



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

10 May 2021

Case Document No. 7

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

FURTHER RESPONSE FROM THE GOVERNMENT

Registered at the Secretariat on 27 April 2021



*Ufficio dell' Agente del Governo
davanti alla Corte europea dei diritti dell' uomo*

AVVOCATURA GENERALE DELLO STATO

European Committee of Social Rights (ECSR)

Collective complaint n. 187/2019

Sindacato Autonomo Pensionati Or.sa vs Italy

**REPLIES OF THE
ITALIAN GOVERNMENT**

CT 57354-19

Avv. G. Greco



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I. Preliminary remarks.

1. For a more complete reconstruction of the facts, reference should be made to what has already been asserted in the previous memorandum filed in response to the collective complaint brought by the Or.S.A. Pensioners' Union instead the European Committee of Social Rights.

2. At this stage, it is sufficient to point out that Or.S.A. wrongly claims that the Italian Government, in dealing with the merits of the collective complaint just mentioned, has limited itself to a long description of the Italian legislation on social security protection of survivors, without, however, taking a position on the allegations of illegality of the same for violation of the right to fair pay and fundamental rights under Articles. 4, 12, 16 and 23 CSE and, above all, the principle of non-discrimination on grounds of sex (art. 20 of the Charter).

3. According to Or.Sa., this *modus operandi* of the Government would have entailed the application, in this case, of the procedural principle of "non-contestation", according to which facts not contested by the party on which the burden of proof rests must be considered proven.

4. It should be pointed out from the outset that this assumption is clearly erroneous and unfounded, given that the Italian Government has taken a precise position on all the individual grounds for the collective claim under discussion, thereby fulfilling its own burden of proof.

5. Consequently, the objections contained in the counterparty's statement of defence are unfounded for the following reasons.

II. Unfoundedness of the comments in reply of Or.Sa.

6. As already mentioned in preliminary remarks, the complainant wrongly asserts that, in dealing with the merits of the proceedings registered under no. 187/2019 before the European Committee of Social Rights, the Italian Government has limited itself to



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carrying out a long description of the Italian legislation on social security protection of survivors, without, however, actually take a position on the allegations of illegality of the same for violation of the right to fair pay and fundamental rights under Articles 4, 12, 16 and 23 CSE and, above all, the principle of prohibition of discrimination on grounds of sex (Article 20 of the Charter).

7. In so doing, according to the counterpart, the Italian government would have allowed the application of the principle of non-contestation.

8. However, this assumption is manifestly unfounded, since the Italian Government, in contesting the merits of the collective complaint lodged by the Or.Sa. Pensioners' Union before the European Committee of Social Rights has taken a precise and detailed position with regard to all the objections to Italian legislation raised by the other party.

9. In fact, the Italian government has refuted, point by point, the allegations made by the other party.

10. In particular, with regard to the violation of the right to a fair salary, guaranteed by article 4 of the CSE, it has already been pointed out that article 1, paragraph 41, of Law 335/1995 (containing the reform of the compulsory and complementary pension system) introduced a partial prohibition of accumulation between the survivor's pension and the beneficiary's income, for the specific purpose of reducing public expenditure.

11. The regulation, in conjunction with attachment F to which it refers, establishes that: *"The amounts of pension treatments for survivors can be accumulated with the income of the beneficiary, within the limits of the attached table "F", whereby for the holder, as in the case in point, of an income greater than five times the minimum annual salary of the Employees' Pension Fund, calculated as thirteen times the amount in force as of January 1st, the percentage of accumulation is fifty percent of the survivor's treatment"*.

12. As already mentioned, the described anti-cumulation regulations respond to a solidarity *ratio* in the imposition of an economic sacrifice on the beneficiaries of pension treatments who have incomes exceeding three, four or five times the minimum treatment:



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in this case, the reversionary treatment can be accumulated only in a percentage measure, by bands or brackets (respectively, seventy-five, sixty, fifty percent), thus achieving a reduction in pension expenditure for subjects who, according to the arguments put forward by INPS, being able to count on considerable earnings, do not allocate the amounts of the survivor's pension to satisfy the primary needs of life and, therefore, are in a situation of economic solidity that would justify, considering the survivor's pension in the amount gross of the non-cumulative quota, the imposition of the sacrifice represented by the temporary renunciation of the revaluation of the pension.

13. Moreover, with reference to the rule in question, the Constitutional Court pronounced on it, affirming its legitimacy, on the basis of the principle according to which the legislator can, in order to safeguard budgetary balances and contain social security spending, reduce pension treatments already in place. Therefore, the right to a legitimately awarded pension may well be subject to the effects of more restrictive regulations introduced not unreasonably by subsequent laws, as already affirmed by the Italian Constitutional Court, with sentence no. 446 of 2002.

14. This being the case and because of the purpose of the institute to satisfy the needs of the surviving beneficiary (in this regard, Constitutional Court, sentence no. 495/1993 and no. 195/1990, according to which the pension is to be paid by the surviving beneficiary). In the sentence no.195/1990, Constitutional Court affirmed that the survivor's pension constitutes, for the survivor, a sort of projection of the function of sustenance that the *de cuius* carried out in his/her favour when he/she was alive.

15. Therefore, the legislation in question, which regulates the amount of the survivor's pension in restrictive terms, but within the limits of reasonableness, cannot be questioned from the point of view of a possible violation of the right to a fair salary.

16. Indeed, Italian legislation, by linking the amount of the benefit paid to surviving relatives to their economic condition, does not neglect the social security dimension of the institution, but complies with the need to contain public expenditure.



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17. Well, from the arguments put forward by the Italian government in relation to the alleged violation of art. 4 of the CSE by the Italian legislation, it clearly emerges that the allegations made by the plaintiffs have been promptly contested.

18. As regards, then, the alleged violation of articles 12, 16 and 23 of the European Charter of Social Rights by article 1, paragraph 41, of Law no. 335/1995, it should be pointed out once again that this last regulatory provision does not operate a tout court reduction in the survivor's pension received by the legitimate survivor but makes the reduction subject to the occurrence of specific conditions.

19. It follows that, the higher the income, the greater the reduction in the amount of the pension received by the survivor, so that the domestic law requires a sacrifice only to those who have the economic capacity to bear it.

20. Therefore, there is no violation of the right to social security, of the right of the family to social, legal and economic protection, nor of the right of the elderly to social protection, since, in any case, the economic capacity of the recipient is in no way affected.

21. Lastly, with reference to the alleged violation of the principle of non-discrimination on the grounds of sex expressed in art. 20 of the CSE, it is reiterated, once again, that in the Italian social security system there are no provisions that differentiate and, therefore, discriminate between female and male individuals.

22. The complainant mistakenly believes that the domestic regulations are detrimental to the right to equal opportunities and treatment in matters of work and professions, since the majority of recipients of survivor's pensions in Italy are women.

23. However, this is the natural result of biological factors for which the male mortality index is higher than that of women, and is not the result of any unequal treatment, since the purpose of the legislation in question is the protection of the surviving spouse, regardless of the sex of the latter.

24. Well, in view of such specific and precise considerations, already proposed in full in the first instance by the Government, it is not clear how the principle of non-contestation can in any way be represented, which is applied only in the event of pure and



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simple denial of the fact alleged by the opponent and not when there is a precise and explicit refutation, as in the case in question.

Roma, 29.4.2021

Drafted by

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