European Union**, in the provisions that are relevant to the case under examination, provides as follows:

**Article 3 - human dignity**

"Human dignity is inviolable. It must be respected and protected";

**Article 34 - Social security and social assistance:**

"1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices. [...]"

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices".

**6) The Convention concerning Minimum Standards of Social Security (ILO) no. 102 of 1952 - old-age benefit:**

“Article 25: Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.”

As is apparent from the provisions referred to above, there is a principle of international law that social security and other social benefits must be adequate; this applies in particular to pension payments, which must in all cases comply with fundamental principles and human rights, including the principle of human dignity. It is stressed that the pension system must be capable of ensuring a standard of living that is sufficient in order to guarantee the health and well-being of the individual and of his/her family; solutions must be adopted which enable national social welfare and pension systems to be modernised in such a manner that they are capable of guaranteeing the above-mentioned levels of assistance.

In Italy, whereas compliance with these requirements has been assured through the establishment of a pension system that is potentially capable of guaranteeing an adequate level of social protection (above all for public sector employees), they are not in any way respected as regards the category of worker (future retirees) at issue in these proceedings, specifically self-employed doctors who, despite being obliged to pay the so-called ENPAM levy A, are in actual fact deprived of adequate social security and pension cover since, given the failure to comply with the conditions for the engagement of levy B, are paid a pension that is far below the minimum subsistence figure.

In other words, whilst the current pension system on the one hand obliges self-employed doctors to pay contributions required under levy A, on the other it does not guarantee that he/she will receive a pension that is consistent with the rights mentioned above, consequently preventing him/her from dedicating such amounts to other forms of investment that could ensure him/her a dignified retirement.

The current pension system for self-employed doctors is therefore at odds with the fundamental principles enshrined in the Treaty on the Functioning of the European Union, the Universal Declaration of Human Rights and all other provisions referred to above, as well as Article 38 of the Italian Constitution, paragraph 2 of which expressly provides that “*Workers have the right to be assured adequate means for their needs and necessities in the event of accidents, illness, disability, old age and involuntary unemployment [...].*”

**d) Violation of Article 12 § 1, 2 and 3 of the European Social Charter.**

The essence of this complaint therefore concerns, as asserted above, the lack of effective pension cover for self-employed doctors as regards the aforementioned ENPAM levy A mandatory contribution, which constitutes the only source of pension income for self-employed doctors who do not satisfy the income conditions for the levy B contribution. In fact, in view of the requirement to pay contributions set forth in Article 3 of the Regulations, upon retirement such doctors will receive a pension that is

not only inadequate but that is even lower, as will be highlighted below, than the minimum pension provided for under national legislation.

The right to a pension is an individual right under public law which is recognised and guaranteed under the Italian Constitution to all male and female workers under equal conditions in accordance with Article 38(2). The Constitution enshrines the indispensable and fundamental obligation to guarantee and ensure to the workers mentioned above adequate means for their needs and necessities in the event of occupational accidents, illness, disability, old age and involuntary unemployment.

However, in the event that self-employed doctors do not pay any ENPAM levy B contributions on the grounds that the income earned by them is lower than the minimum threshold stipulated (equal to €8,000) for the payment of that levy, the pension that they will earn upon retirement will be based exclusively on levy A contributions.

The simulations of various future pensions under levy A (which are appended to this complaint) based on the circumstances of several doctors who are members of the association “Medici Liberi” provides a striking demonstration of the inadequacy of the prevailing pension system and the inadequacy of the pension payments; in fact, these simulations highlight the fact that the average pension presumably payable to the self-employed doctors will amount to around €3,600.00 gross per annum (around €300.00 gross per month). It should be pointed out in this regard that the simulations made take account of the contributions paid for each reference year, which are indicated after deducting the maternity contribution (as this contribution is not taken into account when calculating the amount of the pension).

However, according to the simple wording of these documents, it is apparent that the pension payment will not differ particularly as a result of changes based on the time when contribution payments began or the number of years over which contributions were paid. The details are provided below:

- in the first scenario, for a doctor who began paying pension contributions in 1990 and will become eligible for a pension in 2028, the gross annual amount will be €3,949.00, or €329.08 gross per month.

- second scenario: date of beginning of contributions 2000; eligibility for pension 1 April 2043; gross annual amount €3,618.04, or €301.50 gross per month;

- third scenario: date of beginning of contributions 1992; eligibility for pension 1 February 2033; gross annual amount €3,831.16, or €319.26 gross per month;

- fourth scenario: date of beginning of contributions 1992; eligibility for pension 1 July 2030; gross annual amount €3,895.39, or €324.62 gross per month;

- fifth scenario: date of beginning of contributions 1990; eligibility for pension 1 January 2025; gross annual amount €3,928.29, or €327.36 gross per month;

The gross amount of these pension payments is much lower than the minimum pension in Italy, the level of which was €507.42 in 2018; this pension has already been criticised by the ECSR, which held that the amount of the minimum pension in 2011, equal to around €6,246.89 (€520 per month) was not compliant with Article 12 § 1 of the Charter.

**The Committee's conclusions from 2013 concerning the compliance with the European Social Charter of the situation in Italy are set out below:**

The relevant parts of the report state as follows:

“The Committee further notes from MISSOC [European Union Mutual Information System on Social Protection] that in 2011 the amount of minimum pension (*pensione minima*) stood at €6,246.89 (€520 per month). The old-age pension (*pensione di vecchiaia*) is brought up to the amount of the minimum pension if the annual taxable income of the pensioner is less than twice the minimum pension. The Committee observes that the level of minimum pension falls below 40% of the median equivalised income (Eurostat) and is therefore inadequate (page 29).”

“When assessing adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life.

In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rate for persons aged 65 and over.

The Committee notes from MISSOC that no statutory minimum pension is provided for in the case of workers first insured starting from 1 January 1996; therefore, only pensions paid under the earnings-related scheme can be topped up till the minimum pension amount is reached. It is a means-tested benefit, therefore, in order to be entitled to it, personal income or household income must not exceed certain limits, which are set annually (€6,247 for a single person, approx. € 521/month in 2011). The annual amount of minimum pension (*pensione minima*) amounted in 2011 to €6,076 (€ 506/month). Beneficiaries of a minimum pension may also receive a supplement or supplements. The information supplied by the Italian authorities mentions different supplements and provides different rates for these. (...)

In addition, the report states that the Social Card – a magnetic card, funded by public funds and private donations, distributed by the Italian Mail Company, allows elderly persons on low income to use it to purchase food in certain shops or pay utility bills up to €40/month. It is available to persons over 65 with a pension below €6,000 per year (€8,000 if aged 70 or more), and financial holdings below €15,000.

The Committee notes that 50% of the Eurostat median equivalised income in 2011 stood at €665 (40% at €532). The minimum pension falls below 40% of the Eurostat median equivalised income, therefore the Committee cannot assess the situation until it receives further information on the supplements available (see above question).

The Committee notes from the supplementary information submitted by Italy that there is a social assistance allowance payable to those over 65 years of age and who have an income below €5,749.90. In 2012 the amount payable to a single person was €442.30 per month. The Committee notes that this also falls below 40% of the Eurostat median equivalised income and again asks whether supplements or other benefits and allowance are payable (pages 44-45).”

**“The Committee concludes that the situation in Italy is not in conformity with Article 12§1 of the Charter on the grounds that:**

**- the minimum level of pension benefit is inadequate.”**

In the light of the considerations set out above, it is evident that the amount of the pension under ENPAM levy A, which amounts to around one half of the minimum pension as provided for under Italian law, is clearly in breach of the European Social Charter.

Self-employed doctors are therefore obliged to pay a levy A contribution, receiving in return a pension that is inadequate in order to ensure a dignified retirement, and which is clearly at odds with the international principles referred to, and with Article 12 of the Charter.

Italy has not established an adequate social security system for self-employed doctors in Italy that is at least equivalent to the level necessary in order to ensure compliance with the European Code of Social Security, and has not attempted to gradually enhance that social security system to a higher level.

A strong signal of the type of disadvantage caused by the failure to recognise a fundamental economic and social right that is indispensable for each individual has resulted from the filing of numerous applications before national courts seeking the cancellation of the levy A contribution requirement (a requirement that has always been restated within the various legislative provisions enacted over time), considering the essentially pointless nature of that contribution; however, this court action has not had any tangible result since, whilst the contribution requirement has been upheld as legitimate in accordance with the principle of solidarity, provision has never been made for a system that is capable of guaranteeing adequate pension and welfare provision for self-employed doctors.

However, were that contribution requirement to be eliminated, doctors could use the considerable amount saved in order to make investments capable of guaranteeing a return, or at least the full repayment of the amount invested, and could consequently establish a valid basis for ensuring a dignified retirement, as compared to a system which as things currently stand guarantees a benefit that is entirely insufficient.

The Association Medici Liberi considers the aforementioned international provisions to be clearly incompatible with the conduct of the Italian State, which persists in depriving self-employed doctors of an adequate pension system.

Moreover, the European Social Charter is intended to safeguard fundamental economic and social rights applicable to all individuals, one of the inalienable ones being the right to social security, as provided for under Article 12.

Under the Charter, the parties undertake to guarantee the provision and maintenance of pensions for all workers, adopting the most appropriate measures.

Article 12 § 1, 2 and 3 establishes clearly and incontrovertibly the right to social security for all workers in states that are parties to the European Social Charter. Specifically, it provides that “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.

Therefore, the existence of a pension system that does not safeguard the pension rights of self-employed doctors exercising the medical profession in the National Health Service with the same sense of self-sacrifice and professionalism as employee doctors, taking on the same responsibilities, appears to be utterly unjustifiable. Regarding this question, there is a need for an institutional effort to protect and recognise the rights of interested parties, who are being illogically and unlawfully deprived of their fundamental rights.

In this case, as has been argued at length, the obligation to pay the levy A contribution deprives self-employed doctors of the possibility of choosing other forms of investment that could guarantee a dignified old age, having regard to a future pension that is blatantly inadequate.

In addition, self-employed doctors perform an important role in the National Health Service, being required to safeguard the fundamental right to health of the public at large, in the same manner as employee doctors.

They are therefore required to ensure a high level of professionalism, but without any valid support in their day-to-day tasks.

**It is therefore inconceivable that the work performed by self-employed doctors should not benefit from adequate pension protection.**

In view of this unjustified inadequacy in the pension system, it is entirely appropriate and necessary for legislation to be enacted that guarantees the pension rights of all self-employed doctors, who take on a fundamental share of work in the Italian health service and actively contribute to protecting the health of all Italian and foreign nationals.

The position of self-employed doctors is an established fact, which is indispensable in the Italian health service.

In the light of the arguments set out above, the Association Medici Liberi complains of the violation by the Italian State of Article 12 of the European Social Charter, which guarantees the provision, maintenance and reinstatement of social security rights, including through policies suitable for raising the system of social security to a higher level.

**e) Conclusions.**

In the light of the matters submitted in this complaint, and reserving the right to file supplementary written statements, the European Committee of Social Rights is asked to:

- find that there has been a violation of Article 12 of the Revised European Social Charter with regard to the inadequate pension and social security provision available to self-employed doctors, along with any other provision relevant to the case under examination;

- Order the Italian State to reorganise the legislation governing the pension system for self-employed doctors with particular reference to the obligation to pay the ENPAM levy A contribution, putting in place measures and/or instruments capable of guaranteeing appropriate pension and social security cover for self-employed doctors;

- Order the Italian State to make a payment to the Association Medici Liberi in compensation for the costs and professional fees relating to these proceedings.

**f) Enclosures:**

- 1- Articles of Association of the Association Medici Liberi;
- 2- Statute of the Association Medici Liberi;
- 3- Simulation of Levy A pension benefits.

**Use of the Italian language**

The complainant party requests that it be able to use the Italian language in any submission relating to these proceedings.

**Contact details for communications relating to this complaint**

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[handwritten: Rome, 7 March 2019]

**Counsel Egidio Lizza**

**Counsel Giovanni Romano**

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