



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

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Sindacato autonomo Pensionati Or.S.A. v. Italy
Complaint No. 187/2019

COMPLAINT

Registered at the Secretariat on 3 December 2019



S.A.PENS.
SINDACATO AUTONOMO PENSIONATI
OR.S.A.



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S.A.Pens. OR.S.A. – Sindacato Autonomo dei Pensionati dell'Organizzazione Sindacati Autonomi e di base [Autonomous Trade Union of Pensioners from the Organisation of Autonomous and Rank and File Trade Unions]

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Collective Complaint by S.A.Pens. Or.S.A. to the European Committee of Social Rights concerning the violation of Articles 4, 12, 16, 20 and 23 of the Revised European Social Charter by the Italian Republic in relation to the provisions contained in Article 1(41) of Law no. 335 of 8 August 1995.

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1. OBJECT OF THE COLLECTIVE COMPLAINT

By this complaint, the trade union Sa.Pens. Or.S.A. (with registered office at Via Magenta 13, Rome, represented by the Secretary General Mr Daniele Gorfer) objects – pursuant to the 1995 Additional Protocol to the European Social Charter (hereafter, ESC) – to the violation and inadequate application by the Italian Republic of Articles 4, 12, 16, 20 and 23 ESC in relation to the provisions contained in Article 1(41) of Law no. 335 of 8 August 1995 (as amended and supplemented), which set out the rules governing the amount of and entitlement to pensions payable to the survivors of an insured worker or pensioner. That legislation – the effects of which have been aggravated by a series of “contextual” measures to limit spending on pensions, which will be considered in greater detail below – significantly reduces the amount of pensions payable to the survivors where there is more than one recipient or where the recipient(s) receive(s) income from various sources, thereby resulting in an unreasonable and discriminatory reduction in pension payments to which the deceased would have been entitled, or had already been receiving.

It is hereby requested that we be allowed to use the Italian language– alongside English – for all purposes in relation to these proceedings.

2. GROUNDS FOR THE ADMISSIBILITY OF THE COLLECTIVE COMPLAINT.

2.1. The organisation filing the collective complaint

2.1.1. The Sindacato Autonomo dei Pensionati dell’Organizzazione Sindacati Autonomi e di base

The undersigned trade union is a representative sectoral association of pensioners based in Rome: it is a member of the Or.S.A. [Organisation of Autonomous and Rank and File Trade Unions] Confederation (which has more than 15,000 members including 3,302 pensioners) and carries out concerted trade union activity in order to protect the interests of workers and pensioners.

The Or.S.A Confederation is based on the constitutional principles of internal democracy and pluralism, defines itself as “a democratic, progressive, socially committed and not-for profit trade union association” (Article 2 of the Or.S.A. Charter) and chooses as its fundamental principles “freedom of expression; the exercise of democratic rights and freedom of association in accordance with the principles and objectives of OR.S.A.; the protection of each individual irrespective of his or her political or religious beliefs or social background, against any form of discrimination on the grounds or sex, race or nationality” (Article 1 of the Or.S.A. Charter).

The activity of the trade union S.A.Pens., Sindacato Autonomo Pensionati, which is a member

of the Or.S.A. Confederation, is based on the principles laid down in the Constitution, whose full implementation it promotes. In particular, the objectives of S.A.Pens. are: “protecting the moral, legal and financial interests of its members; studying problems associated with old age, the physiological consequences and development of a trade union culture that channels new generations towards retirement during which income capitalised over years of work may be enjoyed; protecting the interests of workers’ survivors” (Article 3 of the Charter).

S.A.PENS. Or.S.A. protects its members in relation to contractual and social disputes with employers, pension bodies and institutions. In particular, it provides social assistance to all persons who approach its offices situated throughout the country, on regional and provincial levels, in relation to pensions, accidents, civil invalidity, checks and controls of insurance entitlement, legal protection in relation to medical issues and tax advice.

The Or.S.A. Confederation is organised – in a manner replicated by Sa.Pens itself – 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.

Further information concerning S.A.Pens. along with the Confederation of which it is a member, Or.S.A., is available at <http://www.sapens.it> and <http://www.sindacatoorsa.it/index.html>.

212 The standing of the trade union S.A.Pens. Or.S.A. to file collective complaints with the European Committee of Social Rights.

The Sindacato Autonomo dei Pensionati dell’Organizzazione Sindacati Autonomi e di base has standing to file collective complaints with the European Committee of Social Rights.

This standing is established under Article 1 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, according to which *inter alia* “representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint have standing to submit collective complaints”.

Since the Sindacato Autonomo dei Pensionati dell’Organizzazione Sindacati Autonomi e di base has standing, it hereby files, acting through its Secretary General, this collective complaint before the Committee against Italy.

Pursuant to Article 16 of the Charter of S.A.Pens. Or.S.A., “The General Secretariat is the

executive and representative body of the Trade Union”, and is comprised (alongside the Deputy Secretary General, with authority to deputise for the Secretary General, and the Vice Secretary General) of the Secretary General, who is “elected by the General Congress, and is the legal representative of the Trade Union, with standing to sue and to be sued for all legal purposes”.

The complaint is filed by Mr Daniele Gorfer, who was elected as Secretary General of Sa.Pens. Or.S.A. on 10 November 2017 at the Congress held in Montesilvano (province of Pescara), and consequently by the person vested with general powers of substantive and procedural representation, who as such is fully entitled to file it on behalf of the undersigned trade union organisation.

Moreover, the undersigned trade union has on various occasions – including in recent times, for example by collective complaint no. 167 of 2018 on the partial freeze of the automatic annual adjustment of pensions provided for under Law no. 145 of 2018 – exercised its protective prerogatives in accordance with the 1995 Additional Protocol to the ESC, as it is not disputed that it has the status and fulfils the prerequisites stipulated to that effect.

2.2. The State against which the complaint is filed.

The complaint is filed against the Italian Republic.

Italy ratified the European Social Charter by Law no. 30 of 9 February 1999 “Ratification and implementation of the Revised European Social Charter, with appendix, done in Strasbourg on 3 May 1996” (enclosure 1).

By Law no. 298 of 28 August 1997, “Ratification and implementation of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, done in Strasbourg on 9 November 1995”, Italy subsequently ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (enclosure 2).

3. THE REFERENCE LEGISLATIVE FRAMEWORK APPLICABLE TO SURVIVORS’ PENSIONS FOR PRIVATE SECTOR EMPLOYEES UNDER ITALIAN LAW.

In order to place the matter at issue within its proper setting, it is necessary to set out the context within which the national legislation to which this complaint relates was enacted.

3.1. Protected event and scope of pension protection for surviving family members.

Italian law, in line with other legal systems, considers the death of an insured worker or a pensioner to constitute a protected event, which gives rise to a socially relevant need that must

be attended to through the provision of appropriate benefits. This is because it also entails for surviving family members, for the surviving partner within a civil union and for any dependent children the loss of a source of income upon which such persons had been able to rely until then.

It is widely considered (see for example M. Cinelli, *Diritto della previdenza sociale*, Turin, 2018, pp. 605 et seq.) that the death of an insured person or pensioner is covered indirectly, although with certainty, by Article 38(2) of the Constitution, which provides that the State must guarantee resources that are adequate to meet the everyday needs of protected persons in the event, amongst others, of disability and old age. This explains why, under Italian law, the rules on pension provision for surviving family members have always been incorporated into the law on general mandatory insurance against disability and old age, constituting an inseparable structural component of those provisions.

This also explains why the protection available in the event of the death of an insured person or pensioner, as protected within the ambit of mandatory general disability, old age and survivors' insurance, has always – in keeping with the choice subsequently enshrined in Article 38 of the Constitution – been configured strictly as pension provision rather than a form of social security benefit. This is the case in the sense that protection is guaranteed by virtue of – and in proportion with, or in any case in correlation with – the insurance contribution record of the deceased, irrespective of any actual condition of social need of the survivors. In other words, also having regard to the constitutional principle of social solidarity (Articles 2 and 38 of the Constitution), mandatory pension insurance for survivors has always incorporated features that we may define as “meritocratic”; such insurance has configured the structure of benefits in line with the principle laid down in Article 4 of the Constitution by focusing on the employment record of the insured person, and therefore his or her payments into the relevant pension system.

This is an aspect of vital significance for the purposes of this collective complaint. Specifically – as we shall note in greater detail below (section 5) – in enacting Article 1(41) of Law no. 335 of 1995, thereby contradicting the nature and structure of the institution concerned as relating specifically to pensions, the Italian legislature unreasonably deprived it of any tangible protective content and converted it – essentially – into a selective social security benefit.

Therefore, in the event of the death of an insured person or pensioner registered with one of the INPS [National Institute for Social Security] schemes (including the former IPOST [Postal Workers' Fund], the former INPDAP [National Pensions and Assistance Institute for Employees of the Public Administration] and the former ENPALS [National Pensions and

Assistance Institute for Performance Arts Workers and Professional Sportspersons] schemes) for surviving family members referred to by Article 22 of Law no. 903 of 21 July 1965, entitlement to a survivor's pension arises where any of the following conditions is met:

- 1) the deceased was receiving a direct pension (old-age pension, early retirement pension, pension based on contribution record, incapacity pension and disability pension) or was entitled to such a pension and its disbursement was pending (known as a reversionary pension);
- 2) the worker died having fulfilled the following prerequisites:
 - 15 years of insurance and contributions or 780 weekly contributions, or
 - 5 years of insurance and contributions or 260 weekly contributions, of which at least 3 years or 156 weekly contributions during the five-year period prior to his or her death (known as an indirect pension).

For the purposes of fulfilment of the insurance prerequisites for the right to a survivor's pension, any periods during which invalidity benefit was paid and no work was engaged in are also taken into account.

In the event that the surviving family members of a worker insured under the defined-benefit or mixed scheme do not have any entitlement to an indirect pension at the time of death, a death benefit lump sum is paid out based on the total of the contributions paid. Entitlement to this lump sum is recognised provided that at least one year's contribution has been paid or credited during the five years prior to the death of the insured person. The amount of that lump sum is equal to 45 times the total disability, old-age and survivors' contributions paid for the insured person, such contributions being subject to a minimum of €22.31 and a maximum of €66.93.

If the prerequisites mentioned above are not met in relation to the survivors of an insured person whose pension is paid according to the defined-contribution system, a one-off allowance is payable.

3.2. Recipients.

3.2.1. Surviving spouse.

The acquisition of the right to a survivor's pension by the spouse of an insured person or pensioner who has died is not subject to any subjective prerequisite. The spouse loses entitlement to the pension in question only if he or she remarries. In such an eventuality, he or she is entitled to a lump sum equal to two years of pension payments pursuant to Article 3 of Legislative Decree of the Lieutenant of the Realm no. 39 of 18 January 1945, based on the level of entitlement at the time of remarriage. A separated spouse is also entitled to a survivor's pension. In particular, in the event that the surviving spouse was responsible for the separation, he or she is entitled to a pension only if he or she is receiving maintenance pursuant to a court

order.

3.2.2. Surviving divorced spouse.

Article 9(2) of Law no. 898 of 1 December 1970, as replaced first by Article 2 of Law no. 436 of 1 August 1978, and subsequently by Article 13 of Law no. 74 of 9 March 1987, and Law no. 263 of 28 December 2005, provides that “if in the event of the death of a former spouse there is no surviving spouse who meets the prerequisites for a reversionary pension, the spouse in respect of whom a decree of divorce or an order terminating the civil effects of a religious marriage has been issued shall be entitled to a reversionary pension unless he or she has remarried and provided that he or she is receiving the payment referred to under Article 5, and under all circumstances provided that the [employment] relationship that gave rise to entitlement to a pension was in existence before the decree or order”. Accordingly, if an insured person has not remarried after divorce, the surviving divorced spouse is entitled to a pension if the following conditions are met:

- 1) he or she is receiving recurring divorce settlement payments pursuant to Article 5 of Law no. 898 of 1970 (although it should be noted in this regard that if the divorce settlement is paid as a lump sum, the surviving divorced spouse who received it loses entitlement to a survivor’s pension, as there is no longer any link with the assets of the deceased);
- 2) he or she has not remarried (remarriage results in the forfeiture by the divorced spouse of the right to a survivor’s pension, even if at the time of the death of the insured person or pensioner the new marriage has been terminated as a result of the death of the spouse or divorce);
- 3) the date on which the insurance of the deceased started was earlier than the date of the decree of divorce or the order terminating the civil effects of a religious marriage;
- 4) in the event of the death of an insured person, the insurance and contribution prerequisites specified by law have been fulfilled.

If there is both a divorced spouse and a surviving spouse, since the legislation fails to make provision as to the proportions of the pension attributable to each, its allocation will be a matter for the courts pursuant to an application by the divorced spouse seeking recognition of his or her right and the setting of the proportion in question. The overall amount of the pension attributable to the surviving spouse and the divorced spouse amounts to 60% of the pension already paid or to which the deceased would have been entitled. As a matter of law, the court’s judgment is definitive in determining the amount of the respective portions attributable to each.

3.2.3. Children and equivalent persons.

Pursuant to Article 22 of Law no. 903 of 21 July 1965, children (both legitimate and biological) and any persons equivalent to them who have not yet reached the age of 18 at the time of the death of the insured person or pensioner or who, irrespective of age, have been recognised as being unfit for work and financially dependent on the parent at the time of his or her death are entitled to a survivor's pension.

For surviving children who are not involved in gainful activity and are financially dependent on the deceased parent at the time of death, the limit of 18 years of age is increased to 21 if the child is attending middle school or a vocational college and throughout the entire duration of the degree course until the age of 26 at the latest in the event of university attendance.

The following shall be deemed to be equivalent to legitimate or biological children:

- adopted children and stepchildren of the deceased worker;
- children of the deceased who have been recognised or declared to be such by a court of law;
- children who could not be recognised by the deceased for whom he or she was obliged to pay maintenance or alimony pursuant to a court order, under the circumstances provided for in Article 279 of the Civil Code;
- children who could not be recognised by the deceased but who have obtained recognition of the right to a lifetime annuity within the estate of the parent pursuant to Articles 580 and 594 of the Civil Code;
- children born from the previous marriage of the spouse of the deceased;
- children of the spouse of the deceased who have been recognised or declared to be such by a court of law;
- minors duly placed in foster care by the competent authorities according to law;
- grandchildren not of legal age, even if not formally in his or her custody, who are proven to be financially dependent on the descendant;
- posthumous children born within three hundred days of the death of the father (in such cases the respective entitlement arises from the first day of the month following that in which the posthumous child was born).

3.2.4. Parents.

If there is no spouse or child, or if any existing spouse or child(ren) is/are not entitled to a survivor's pension, the right to the pension in question is vested in the parents of the insured person or pensioner if at the time of the death of the latter they are:

- older than 65 years of age;

- not in receipt of any direct or indirect pension;
- financial dependants of the deceased worker.

Any parent who after receiving a survivor's pension accrues entitlement to another pension loses the right to the survivor's pension with effect from the first day of the month following that in which the new pension became payable.

3.2.5. Unmarried siblings.

If there is no spouse, child or parent, or if any existing spouse, child(ren) or parent(s) is/are not entitled to a survivor's pension, the right to the pension in question is vested in the unmarried siblings of the insured person or pensioner if at the time of the death of the latter they are:

- unfit for work;
- not in receipt of any direct or indirect pension;
- financial dependants of the deceased worker.

Any sibling who after receiving a survivor's pension accrues entitlement to another pension loses the right to the survivor's pension with effect from the first day of the month following that in which the new pension became payable. In addition, cessation of unfitness for work or subsequent marriage results in the forfeiture of the right to the benefit from the first day of the month following that in which the relevant event occurred.

3.3. Prerequisite of financial dependence.

Article 22 of Law no. 903 of 21 July 1965 subjects the recognition of entitlement to a survivor's pension for children and equivalent persons over the age of 18, for students or for persons unfit for work to the prerequisite of their financial dependence on the deceased at the time of the parent's death.

Children or equivalent persons under the age of 18 are automatically assumed to be financially dependent on the deceased.

The prerequisite of financial dependence is deemed to be met where the following two conditions are met.

1) A state of need of the surviving child consisting in his or her lack of financial self-sufficiency in relation to the average needs pertaining to his or her upkeep, his or her sources of income, and the proceeds of any contribution to upkeep by other family members. The prerequisite of a lack of financial self-sufficiency is met where the individual income of the survivor, less any income ineligible for computation according to law, is lower than the amount of the minimum pension increased by 30%.

The minimum pension is taken to mean the minimum monthly amount of the pension provided for under mandatory general insurance, increased by one twelfth for the thirteenth monthly payment. In addition to direct and indirect war pensions, any study grants, scholarships and pensions for the civilian blind are excluded from the computation of income for surviving children and equivalent persons. As was clarified by the INPS in circular no. 15 of 2009, only income that is liable to income tax need be taken into account for the purposes of assessing the limits described above, thereby excluding any income that is exempt (war pensions, financial benefits payable in relation to civil invalidity) or income that is otherwise not considered for income tax purposes (INAIL [National Institute for Insurance Against Occupational Accidents] annuities), as laid down by Article 14-septies of Law no. 33 of 29 February 1980.

In the event that a child who is unfit for work is married, his or her right to a pension is conditional upon the prerequisite that the child was financially dependent on the parent at the time of the latter's death on the grounds that the spouse did not have sufficient means to maintain him or her. Therefore, in such an eventuality also any income earned by the spouse must be considered as part of the assessment as to whether the prerequisite of financial dependence is met.

2) Habitual upkeep of the survivor by the deceased. This prerequisite may be inferred from the actual conduct of the deceased in relation to the survivor.

The following considerations are of particular significance as part of this assessment:

- cohabiting, i.e. the actual sharing of a home and meals (for cohabiting children over the age of 18 it is necessary to establish that they are not financially self-sufficient, whereas there is not as a rule any need to verify habitual upkeep);
- non-cohabiting (in this case, it is necessary to establish in relation to children over the age of 18 that both prerequisites of a lack of financial self-sufficiency and habitual upkeep are met).

For the purposes of habitual upkeep it is necessary to establish that the deceased provided a significant and ongoing contribution to the upkeep of the survivor. For that purpose, it is necessary to ascertain, *inter alia* by a comparative examination of the incomes of the deceased and the survivor, whether the former did actually provide a significant and ongoing contribution to the upkeep of the non-cohabiting child. It is not necessary that the insured person or pensioner provided exclusively for the upkeep of the non-cohabiting child. One particular scenario in which there is more than one contribution to upkeep is that in which the survivor has been admitted to an institution providing care or assistance where the admission charges are paid by a body or person other than the deceased worker, who nonetheless provides that person on an ongoing basis with the means for subsistence. In that eventuality, the prerequisite of

financial dependence will be met where the survivor is not able to rely on any other means of subsistence.

By judgment no. 42 of 25 February 1999, the Italian Constitutional Court held that “whilst the receipt of a small income for work performed does indeed improve the financial circumstances of an orphan, it does not deprive him or her of the predominant classification as a student; as a result, the entire elimination or even the partial reduction of the level of the reversionary pension would result in a substantial violation of the right to study and a deterioration in the circumstances of the student, at odds with the principles laid down by Articles 3, 4, 34 and 35 of the Constitution”. The right to a survivor’s pension of an orphan who is a student is in fact a result of the fact that it is impossible for that studying orphan to earn income, owing to his or her involvement in studies: therefore, the performance of remunerated work as grounds for the refusal of a share of the pension cannot be applied in relation to work that is precarious, occasional and remunerated at a minimal level, but only to ordinary work performed with adequate remuneration.

In the absence of any legislative provision, the performance of work that gives rise to annual income lower than the minimum annual amount of the pension provided for under mandatory general insurance increased by 30% is not considered to preclude entitlement to a pension. Therefore, in the event that the remunerated activity does not interfere with the predominant classification as a student, the survivor is obliged to inform the Institute promptly of the anticipated annual income, as well as any changes to it.

If the limit referred to above is exceeded, the INPS immediately suspends payment of the pension and takes action to recover any amounts unduly disbursed during the relevant year. Only income resulting from any form of work is taken into account for the purposes of establishing the income circumstances referred to above.

Article 22 of Law no. 903 of 21 July 1965 provides that children of any age who were recognised as being unfit for work and financially dependent on the parent at the time of death are entitled to a survivor’s pension. In addition, any underage children who became unfit for work between the death of the parent and the age of 18 are entitled to a survivor’s pension. In order to be classified as unfit for work for the purposes of entitlement to a survivor’s pension, the individual must be “subject to an absolute and permanent inability to carry out any form of work owing to a physical or mental infirmity or disability”.

3.4. Amount of the pension paid to survivors.

Payment of the survivor’s pension commences from the start of the month following that in

which the pensioner or insured person died and is due as a percentage share of the pension previously paid or to which the insured person would have been entitled. According to the percentages laid down by Law no. 335 of 8 August 1995, the survivors' shares are stipulated as follows:

- spouse only: 60%;
- spouse and one child: 80%;
- spouse and two or more children: 100%.

If only the children are entitled to a pension, or only parents or only siblings, the reversionary shares are as follows:

- one child: 70%;
- two children: 80%;
- three or more children: 100%;
- one parent: 15%;
- two parents: 30%;
- one sibling: 15%;
- two siblings: 30%;
- three siblings: 45%;
- four siblings: 60%;
- five siblings: 75%;
- six siblings: 90%;
- seven or more siblings: 100%.

Any amounts paid as a pension to survivors must however be cumulated with the income of the beneficiary (spouse, parents, siblings), in accordance with the limits laid down in Table F to Law no. 335 of 8 August 1995:

- income higher than 3 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January → percentage eligible for cumulation: 75% of the reversionary pension;
- income higher than 4 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January → percentage eligible for cumulation: 60% of the reversionary pension;
- income higher than 5 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January → percentage eligible for cumulation: 50% of the reversionary pension.

The pension resulting from the cumulation of income with the reduced survivor's pension must not under any circumstances be lower than that to which the same individual would have been

entitled had that income reached the maximum limit of the band immediately below that in which the income received is classified. The limits on eligibility for cumulation do not apply if the recipient is a member of a family unit comprising underage children, students or persons unfit for work, identified in accordance with the rules applicable to mandatory general insurance. Therefore, they apply in situations in which a survivor's pension is due only to the spouse or to the parents or siblings, and do not by contrast apply in situations in which a pension is received by underage children, students or persons unfit for work, either alone or in conjunction with the spouse.

For the purposes of eligibility for cumulation as mentioned above, INPS circulars no. 234 of 25 August 1995 and no. 38 of 20 February 1996 have clarified the income of the recipient that is to be taken into account: income liable to income tax, after pension and social security contributions, excluding end-of-service allowances irrespective of their designation and any advances thereon, income generated by the home and backdated income taxed separately. In all instances, the amount of the survivor's pension that is potentially to be reduced is disregarded.

If the survivor receives more than one survivor's pension, those pensions are excluded from the computation of the income that is to be assessed for the purposes of the application of the legislation concerned.

4. CONCERNING THE MERITS OF THE COMPLAINT: THE EXPROPRIATING EFFECTS OF LAW NO. 335 OF 1995 AND SUBSEQUENT "CONTEXTUAL" MEASURES.

It is clearly apparent from the albeit summary account of the national legislative framework provided above that Law no. 335 of 1995 constituted a genuine departure within the long legislative tradition of the rules governing survivor's pensions under the Italian pension system, in distorting its nature and altering its protective function, resulting in a serious breach of the social rights protected under the ESC.

The negative effects on the pensions paid to recipients – who are predominantly women – have without doubt heightened over the course of the years, most recently as a result of the provisions on the partial freeze of the automatic annual adjustment of pensions, which were reiterated by Law no. 145 of 2018 (and which will be discussed in greater detail shortly below). However, there is no doubt that, from the outset, the 1995 law essentially depleted the pension insurance aspect of the survivor's pension by altering its nature from a pension into what has surreptitiously become a form of social security (and which for this reason has become means tested).

In fact, Article 1(41) of Law no. 335 was applied without the general gradualism that

characterised the principal change made by the 1995 reform to the mandatory pensions system – consisting in the passage from the defined-benefit system to the defined-contribution system, which has still not yet become fully effective almost 25 years after the law came into force; specifically, it entailed an immediate and significant reduction in the level of the pensions payable to survivors – moreover without any effective financial reason – according to a mechanism providing for a percentage reduction in the level of the reversionary pension if there is more than one recipient and – above all – if there are multiple sources of income. For persons in receipt of income higher than five times the minimum INPS pension, this essentially entailed the expropriation of 50% of the benefit. We shall see below – with reference to the analytical tables based on official INPS data – how the combined effect of the lowering of the reversionary shares, the reduction of the amount payable according to income band and the progressive nature of the tax system can as a matter of fact entail the almost complete cancellation of the survivor's pension, in particular for persons in receipt of income higher than 5 times the amount of the minimum annual pension.

In fact, as was pointed out above, the survivor's pension is paid as a percentage of the amount that was paid or that would have been paid to the deceased worker or pensioner, including any supplement up to the minimum amount of the pension, according to the shares set out in the summary provided above. If the pension is a reversionary pension, the percentage is applied to the amount of the pension paid to the deceased; if the pension is an indirect pension, the amount of the pension that would have been payable to the insured person at the time of death is calculated, taking account of the level of contributions credited up until that point in time, after which the percentage entitlement is applied. The amount of the survivor's pension thereby determined constitutes, to all intents and purposes, the notional amount of the pension, which must then be adjusted at the statutory intervals and topped up to the amount of the minimum pension in the event that the statutory prerequisites are met in relation to the survivor. The pension to which the deceased insured person would have been entitled under the defined-contribution system is calculated on the basis of the transformation coefficients established with reference to age, and if the deceased was younger than 57 years of age the coefficient applicable to age 57 is taken as a reference.

The amount of the survivor's pension thereby calculated is further reduced if the recipient earns income in excess of the amount of the INPS minimum pension for employee workers. That reduction – as mentioned above – amounts to 25% if the income is higher than three times that figure, to 40% if the income is higher than four times, and to 50% if the income is higher than five times. This means that, as a result of the application of Article 1(41) of Law no. 335 of 1995, any person with a gross income of a little over €2,500 per month ends up losing half of

the pension. In reality however – considering the combined effect of the tax burden (which according to law applies to the pensioner’s overall income) – the proportion lost can even be much higher, and is normally around 60%: as a result, it may be branded without any exaggeration as a form of levy akin to the genuine expropriation of the pension benefit.

We feel that it is appropriate to summarise in the following table the rules governing the eligibility for cumulation of a survivor’s pension with the recipient’s own income and the resulting system for the percentage reduction of the pension.

Law no. 335 of 1995 - TABLE F (Article 1(41)) on the cumulation of survivor’s pensions and the recipient’s own income		
Survivor’s income limits	Percentage eligible for cumulation with the reversionary pension	Actual reversionary percentage to be applied to the reversionary share of 60%
Income up to 3 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January	Percentage eligible for cumulation: 100% of the reversionary pension.	100% of 60% =60%
Income between 3 and 4 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January.	Percentage eligible for cumulation: 75% of the reversionary pension. Remaining 25% not eligible for cumulation.	75% of 60% =45%
Income between 4 and 5 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January.	Percentage eligible for cumulation: 60% of the reversionary pension. Remaining 40% not eligible for cumulation.	60% of 60% =36%

<p>Income higher than 5 times the minimum annual pension of the pension fund for employee workers, calculated in an amount equal to 13 times the amount applicable as at 1 January.</p>	<p>Percentage eligible for cumulation: 50% of the reversionary pension. Remaining 50% not eligible for cumulation.</p>	<p>50% of 60% =30%</p>
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It is also useful to summarise with reference to examples in the following table the reasoning set out above.

Reversibility 1 years 2019										
Minimum INPS pension 2019 gross per month			Monthly amount of the MP 2019	Monthly amount 3x MP	Monthly amount 4 x MP	Monthly amount 4 x MP				
			513.01	1,539.03	2,052.04	2,565.05				
Income class of the survivor's direct pension	Gross monthly survivor's direct pension	Gross direct pension of the deceased	Reversionary share applied according to survivor's income %	Gross reversionary pension due to survivor	Direct pension plus reversionary pension (gross)	Gross annual income tax	Direct pension plus reversionary pension (after income tax)			Total gross annual income
up to 3 times minimum	1,539	6000	60	3,600	5,139	22,061	3,442			66,807
up to 4 times minimum	2,052	6000	45	2,700	4,752	19,999	3,214			61,777
between 4 and 5 times minimum	2,399	6000	36	2,160	4,559	18,969	3,100	<<<<<<safeguard clause triggered		59,267
up to 5 times minimum	2,565	6000	36	2,160	4,725	19,854	3,198			61,426
More than 5 times minimum	2,750	6000	30	1,800	4,550	18,122	3,156	<<<<<<safeguard clause triggered		59,150
up to 3 times minimum	1,539	5000	60	3,000	4,539	18,863	3,088			59,007
up to 4 times minimum	2,052	5000	45	2,250	4,302	17,600	2,948			55,927
between 4 and 5 times minimum	2,399	5000	36	1,800	4,199	17,063	2,886	<<<<<<safeguard clause triggered		54,587
up to 5 times minimum	2,565	5000	36	1,800	4,365	17,936	2,985			56,746
More than 5 times minimum	2,750	5000	30	1,500	4,250	17,322	2,918	<<<<<<safeguard clause triggered		55,250
up to 3 times minimum	1,539	4000	60	2,400	3,939	15,576	2,741			51,207
up to 4 times minimum	2,052	4000	45	1,800	3,852	15,349	2,671			50,077
between 4 and 5 times minimum	2,399	4000	36	1,440	3,839	15,284	2,663	<<<<<<safeguard clause triggered		49,907
up to 5 times minimum	2,565	4000	36	1,440	4,005	16,105	2,766			52,066
More than 5 times minimum	2,750	4000	30	1,200	3,950	15,833	2,732	<<<<<<safeguard clause triggered		51,350
up to 3 times minimum	1,539	3700	60	2,220	3,759	14,889	2,614			48,867
up to 4 times minimum	2,052	3700	45	1,665	3,717	14,682	2,588			48,322
between 4 and 5 times minimum	2,399	3700	36	1,332	3,731	14,751	2,596			48,503
up to 5 times minimum	2,565	3700	36	1,332	3,897	15,572	2,699			50,662
More than 5 times minimum	2,750	3700	30	1,110	3,860	15,388	2,676	<<<<<<safeguard clause triggered		50,180
up to 3 times minimum	1,539	2555	60	1,533	3,072	11,496	2,188			39,936
up to 4 times minimum	2,052	2555	45	1,150	3,202	12,136	2,268			41,623
between 4 and 5 times minimum	2,399	2555	36	920	3,319	12,714	2,341			43,144
up to 5 times minimum	2,565	2555	36	920	3,485	13,535	2,444			45,303
More than 5 times minimum	2,750	2555	30	767	3,517	13,691	2,463			45,715

Safeguard clause. The pension resulting from the cumulation of income with the reduced survivor's pension must not under any circumstances be lower than that to which the same individual would have been entitled had that income reached the maximum limit of the band immediately below that in which the income received is classified.

These reductions have been progressively increased, including under the most recent budgetary law for 2019 (Law no. 145 of 2018), in particular to the detriment of recipients of reversionary pensions who also receive their own pension or a direct pension (the vast majority of those affected), by the provisions governing the freeze of the automatic annual adjustment of pensions, which have involved the progressive deactivation of the revaluation mechanism under which the level of pension payments is adjusted in Italy in line with the increase in the cost of living. The complainant trade union has already objected to this Committee – in collective complaint no. 167/2018, which is still pending – to the violation of the relevant provisions of the ESC that these measures have caused, on their own, to Italian pensioners; as a result, there is no need for the complaint to provide a detailed account here of the extremely complex evolution of Italian law. It will therefore be sufficient at this juncture to provide a brief *excursus* of the development of the law on the automatic adjustment of pensions in order to appreciate how this has overall contributed to aggravating the effects of the 1995 law, which essentially imposed a “levy” on the social rights of recipients of reversionary pensions.

Before 2001, and therefore at a time following the entry into force of Law no. 335 of 1995, automatic adjustment was governed by Article 24 of Law no. 41 of 1986, which guaranteed full adjustment for pensions amounting to up to two times the minimum pension, 90% adjustment for those amounting to between two and three times the minimum and 75% adjustment for those amounting to more than three times the minimum. With effect from 1 January 2001, Law no. 388 of 2000 reconfigured the three bands, granting the full adjustment, i.e. 100%, to pensions amounting to up to three times the minimum pension; this was reduced to 90% for amounts falling between three and five times the minimum pension, and further to 75% for any amounts in excess of five times the minimum. As regards the manner in which the adjustment is applied, as of 1 January 1999, Article 34(1) of Law no. 448 of 1998 provided that the adjustment be applied on a cumulative basis, i.e. taking as a reference for the purposes of establishing the rate of adjustment to be applied the overall income resulting from the cumulation of pensions paid by the INPS as registered for each pensioner in the Central Register of Pensioners.

On several occasions already during this initial period, indexation rates were moreover reduced for higher pensions. It is sufficient to consider that, as early as 1998, Article 59 of Law no. 449 of 1997 had provided for the freezing of the automatic adjustment of pensions in excess of five times the minimum INPS and that, for the following year, the rate of adjustment was to be applied at a level of 30% for amounts falling between five and eight times; above that limit, no further annual adjustment was to be applied. A similar freeze was introduced for 2008 by Law no. 247 of 2007 on pensions higher than eight times the INPS minimum (for the 2008-2010 three-year period, the adjustment was however guaranteed in the full amount for pensions not exceeding five times the minimum pursuant to Article 5(6) of Decree-Law no. 81 of 2007).

The regime described above remained operative until 31 December 2011 when Decree-Law no. 201 of 2011 (subsequently converted into Law no. 214 of 2011) ordered the freezing of indexation for pensions amounting to more than three times the minimum INPS pension. On the other hand, pensions worth less than that amount were adjusted in full in line with inflation (+ 2.7% in 2012 and + 3% in 2013). As of 1 January 2014, Law no. 147 of 2013 (Stability Law for 2014) introduced a revaluation system (which was subsequently extended until 31 December 2018), subdivided into five bands: for pensions amounting to up to five times the INPS minimum pension, the adjustment was applied in full (100%); for pensions between this level and four times the minimum pension, 95% of the adjustment was applied; for those between this level and five times the minimum, 75% of the adjustment was applied; the adjustment was reduced to 50% for pensions exceeding in total five times the minimum; finally, it fell to 45%

for pensions higher than 6 times the minimum pension.

It was against this legislative backdrop that judgment no. 70 of 2015 was issued by the Italian Constitutional Court, which ruled unconstitutional the two-year freeze (2012-2013) provided for under Law no. 214 of 2011 on pensions higher than three times the INPS minimum.

In response to the objections raised by the Constitutional Court, the Italian Government then intervened once again with Decree-Law no. 65 of 2015, a measure which however guaranteed a partial, retrospective revaluation only for pensions amounting to between three and six times the INPS minimum, whilst substantially upholding the two-year freeze on pensions higher than that limit.

Finally, further provisions were adopted by Law no. 145 of 2018. The five-band regime established by the Stability Law for 2014 was extended until 31 December 2018 by the Stability Law for 2016 with the result that, as of 1 January 2019, the position was set to revert to the provisions laid down by Law no. 388 of 2000. However, Article 1(260) of Law no. 145 of 2018 further reviewed the revaluation mechanism for the 2019-2021 three-year period, breaking it down into seven bands as follows: the adjustment will be applied in full (100%) only for pensions amounting to up to three times the INPS minimum pension; for pensions above this level up to four times the minimum pension, 97% of the adjustment will be applied; for pensions above this level up to five times the minimum, 77% of the adjustment will be applied; the adjustment will fall further to 52% for pensions amounting to between five and six times the minimum, to 47% for pensions between six and eight times the minimum pension, to 45% for pensions between eight and nine times the minimum and finally to 40% for those amounting to more than nine times the INPS minimum. Following the reconfiguration of the percentage adjustments introduced by the budgetary law for 2019, whilst nothing will change for pensions amounting to up to three times the INPS minimum, for those falling into the second band (between three and four times the minimum) there will be a small increase compared with the previous regime, whilst for all others the amounts will be reduced at an increasing rate, thereby resulting in a loss of purchasing power. For example:

- for a pension of €2,000 gross (which falls into the band of between three and four times the INPS minimum), under the previous system 90% of the revaluation would have been applied (index equal to 0.99%), whilst today the revaluation ratio increases to 97% (index equal to 1.067%), which means that the pensioner will receive around €1.50 more each month as a result of the adjustment;
- on the other hand, if the pension amounts to €2,200 (which falls into the band of between four and five times the minimum), as of 1 January 2019 77% of the revaluation will be

applied (revaluation index of 0.847%), equal to €18.6 per month, as against €21.7 under the previous regime.

The reconfiguration of pension adjustments affects around 58.6% of pensions, according to estimates contained in the technical report annexed by the Italian Government to the budgetary law for 2019. The legislation in question started to be applied in practice from 1 June 2019 owing to the deduction from the pension instalments for June also of the amounts due to be withheld from 1 January 2019.

It is therefore sufficiently clear that, also in accordance with so-called “contextual” provisions, the legislation imposing a levy on reversionary pensions laid down by Article 1(41) of Law no. 335 of 1995, which is objected to here before the Committee, amounts to a significant breach of various provisions of the European Social Charter.

5. GROUNDS FOR UNLAWFULNESS IN RELATION TO THE RIGHTS GRANTED TO SURVIVORS AND THE PRINCIPLES ENSHRINED IN THE EUROPEAN SOCIAL CHARTER.

The undersigned trade union organisation considers that the Italian legislation applicable to reversionary pensions violates a series of rights and principles contained in the European Social Charter and that, for this reason, such a systematic violation of the social rights guaranteed under the ESC must be objected to and brought to the attention of this Committee through this collective complaint.

Articles 4, 12, 16, 20 and 23 ESC are of particular significance in this case, and it appears to be especially evident that they have been violated by the Italian legislator for reasons that will be illustrated in greater detail below.

5.1. The social security status of pensions paid to survivors under Italian law.

As has been fully clarified by the Italian Constitutional Court in some of its rulings (judgment no. 174 of 2016, sections 3.1 and 3.2 of the conclusions on points of law; judgment no. 286 of 1987, section 3.2 of the conclusions on points of law; judgment no. 777 of 1988, section 2; judgment no. 18 of 1998, section 5; judgment no. 926 of 1988, section 2; judgment no. 419 of 1999, section 2.1; judgment no. 70 of 1999, section 3), reversionary pensions constitute a form of pension provision and a necessary instrument for pursuing the interests of society as a whole in freeing every individual from need and guaranteeing the minimum financial and social conditions that allow for the effective enjoyment of civil and political rights, ensuring that workers receive preferential treatment compared with the public at large. As a result of the

death of the worker, any previous arrangement under which another person was financially dependent comes to an end; however, the reversionary pension achieves a guarantee of continuity of support for survivors.

On account of that aspect to pension provision, which has moreover always been clearly apparent in the Italian pension system (see on all points M. Cinelli, S. Giubboni, *Lineamenti di diritto della previdenza sociale*, Milan, 2018, pp. 193 et seq.), the reversionary pension is governed by the principles that pensions must be adequate and proportionate, as deferred remuneration, and also suitable for guaranteeing a free and dignified existence to the worker. When a reversionary pension is disbursed to a surviving family member, the pension-related goal is naturally also associated with a specific foundation in solidarity. This is because that payment is intended to ensure continuity of support for cohabiting survivors and to avoid the state of need that may arise for the survivor as a result of the death of the relative. Accordingly, the continuation of the bond of family solidarity also extends beyond the moment of death.

In recognising that a reversionary pension provided for under an occupational pension scheme falls within the scope of Article 157 TFEU (principle of equal pay for male and female workers for equal work or work of equal value), the Court of Justice of the European Union itself has moreover stated that the fact that such a pension, by definition, is paid not to the worker but to his survivor cannot affect that interpretation, since, as such a pension is a benefit deriving from the survivor's spouse's membership of the scheme, the pension accrues to the survivor by reason of the employment relationship between the employer and the survivor's spouse and is paid to the survivor by reason of the spouse's employment (see the judgment of 24 November 2016 in Case C-443/15, *Parris*, EU:C:2016:897, paragraph 33; the judgment of 10 April 2008 in Case C-267/06, *Maruko*, EU:C:2008:179, paragraph 45 and the case-law cited).

The Court went on to assert that, for the purposes of assessing whether a retirement pension, by reference to which the survivor's pension ... is calculated ... falls within the scope of Article 157 TFEU, ... [out of] the criteria for identifying a pension scheme which it has adopted on the basis of the situations brought before it, only the criterion of whether the retirement pension is paid to the worker by reason of the employment relationship between him and his former employer, that is to say, the criterion of employment, based on the wording of that article, may prove decisive. In this context, ... while that criterion admittedly cannot be regarded as exclusive, inasmuch as pensions paid under statutory social security schemes may reflect, wholly or in part, pay in respect of work, considerations of social policy, of State organisation, of ethics, or even ... budgetary concerns ... cannot, however, prevail if the pension concerns only a particular category of workers, if it is directly related to the period of service completed and if its amount

is calculated by reference to final salary (see the judgment cited above of 24 November 2016 and 10 April 2008).

However, as mentioned above, the legislation governing this system introduced by Article 1 of Law no. 335 of 8 August 1995 violates the fundamental principles of the ESC in various respects.

5.2. The relevant ESC provisions violated.

5.2.1. Violation of the right to fair remuneration.

First and foremost, the percentage reduction of the amount of the reversionary pension in the event that there is more than one recipient and – in particular regarding the aspect of most relevance here – if there are multiple sources of income violates the right to fair pay guaranteed under Article 4 ESC. In fact, Italian law entirely distorts the legal nature of the concept of the reversionary pension as it links the amount of the pension paid to the surviving spouse to that person's state of need, entirely disregarding its status as a pension (and hence, as mentioned above, "remunerative-meritocratic"), thereby unduly transforming it essentially into a social security benefit. In this way, following the 1995 reform, the amount of the pension ends up being detached from the contributions accumulated throughout the lifetime of the deceased, and is now predominantly based on the financial circumstances of the survivor. As such, this irredeemably violates the principle whereby a pension, having the nature of deferred remuneration under the ESC itself, must be based on the quality and quantity of work performed. This principle (as mentioned above) is not undermined by the fact that the reversionary pension is disbursed not to the worker, but to his or her survivor, as this originates from the survivor's affiliation to the scheme of the deceased family member. As a result, the pension is still payable under an employment relationship between the deceased and the employer, and is disbursed as a consequence of work performed.

The European Committee of Social Rights has incontrovertibly clarified that paragraph 1 of Article 4 of the Charter establishes "*the right to a level of remuneration that ensures a decent standard of living*" and that remuneration for work must be understood as "*the consideration that an employer pays to his or her employee for the work carried out*" including, where appropriate, premiums, bonuses or contributions (European Committee of Social Rights, Decision on the merits: *European Council of Police Trade Unions (CESP) v. Portugal*, Collective Complaint No. 37/2006, § 21 et seq.).

It is therefore evident that, in reducing the amount based on the personal and financial circumstances of the recipient, the 1995 reform unlawfully distances the survivor's pension

arrangement from its natural and original configuration as a pension benefit which is directly linked, through a dependency relationship, to the remuneration received by the deceased during his or her lifetime and the deferred remuneration received by the deceased during retirement, and therefore clearly violates the fundamental principle of sufficient and decent remuneration laid down by Article 4, paragraph 1 of the Charter.

5.2.2. Violation of the fundamental rights laid down by Articles 12, 16 and 23 ESC.

In addition, the calculation mechanism introduced by the 1995 reform results in a reduction in the amount of the pension that is payable to survivors which, in most cases, can be – and is – considerable, and may end up amounting to a genuine, albeit not complete, levy on or expropriation of the pension. We should consider by way of example a scenario in which the spouse (in the event that his or her nuclear family does not include underage children, students or persons unfit for work) is due only 60% of the amount of the pension paid to the deceased or of the amount to which the insured person would have been entitled at the time of death. Moreover, in the event that the surviving spouse receives income in excess of the amount of the minimum pension of the pension fund for employee workers (thereby suffering a reduction of the pension by up to 50%), according to the 1995 legislative reform he or she will end up receiving a reversionary pension or an indirect pension which may amount to only 30% of the pension received by the deceased spouse or to which he or she would have been entitled.

However there is more. This drastic reduction pursuant to Law no. 335 of 1995 is aggravated in terms of its specific effects in that it is applied to the gross amounts of the reversionary pension, which are however also subject to the income tax already applied to the overall cumulative income of the recipient of the reversionary pension. As a result, the real impact of the reduction is – typically – much greater than the 50% provided for under Law no. 335 of 1995 for those in particular with incomes higher than 5 times the INPS minimum pension (as described above). As a result, it would not be out of place to assert that this constitutes a genuine (partial) expropriation of the pension, including by virtue of the cumulative effect of taxation.

There is no doubt that such a drastic reduction in the pension benefit payable to survivors – not only violates, as mentioned above, the principle that remuneration for work performed must be adequate and proportionate, but also – infringes in a particularly blatant manner the principles laid down in Articles 12, 16 and 23 ESC.

In particular, Article 12 (*The right to social security*) provides *inter alia* that, with a view to ensuring the effective exercise of the right to social security, the Parties undertake:

- to establish or maintain a system of social security;

- 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;
- to endeavour to raise progressively the system of social security to a higher level; In this regard, the Committee has been settled in asserting that Article 12 of the Charter establishes the right to social security as a fundamental right, such that “*a social security system in the meaning of Article 12§1 must cover the traditional social risks providing adequate benefits in respect of medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors (e.g. Conclusions 2013, Georgia, Art. 12 §1)*”. Furthermore, “*the social security system must cover a significant percentage of the population and it must be collectively financed, i.e. funded by contributions of employers and employees and/or by the state budget (e.g. Conclusions 2006, the Netherlands, Art. 12 §1)*. Moreover, “*When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement*” and “*under Article 12§1 benefits provided within the different branches of social security should be adequate*” (Decision on the Merits: *Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, § 57 et seq.).

Article 16 (*The right of the family to social, legal and economic protection*) guarantees the fulfilment of the necessary conditions for the full development of the family, promoting the economic, legal and social protection of family life by such means as social benefits, fiscal arrangements and incentives.

Article 23 (*The right of elderly persons to social protection*) provides, *inter alia*, that with a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of provision of housing suited to their needs and their state of health or of adequate support for adapting their housing, and the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

The European Committee of Social Rights has asserted on various occasions that Article 23 of the Charter lays down the fundamental right of elderly persons to receive adequate and effective social protection. In particular, “*with a view to respect for this right, States Parties are*

committed to take the necessary actions to enable elderly persons to remain full members of t society and to lead independent lives in their familiar surroundings for as long as they wish and are able” (Decision on the merits: *The Central Association of Carers in Finland v. Finland*, Collective Complaint No. 70/2011, §47).

As is known, these principles are closely paralleled by the Charter of Fundamental Rights of the European Union (CFREU), which draws considerably on them, Article 34 of which provides *inter alia* that:

- The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as (...) old age;
- Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages;
- In order to combat social exclusion and poverty, the Union recognises and respects the right to social (...) assistance so as to ensure a decent existence for all those who lack sufficient resources.

It is also necessary to refer here – owing to its connection and due to the fact that it draws on the provisions of the ESC – to Article 25 CFREU, which recognises the right of the elderly to lead a life of dignity and independence and to participate in social and cultural life, and to Article 33 of the Charter, which guarantees legal, economic and social protection to the family.

However, through the provisions introduced by Article 1(41) of Law no. 335 of 1995, Italian law blatantly contradicts the principles mentioned above in that the mechanism illustrated for reducing the pension benefits paid to survivors:

- does not guarantee a satisfactory social security regime to surviving family members of the deceased (nor, even more so, the achievement of the policy goal of progressively raising the level of protection);
- does not guarantee (nor less promote) the fulfilment of the necessary conditions for the full development of the family;
- does not guarantee certainty for the elderly that they will have sufficient resources for a dignified and independent existence (through the provision of adequate housing and the necessary assistance), at the same time ensuring their full participation in public, social and cultural life.

5.2.3. Violation of the fundamental principle of non-discrimination on the grounds of sex (Article 20 ESC).

And last but not at least, it is necessary to object to a further extremely significant – and self-standing – aspect involving a systematic violation of the principles laid down in the European

Social Charter, which has already been referred to above where it was pointed out that the vast majority of the recipients of reversionary pensions in Italy are women.

It is evident that the right to equal opportunities and treatment in relation to work and employment without discrimination on the grounds of sex has been violated; this right is recognised as a fundamental principle which also applies to the pension schemes of the signatory states under Article 20 ESC, in particular in terms of equal pay, including in relation to deferred remuneration.

In fact, the mechanism for reducing the benefit payable in the event of the death of the spouse provided for in Italy under Law no. 335 of 1995, results in treatment that is significantly worse for women: since in statistical terms in the vast majority of cases it is the wife who survives the husband, the twin-track system for reducing the reversionary pension (based on the one hand on the degree of kinship, taking account of the existence of multiple surviving family members, and on the other, the cumulation with other income) prevalently – and overwhelmingly – disadvantages women, thereby resulting in an indirect form of discrimination between workers and pensioners on the grounds of sex without any objective justification, not even due to any alleged need to limit spending on pensions. On the contrary, it may be asserted without any exaggeration – as is clearly apparent from the tables set out below – that Law no. 335 of 1995 has caused a massive reduction in pension protection for Italian women, who – already being structurally disadvantaged on the labour market, and by extension in terms of direct pensions received – are further penalised as a result of this discriminatory choice by the national legislature in terms of reversionary pension benefits at the time when they have greatest need of social protection from the State.

The tables set out below – which have been drawn up on the basis of official INPS data – demonstrate what has been irrefutably argued here.

Survivor's Pensions 2018 Register, according to the cumulation of the survivor's pension with other pensions.

Type	Sex	Number of pensioners	Overall annual amount of survivor's pensions (millions of euros) (a)	Overall annual amount of other types of pension (millions of euros) (b)	Overall annual pension income (millions of euros) (a+b)	Average annual pension income (euros)
Only survivor's pensions	Men	116,108	687	0	687	5,918.14
	Women	1,305,078	14,449	0	14,449	11,071.41
	TOTAL	1,421,186	15,136	0	15,136	10,650.40
Cumulation with other types of pension	Men	490,841	3,223	9,285	12,508	25,481.96
	Women	2,460,529	24,149	28,489	52,638	21,393.02
	TOTAL	2,951,370	27,372	37,774	65,146	22,073.05
TOTAL	Men	606,949	3,910	9,285	13,195	21,739.44
	Women	3,765,607	38,598	28,489	67,087	17,815.77
	TOTAL	4,372,556	42,508	37,774	80,282	18,360.41

Source: INPS - Central Register of Pensioners 2018 (last available).

Reversionary rate applied to the technical basis for calculating the transformation coefficient into an annuity for a defined-contribution pension.

	1996-2009	2010-2012	2013-2015	2016-2018	2019-2020
Full reversionary rate for a surviving spouse alone	60%	60%	60%	60%	60%
Average percentage reduction as a result of income prerequisites	0.9 if the deceased was male 0.7 if the deceased was female	0.9 if the deceased was male 0.7 if the deceased was female	0.9 if the deceased was male 0.7 if the deceased was female	0.9 if the deceased was male 0.7 if the deceased was female	0.9 if the deceased was male 0.7 if the deceased was female
Average reversionary rate reduced according to income prerequisites	54% to the widow 42% to the widower	54% to the widow 42% to the widower	54% to the widow 42% to the widower	54% to the widow 42% to the widower	54% to the widow 42% to the widower

As a result of the income prerequisites, the reversionary rate varies between 30% and 60% of the pension of the deceased if only the spouse is a beneficiary

INPS pensions payable as at 1 January 2019

Sex	Survivor Private Sector (1)		Survivor Public Sector		TOTAL INPS + ex INPDAP+ ex ENPALS (2)		
	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions
Men	450,231	425.92	95,978	739.60	546,209	481.04	12.6
Women	3,254,473	663.95	532,885	1,187.01	3,787,358	737.55	87.4
TOTAL	3,704,704	635.03	628,863	1,118.73	4,333,567	705.22	100.0

(1) Includes INPS and ex ENPALS survivor's pensions
(2) Excludes survivor's pensions of Professional Funds

Source: INPS - Pensions Statistical Observatory on 1 January 2019

Pensions payable according to the Central Register of Pensioners on 31 December 2018

Type of pension	Number of pensions	%	Overall amount		Average annual amount	
			millions of euros	%	euros	Index Number
Survivor's Pensions	4,696,874	20.6	42,508	14.5	9,050.29	70.3
Total pensions	22,785,711	100.0	293,344	100.0	12,874.03	100.0

Source: INPS - Central Register of Pensioners on 31 December 2018 - provisional data downloaded on 2019

Includes all private and public pension funds and professional funds, excluding the Constitutional Organs of the State

Pensions payable as at 1 January 2019

Sex	Ex-ENPALS		INPS		Total INPS + ex ENPALS Private sector	
	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount
Men	1,436	616.26	448,795	425.31	450,231	425.92
Women	14,555	813.05	3,239,918	663.28	3,254,473	663.95
TOTAL	15,991	795.37	3,688,713	634.33	3,704,704	635.03

Sex	Ex-INPDAP survivors of insured persons		Ex-INPDAP pensioners' survivors		Total ex-INPDAP survivors Public sector	
	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount
Men	27,814	654.41	68,164	774.36	95,978	739.60
Women	101,597	1,097.42	431,288	1,208.12	532,885	1,187.01
TOTAL	129,411	1,002.21	499,452	1,148.92	628,863	1,118.73

Pensions payable as at 1 January 2019 in the former Transport Fund

Sex	Transport Fund survivors		Total Transport Fund	
	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount
Men	602	1,055.86	59,518	2,065.16
Women	39,138	1,112.14	41,167	1,161.43
TOTAL	39,740	1,111.29	100,685	1,695.65

Number of SURVIVOR'S PENSIONS PAYABLE as at 1 January 2019 according to type of pension scheme (1).

	Defined contribution		Mixed (2)		Pure defined-contribution		TOTAL	
	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount
Women	2,886,392	662.44	191,234	629	57,641	126.42	3,135,267	650.55
Men	369,740	427.61	63,009	417.65	8,905	165.96	441,654	420.91
TOTAL	3,256,132	635.78	254,243	576.62	66,546	131.71	3,576,921	622.19

Number of SURVIVOR'S PENSIONS PAID during 2018 according to type of pension scheme (1).

	Defined contribution		Mixed (2)		Pure defined-contribution		TOTAL	
	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount	Number of pensions	Average monthly amount
Men	28,647	416.81	6,994	437.9	1,509	326.88	37,150	417.13
Women	130,523	737.77	20,225	707.15	7,915	229.92	158,663	708.53
TOTAL	159,170	680.01	27,219	637.97	9,424	245.45	195,813	653.25

(1) The data cover only survivors from the INPS funds for employee workers and for self-employed workers.

(2) The mixed system also includes pensions disbursed following the Fornero Reform (defined-contribution system for all from 2012).

The tables provide a highly precise and objectively merciless overview of the discriminatory impact of Law no. 335 of 1995 on female survivors who – across all pension types – account for over 80% of the recipients of indirect or reversionary pensions. The data provided cover the full range of Italian pensions (from the global figure relating to current pensions paid in Italy, according to the INPS General Register, through to the details of pensions disbursed by the former Transport Fund), offering a clear picture of the discriminatory impact of Law no. 335 of 1995, which releases the complainant trade union organisation from any further need to comment. It will be for the Italian Republic to demonstrate the existence of objective reasons, which are independent of the sex of the individuals protected, that could justify such an “upside-down” distribution of pension wealth within the country, which is achieved almost entirely to the detriment of women.

This trade union organisation considers that there are quite simply no such reasons and that, insofar as it affects in such a discriminatory manner on the pension protection for survivors, depriving it of any content, Law no. 335 of 1995 has systematically violated - for all of the reasons set out above – Articles 4, 12, 16, 20 and 23 of the European Social Charter, both jointly and individually.

6. CONCLUSIONS.

In view of the above, the undersigned Daniele Gorfer, acting in his capacity as the Secretary General of the complainant trade union organisation, expressly reserving the right insofar as may be necessary to supplement the submissions set out above at a later stage of the proceedings,

asks

this Committee to declare the above complaint well-founded and as a result to find that, for the reasons set out in the substantive part, the Italian Republic has violated and is violating Articles 4, 12, 16, 20 and 23 of the European Social Charter.

For ease of reference, copies of the following currently applicable legislation are enclosed:

1. Law of the Italian Republic no. 30 of 9 February 1999, “Ratification of the Revised European Social Charter, with Appendix, done in Strasbourg on 3 May 1996”;
2. Law of the Italian Republic no. 298 of 28 August 1997, “Ratification and implementation of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, done in Strasbourg on 9 November 1995”.

Rome and Strasbourg, 25 November 2019

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

(The Secretary General)

A handwritten signature in blue ink, appearing to read 'Daniele Gorfer', is written over a light blue horizontal line. The signature is fluid and cursive.