JUDGMENT NO. 250 YEAR 2017

In this case the Court considered fifteen largely overlapping referral orders challenging Decree-Law 65 of 2015, in the parts in which it denied the annual automatic pension increase, intended to preserve the purchasing power of pensions against the detrimental effects of inflation, for middle- and high-income pensions (greater than six times the minimum INPS pension) for a two-year period retroactively affecting 2012-2013. This block on the automatic increase would then, under the law in question, be "carried over" to future years by resetting the base number for calculating future increases to zero. The decree-law was enacted for the express purpose of implementing the Constitutional Court's Judgment no. 70 of 2015. That decision had struck down earlier versions of the same provisions as unconstitutional, stating that they represented an abuse of legislative discretion because, in effecting the necessary balancing between pensioners' interest in preserving the purchasing power of their pensions and the financial requirements of the State, the legislator had unreasonably sacrificed pensioners' interests (particularly those in receipt of modest pensions) for reasons of national financial requirements that were not illustrated in any detail. In this decision, on the contrary, the Court held that the balancing carried out by the legislator did not violate the principle of reasonableness, or the principles of adequacy and proportionality of pensions. The law relied on objective data illustrating the financial requirements that justified a "partial" and "temporary" sacrifice of pensioners' interests, and also impacted only those pensioners receiving middle- and high-income pensions (greater than six times the minimum INPS pension). Because the adequacy of pensions must be considered not in terms of the automatic increase alone, but in terms of the overall value of the pensions, even a total block on the increase for middle and high income pensions could not be considered a violation of the principle of adequacy. Therefore, the Court held that the questions were unfounded, and the provisions, unlike those of the *Salva-Italia* law struck down by Judgment no. 70 of 2015, was a constitutional expression of legislative discretion.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

In proceedings concerning the constitutionality of Article 24(25) and (25-*bis*), of Decree-Law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted, with modifications, into Law no. 214 of 22 December 2011 — as replaced (section 25) and inserted (section 25-*bis*) by numbers 1) and 2), respectively, of Article 1(1) of Decree-Law no. 65 of 21 May 2015 (Urgent provisions concerning pensions, social welfare, and severance pay guarantees), converted, with modifications, into Law no. 109 of 17 July 2015 — and of Article 1(483) of Law no. 147 of 27 December 2013, as modified by Article 1(286) of Law no. 208 of 28 December 2015, entitled "Provisions on the formation of the annual and multi-year budget of the State (Stability Law 2014)," initiated by the Ordinary Tribunal of Palermo with a referral order of 22 January 2016, by the regional jurisdictional division for Emilia Romagna of the Court of Auditors (*Corte dei Conti*) with a referral order of 10 March 2016, by the Ordinary Tribunal of Milan with a referral order of 30

April 2016, by the Ordinary Tribunal of Brescia with a referral order of 8 February 2016, by the Ordinary Tribunal of Cuneo with referral orders of 18 November 2016 (no. 2 referral orders) and of 9 and 21 February 2017, registered respectively as no. 36, 101, 124, 188, 237, 242, 243, 244, and 278 of the 2016 Register of Referral Orders and no. 24, 25, 43, 44, 77, and 78 of the 2017 Register of Referral Orders, and published in the *Official Journal* of the Republic no. 9, 21, 26, 40, 47, and 48, first special series, of 2016 and no. 5, 9, 13, and 22, first special series, of 2017.

Considering the entries in appearance of C.G., L.F. et al., R.P. et al., C.A. et al., F.M. et al., P.S. et al., and of the National Institute for Social Security (*Istituto nationale della previdenza sociale*, INPS), as well as the intervention of the union *Sindacato autonomo Dipendenti INAIL in pensione* et al., that of the President of the Council of Ministers, and that of CODACONS et al., which was submitted after the deadline;

having heard from Judge Rapporteur Silvana Sciarra during the public hearing of 24 October 2017;

having heard from counsel Riccardo Troiano on behalf of C.G., Corrado Scivoletto on behalf of L.F. et al., Andrea Rossi Tortarolo on behalf of R.P. et al, Michele Iacovielli on behalf of C.A. et al., Inside B. Storace on behalf of F.M. et al., Fabrizio Ricciardi on behalf of P.S. et al., Luigi Caliulo on behalf of INPS, Augusto Sinagra on behalf of the *Sindacato autonomy Dipendenti INAIL in pensione* et al., and from State Counsel Gabriella Palmieri on behalf of the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– With fifteen referral orders, the Ordinary Tribunals of Palermo (Register of Referral Orders no. 36 of 2016), Milan (no. 124 of 2016), Brescia (no. 188 of 2016), Naples (no. 237 of 2016), Genoa (no. 242, 243, and 244 of 2016), Turin (no. 278 of 2016), La Spezia (no. 24 and 25 of 2017), and Cuneo (no. 43, 44, 77, and 78 of 2017), as well as the regional jurisdictional division for Emilia-Romagna of the Court of Auditors (no. 101 of 2016) have brought questions before this Court concerning the constitutionality of: a) Article 24, sections 25 and 25-*bis* of decree-law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted, with modifications, from Law no. 214 of 22 December 2011 — as replaced (section 25) and inserted (section 25-*bis*) by, respectively, numbers 1) and 2) of Article 1(1) of Decree-Law no. 65 of 21 May 2015 (Urgent provisions concerning pensions, social subsidy programs, and severance pay guarantees), converted, with modifications, into Law no. 109 of 17 July 2015; and, b) Article 1(483) of Law no. 147 of 27 December 2013, as modified by Article 1(286) of Law no. 208 of 28 December 2015, entitled "Provisions on the formation of the annual and multi-year budget of the State (Stability Law 2014)."

1.1.– All the referring judges are presiding over cases brought against the National Institute for Social Security (INPS) by one or more pensioners, who request the affirmation of their right to the automatic revaluation of their pensions, to which they claim to be entitled under (where specified) either Finance Law 2001 (Article 69(1) of Law no. 388 of 23 December 2000, laying down "Provisions on the formation of the annual and multi-year budget of the State") or Article 34(1) of Law no. 488 of 23 December 1998 (Public finance measures for stabilization and development). In nearly all cases, the complainants also request a judgment against INPS ruling that it must pay them the difference between the amount actually paid them and the amount to which they would be entitled according to the indicated legislation. In most cases, the

complainants' questions concern only the automatic reevaluation of their pension payments for the years 2012 and 2013. Only in certain cases (referral orders no. 101, 124, 188, 244 and 278 of 2016, and no. 78 of 2017) do the questions also regard revaluation in later years.

1.2.– The challenged sections of D.L. no. 201 of 2011, Article 24(25) and (25-*bis*), were adopted for the express purpose (indicated in Article 1(1) of D.L. no. 65 of 2015) of "implementing" the "principles laid out in Judgment no. 70 of 2015 of the Constitutional Court" (while complying with "the principle of a balanced budget and [with] public budgetary goals, assuring the protection of the essential levels of services regarding civil and social rights, including for the purpose of safeguarding intergenerational solidarity"). That Judgment struck down the former text of D.L. no. 201 of 2011 "insofar as it provides that 'In consideration of the contingent financial situation, the automatic revaluation of pensions according to the mechanism laid down by Article 34(1) of Law no. 448 of 23 December 1998 shall be recognised for the years 2012 and 2013 at a level of 100 percent exclusively in relation to pensions worth an overall amount of up to three times the minimum INPS pension'" for violating Articles 3, 36(1), and 38(2) of the Constitution.

In particular, Article 24(25) of D.L. no. 201 of 2011, as replaced by Article 1(1)(1) of D.L. no. 65 of 2015, establishes a new regulatory scheme for the automatic revaluation of pensions for the years 2012 and 2013. While leaving in place its grant of a 100-percent increase for pensions with a total amount up to three times the minimum INPS pension (letter *a*), letter *e*) prohibits automatic revaluation of pension plans with an overall amount greater than six times the minimum INPS pension (and no longer those greater than three times the minimum). For pensions between those over three times, and up to six times, the minimum INPS pension – which were also excluded from the so-called *perequazione* [equitable adjustment] in the former text – current section 25 grants it according to percentages that decrease in proportion with the increase in the total amount of the pension. Specifically, these percentages are: 40 percent for pensions greater than three times the minimum INPS pension and equal to or less than four times that minimum (letter *b*); 20 percent for plans greater than four times the minimum INPS pension and equal to or less than five times that minimum (letter *c*); and 10 percent for plans greater than five times the minimum INPS pension and equal to or less than six times that minimum (letter *d*).

Section 25-*bis* then establishes what portion of the automatic increases stipulated by section 25 for the years 2012 and 2013 will be granted for purposes of determining the automatic revaluation of pensions with total amounts greater than three times the minimum INPS pension for the years 2014 and 2015 (20 percent), and from 2016 forward (50 percent).

While some of the referring judges challenge only section 25 (referral orders no. 36, 124, 188, and 237 of 2016, and no. 24 and 25 of 2017), others include section 25-*bis* (referral orders no. 101, 242, 243, and 244 of 2016, and no. 43, 44, 77, and 78 of 2017). Referral Order no. 278 of 2016 challenges only section 25-*bis*.

1.2.1.– Fourteen of the fifteen referral orders allege that the regulations found in challenged sections 25 and/or 25-*bis* violate, first of all, Article 136 of the Constitution, for violating the constitutional ruling of Judgment no. 70 of 2015. Since the provisions do not allow for the automatic revaluation of pensions greater than six times the minimum INPS pension (section 25(*e*)), the referring judges allege that this either replicates the situation declared unconstitutional in this Court's earlier judgment

(referral orders no. 101, 124, 188, and 237 of 2016, and no. 24, 43, and 44 of 2017), neutralizes that judgment's effects (referral orders no. 242, 243, and 244 of 2016), or establishes a regulatory scheme with defects similar to the ones it censored (referral orders no. 278 of 2016, and no. 77 and 78 of 2017). They further allege that, by allowing for the automatic revaluation increase of pensions greater than three times, and less than or equal to six times the minimum INPS pension, only to the extent envisaged in section 25b), c), and d), the regulations limit the effectiveness of Judgment no. 70 of 2015 (referral orders no. 242, 243, and 244 of 2016, and no. 25, 43, and 44 of 2017) or establish a regulatory scheme with defects analogous to the ones it censored (referral orders no. 124 of 2016, and no. 24, 25, 77, and 78 of 2017).

[omitted]

1.2.3.– All the referring judges, with the sole exception of the Tribunal of Turin (referral order no. 278 of 2016), allege that the challenged sections 25 and 25-*bis* present the same areas of contradiction with the Constitution that Judgment no. 70 of 2015 found with regard to the former text of Article 24(25) of D.L. no. 201 of 2011, and, therefore, violate Articles 3, 36, and 38 of the Constitution.

According to the referring judges, sections 25 and 25-*bis* also violate the principles of equality and reasonableness [*ragionevolezza*] (under Article 3 of the Constitution), as well as those of the adequacy and proportionality of redistributive measures (respectively under Article 38, section 2, and Article 36, section 1, of the Constitution). The referring judges stress that, by prohibiting the automatic revaluation of pensions greater than six times the minimum INPS pension (section 25(*e*)), or allowing it only in limited percentages for pensions greater than three times, and up to six times the minimum (letters *b*, *c*, and *d* of the same section) sections 25 and 25-*bis*, like former Article 24(25) of D.L. no. 201 of 2011, have an impact on modest overall pensions (referral orders no. 36 of 2016, and no. 24, 25, 43, 44, 77, and 78 of 2017); fail to provide for any form of recovery (referral order no. 36 of 2016); produce negative effects for the equitable adjustment for successive years (referral orders no. 36, 242, 243, and 244 of 2016, and no. 24, 25, 43, 44, 77, and 78 of 2017); and do not give clear reasons explaining why the financial requirements of cutting costs should have prevailed over the sacrificed interests of pensioners in preserving the purchasing power of their pensions in the balancing operation conducted (referral orders no. 101, 124, 188, 237, 242, 243, and 244 of 2016, and no. 24, 25, 43, 44, 77, and 78 of 2017). In addition, the referral orders point out that the challenged sections are unlike Article 1(19) of Law no. 247 of 24 December 2007 (Provisions implementing the Protocol of 23 July 2007 on services, labor, and competition to foster equity and sustainable growth, as well as other regulations for labor and social services), which this Court's Judgment no. 316 of 2010 found to be in keeping with Articles 3, 36, and 38(2) of the Constitution in a number of ways, as Judgment no. 70 of 2015 recalled. Indeed, the sections currently under review prevent automatic revaluation for pensions greater than six times the minimum INPS pension, rather than greater than eight times the minimum (referral orders no. 101, 188, 237, 243, and 244 of 2016, and no. 24 of 2017); they apply to a two-year period rather than a single year (referral orders no. 101, 124, 188, 237, 242, 243, and 244 of 2016, and no. 24, 25, 43, 44, 77, and 78 of 2017); and they fail to provide a specific solidarity-related purpose within the social services system (referral order no. 101, 242, 243, and 244 of 2016). Finally, where the challenged sections do provide for automatic revaluation, they do so to a percentage extent that is meager and significantly smaller than the one provided both for previous years (by Article 69(1) of

Law no. 388 of 2000) and for later years (by Article 1(483) of Law no. 147 of 2013) (referral order no. 25 of 2017).

1.2.4.– According to the regional jurisdictional division for Emilia-Romagna of the Court of Auditors (referral order no. 101 of 2016) and the Ordinary Tribunal of Cuneo (referral order no. 44 of 2017), Article 24(25)(*e*), and, respectively, Article 24(25) letters *b*), *c*), *d*), and *e*), and Article 24(25-*bis*) of D.L. no. 201 of 2011 also violate Article 117(1) of the Constitution, in relation to Article 6 of the European Convention on Human Rights (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law no. 848 of 4 August 1955. These provisions allegedly violate the right to a fair trial, guaranteed by Article 6, by retroactively regulating the automatic revaluation of pensions for the 2012 and 2013 years in a way that reproduces the same regulatory scheme that was struck down by Judgment no. 70 of 2015 (referral order no. 101 of 2016) or in any case establishes a scheme different from the one called for by that judgment (which the Tribunal of Cuneo identifies as that found in Article 69(1) of Law no. 388 of 2000).

It is the view of the regional section of the Court of Auditors that challenged section 25(*e*), for the same reasons, also violates the principles of legitimate expectation and of legal certainty, established in Article 3 of the Constitution.

1.2.5.– The Court of Auditors (referral order no. 101 of 2016) further holds that Article 24(25)(*e*) and (25-*bis*), of D.L. no. 201 of 2001 also violate Article 117(1) of the Constitution in relation to the first Protocol to the ECHR (signed in Paris on 20 March 1952, ratified and implemented by Law no. 848 of 1955), which guarantees to every person the right to the "peaceful enjoyment of his possessions." The referring court alleges that, by permanently depriving pensioners entitled to pensions the entire amount of which is greater than six times the minimum INPS pension of the "'possession' [of] 'automatic increases,'" to which they are "entitled in light of Judgment no. 70 of 2015, […], it does not seem that this 'good' was regulated […] in conformity with the requisite equitable balancing in light of the principle that any interference with a person's 'possessions' must be reasonably proportionate to the pursued aim, […] resulting in an excessive individual impact upon the rights of the aforementioned pensioners."

1.3.– Article 1(483) of Law no. 147 of 2013, as modified by Article 1(286) of Law no. 208 of 28 December 2015, laying down "Provisions for the formation of the annual and multi-year budget of the state (Stability Law 2016)," regulates the amount of automatic revaluation of pensions for the five-year period from 2014 to 2018. It provides for revaluation according to the following percentages, which decrease in indirect proportion to the increases in the overall amount of the pensions: 100 percent for pensions with an overall value up to three times the minimum INPS pension (letter *a*); 95 percent for pensions with an overall value greater than three times and less than or equal to four times the minimum INPS pension (letter *b*); 75 percent for pensions with an overall value greater than four times and less than or equal to five times the minimum INPS pension (letter *c*); 50 percent for pensions with an overall value greater than five times and equal to or less than six times the minimum INPS pension (letter *d*); and 40 percent for 2014 and 45 percent for each of the years 2015, 2016, 2017 and 2018 for pensions with an overall value greater than six times the minimum INPS pension, with the specification that, "for 2014 only, [automatic revaluation] is not provided for those pensions with an amount greater than six times the minimum INPS pension."

Only the Tribunal of Brescia challenges section 483 (referral order no. 188 of 2016), alleging in particular that letter (*e*), by allowing for only a 40-percent automatic revaluation of pensions with a value greater than six times the minimum INPS pension for the year 2014, and not allowing it at all for pensions greater than six times the minimum INPS pension, violates the principle of adequacy of pensions (Article 38(2) of the Constitution) by preventing them from retaining value over time, as well as the "principle of proportionality between one's pension […] and the remuneration one enjoyed during one's working life" (Article 36(1) of the Constitution). The Tribunal also alleges that the principles deriving from the combined application of Articles 3, 36, and 38 of the Constitution have been violated in that, "violating the principle of proportionality between pension and remuneration as well as that of the adequacy of welfare support distorts the principle of equality and reasonableness, causing irrational discrimination to the disadvantage of pensioners as a class."

[omitted]

2.– Since the questions involve, for the most part, the same provisions, challenging them with reference to parameters and based upon arguments that are largely overlapping, the judgments must be joined, in order to be jointly addressed and adjudicated.

[omitted]

6.– Turning now to the merits, the first questions that must be reviewed are those concerning Article 24(25) and (25-*bis*) of D.L. no. 201 of 2011, which are the provisions most heavily criticized by the referring judges.

6.1.– According to the settled case law of this Court, the alleged violation of Article 136 of the Constitution "takes logical precedence over the others," precisely because it "goes to the very exercise of legislative power, which would be proscribed by the constitutional rule presumed to have been violated" (Judgment no. 2 of 2015, 245 of 2012, and 350 of 2010).

This challenge must thus be examined first, for the purpose of evaluating whether the challenged regulatory scheme amounts to a re-proposition of the same regulatory scheme that was already held to violate the Constitution (see, among many, Judgment no. 5 of 2017).

The question is unfounded.

With the express intent to implement this Court's Judgment no. 70 of 2015, the legislator carried out a new balancing of the values and constitutional interests involved in this area. Article 1(1)(1) of D.L. no. 65 of 2015 introduced a new regulatory framework for the automatic increase of pensions for the years 2012 and 2013, different from the one that was struck down as unconstitutional by Judgment no. 70 of 2015, in that it provides for equitable adjustment in decreasing percentages for those pensions with a value greater than three times and up to six times the minimum INPS pension, which were previously excluded form equitable adjustment.

Furthermore, challenged section 25-*bis*, which was inserted by Article 1(1)(2) of D.L. no. 65 of 2015, regulates so-called "carry-over," that is, the computation of the equitable increases, reintroduced by section 25 for the years 2012 and 2013, for purposes of determining the base numbers for automatic revaluation in the following years.

It is not, therefore, a "mere reproduction" (Judgment no. 73 of 2013 and 245 of 2012) of the regulation declared unconstitutional, nor does it amount to the realization "'even if

indirect,' [of] corresponding results" (Judgments no. 5 of 2017, 73 of 2013, 245 of 2012, 922 of 1988, 223 of 1983, and 88 of 1966).
On the contrary, the challenged provisions present "significant regulatory innovations" compared with the previous regime (Judgment no. 262 of 2009).
Nor is it correct to maintain, as some of the referring judges do, that the constitutional judgment is violated due to the fact that a portion of the regulatory scheme resulting from these provisions corresponds to that found in Article 24(25) of D.L. no. 201 of 2011, which was declared unconstitutional in Judgment no. 70 of 2015 (which is particularly true of the regulation of the automatic revaluation of pensions greater than six times the minimum INPS pension). Indeed, the regulatory scheme established by the legislator must be considered in its entirety because it constitutes a comprehensive (albeit temporary) new design for the equitable adjustment of pensions. What is therefore relevant for purposes of reviewing the alleged violation of the constitutional judgment is "the provisions as a whole which are enacted at different moments in time" (Judgment no. 262 of 2009; see also Judgment no. 87 of 2017).
Article 1(1) of D.L. no. 65 of 2015 is the expression of a choice concerning which this Court was unable to "effect, to the detriment of the legislator, outcomes that amount to an 'expropriation' of legislative authority on the point" (Judgment no. 169 of 2015).
Judgment no. 70 of 2015 declared the first sentence of former Article 24(25) of D.L. no. 201 of 2011 unconstitutional "insofar as set out," due to the fact that the legislator, through that provision, had abused the discretion to which it is entitled (point 8 of the *Conclusions on points of law*). In balancing pensioners' interest in maintaining the purchasing power of their pensions against the financial requirements of the State, which do indeed merit protection, the legislator had unreasonably sacrificed the former, and "in particular [the interests of] those in receipt of modest pensions," in the name of financial requirements that were not even delucidated (point 10 of the *Conclusions on points of law*).
That judgment left it to the legislator to intervene, to repair these defects and operate a new balancing of the values and constitutional interests involved, in compliance with the "principles of reasonableness and proportionality," in such a way that none of them was "unreasonably sacrificed."
Article 1(1) of D.L. no. 65 of 2015 (expressly adopted "In order to implement the principles laid out in Judgment […] no. 70 of 2015") introduced a new and not unreasonable adjustment to the mechanism underlying the automatic increase, the extent of which was redefined in a way compatible with the available resources.
It bears noting further that the new regime, in implementing this Court's suggestion, necessarily produced retroactive effects, albeit limited (as, in fact, they were) to the timespan of the years 2012 and 2013 to which the stricken provisions referred.
Such retroactive effect is, therefore, consistent with the purposes of a legislative measure which, in implementing this Court's judgment, endeavored to replace the automatic adjustment regime for the years 2012-2013 in various ways, expressing a new balancing of the constitutional interests involved, in conformity with the limits of "reasonableness and proportionality" (for a retroactive legislative intervention enacted pursuant to a declaration of unconstitutionality, see Judgment no. 87 of 2017).
6.2.– An examination of the questions raised in reference to Article 3 of the Constitution, in relation to the principles of legitimate expectation and legal certainty, and Article 117(1) of the Constitution, in relation to the right to a fair trial guaranteed

by Article 6(1) of the ECHR, is related to the challenged provisions' unique purpose of implementing the constitutional judgment and its related retroactive effect.
These questions, which are based on substantially common arguments and may therefore be examined jointly, are unfounded.
6.2.1.– The argument that pensioners developed an expectation based upon the application of Judgment no. 70 of 2015 must be rejected. That judgment made it foreseeable that the legislator would intervene in an exercise of discretion to provide anew for the automatic adjustment for the years 2012 and 2013, on the basis of a balancing operation taking into account all the various relevant constitutional interests, particularly those of public finance.
Nor could an expectation have arisen, given the immediacy of the legislator's intervention, if one considers that D.L. no. 65 of 2015 entered into force on 21 May 2015, only twenty-one days after Judgment no. 70 of 2015 was handed down on 30 April 2015. According to this Court's case law, in order for a legal situation to give rise to an expectation, it must not only "come to be in a material legal context capable of creating in an addressee a reasonable reliance upon its conservation," but must also "extend for a sufficiently long period of time" (Judgment no. 56 of 2015).
6.2.2.– The purpose of Article 1(1) of D.L. no. 65 of 2015 to implement this Court's Judgment no. 70 of 2015, together with the other circumstances surrounding it, rule out the possibility that the challenged sections 25 and 25-*bis* (respectively replaced and inserted by Article 1(1)) violate Article 6(1) of the ECHR.
The European Court of Human Rights (ECtHR) has explained that Article 6 "cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party." (Case of *OGIS-Institut Stanislas, OGEC St. Pie X and Blanche de Castille and others v. France*, 27 May 2004 [para. 71]; *Case of The National & Provincial Building Society, The Leeds Permanent Building Society and the Yorkshire Building Society v. The United Kingdom*, 23 October 1997 [para. 112]).
In particular, the Strasbourg Court held in these decisions that, for purposes of determining whether a retroactive legal intervention which has a bearing on the outcome of ongoing proceedings entails a violation of the principle of equality of arms, it is necessary to "have regard to all the circumstances of the case" and to "the reasons adduced by the respondent State for justifying any intervention" (Aforementioned cases of OGIS-Institut Stanislas, OGEC Saint Pie X and Blanche de Castille and others v. France and National and Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society v. The United Kingdom [para. 107]).
Even though it impacted the outcomes of ongoing proceedings, the circumstances of and the reasons for the intervention carried out by Article 1(1) of D.L. no. 65 of 2015 rule out the idea that it violates Article 6(1) of the ECHR. Indeed, its very purpose was not to affect the outcome of ongoing proceedings to which the State was a party, but was rather, as the legislator expressly stated, to "implement the principles laid out in Judgment no. 70 of 2015 of the Constitutional Court." To that end, it effected, with regard to all pensions, a new balancing operation between the interests of pensioners and the financial requirements of the State. In addition to eliminating possible uncertainties concerning the applicable regulations following said Judgment, the legislative intervention aimed to remedy the defects of unreasonableness and disproportionality of the provision that was struck down.

6.3.– The question of constitutionality raised by the jurisdictional division for Emilia-Romagna of the Court of Auditors, referring to Article 117(1) of the Constitution in relation to Article 1 of the ECHR Protocol is likewise unfounded.

Indeed, the conditions that amount to an interference with the right to respect for the peaceful enjoyment of one's possessions according to the case law of the ECtHR (specifically, the payment related to the automatic adjustment for the years 2012 and 2013 to which pensioners would have been entitled following Judgment no. 70 of 2015) are fulfilled, compatibly with the interposed parameter specified by the referring court (see, most recently, Grand Chamber, Judgment 13 December 2016, *Bélané Nagy v. Hungary*, and 5 September 2017, *Fábián v. Hungary*, both addressing the topic of rights to social services).

The explicit link between the challenged provisions and the implementation of this Court's Judgment no. 70 of 2015 makes clear that the pursuit of the "public (or general) interest," one of the ECtHR's conditions for granting an ample margin of appreciation to national authorities, is present here (*Bélané Nagy*, para. 113).

Likewise, the proportionality requirement, which appears to be the central focus of the referring court's challenge, is fulfilled. Contrary to the line of reasoning followed by the referring judge, the significance of the burden on pensioners must be evaluated in light of the total pension to which they are entitled, and not merely the amount of the automatic increase, which was removed entirely for the years 2012 and 2013 for pensioners with pensions greater than six times the minimum INPS pension. What the ECtHR has held to be relevant (in addition to the aforementioned cases *Fábián* and *Bélané Nagy*, see also the judgment of 15 April 2014, *Stefanetti and others v. Italy*, and that of 31 May 2011, *Maggio and others v. Italy*) is: "the essence of his or her pension rights," the existence or absence of an "excessive individual burden" concerning the interested parties (*Bélané Nagy*, paras. 118 and 126, respectively), and, ultimately, the evaluation of whether or not the fundamental right to a pension has been sacrificed.

In light of this framework, it follows that blocking the automatic increase for only two years and its resulting "carry-over" to the following years do not amount to a disproportionate sacrifice when compared with the requirements underlying challenged sections 25 and 25-*bis*, which are of general interest. These provisions affect a limited portion of the total amount of pensions and do not impact the livelihoods of pensioners with middle- and high-income pensions. The Strasbourg Court has also said that losses of services and livelihood are factors in evaluating whether national authorities have overstepped the bounds of their margin of appreciation (*Fábián*, paras. 74-75 and 78-82, respectively).

[omitted]

6.5.– The challenge alleging that Article 24(25) and (25-*bis*) of D.L. no. 201 of 2011 violates the principles of equality and reasonableness (under Article 3 of the Constitution), as well as those of the adequacy and proportionality of retirement pensions (respectively under Article 38(2) and Article 36(1) of the Constitution), because they allegedly replicate the same unconstitutional aspects identified in Judgment no. 70 of 2015 with regard to former Article 24(25) of D.L. no. 201 of 2011, is unfounded.

6.5.1.– Automatic pension increases are a technical tool intended to protect pensions from declining purchasing power due to inflation, even after a person has ceased working (Judgment no. 70 of 2015, point 8 of the *Conclusions on points of law*, which refers to Judgment no. 26 of 1980 on this topic). It is intended to assure compliance

over time with the principles of adequacy and proportionality of retirement pensions (see, among many, Judgments no. 70 of 2015 and 208 of 2014).
This Court has reviewed the "personal values inherent in social security protection," anchored to the "principle of solidarity (which underlies Article 38 of the Constitution) in coordination with the principle of rationality-equity (Article 3 of the Constitution)," considering the need to curtail expenditure and explaining that a guaranteed income that does not compress the "life needs to which the social security provision was previously proportionate" must in any case be protected (Judgment no. 240 of 1994).
It held that this objective may be achieved "through and to the extent of" Article 38(2) of the Constitution (Judgment no. 156 of 1991), which "only indirectly" entails a connection with Article 36(1) of the Constitution (Judgment no. 261 of 1996), for purposes including that of giving the criterion of adequacy a more concrete meaning.
The legislator must, in its discretion, act upon this firm basis, effecting a balancing of the values and constitutional interests involved with reference to not unreasonable criteria. On the one side are the pensioners' interest in preserving the purchasing power of their pensions, while on the other are the financial requirements and requirements related to balancing the budget of the State (see, among many, Judgments no. 70 of 2015, 316 of 2010, and 30 of 2004, and Orders no. 383 of 2004, 531 of 2002, and 256 of 2001). In this balancing operation, the legislator may not "disregard the limit of reasonableness" (Judgment no. 70 of 2015).
In Judgment no. 70 of 2015, this Court held that this very limit was circumvented by former Article 24(25) of D.L. no. 201 of 2011, which had sacrificed the interest of pensioners, "in particular those in receipt of modest pensions," in protecting their purchasing power in the name of opposing financial requirements of spending cuts that were "not illustrated in detail."
The principle of reasonableness is the pivot point around which legislative choices concerning pensions must turn, and because of this central importance, it is a pillar of the entire system. In order to ensure consistent application of this pivotal principle in legislative interventions relating to spending cuts, the cuts must be thoroughly grounded on reasonable motives, that is, supported by an assessment of the financial situation that is based upon objective data (Judgment no. 70 of 2015, point 10 of the *Conclusions on points of law*). Technical reports, illustrative of those legislative interventions geared toward spending cuts in the area of social services – like every other form of documentation that are a necessary part of financial maneuvers – are, therefore, a tool for reviewing legislative choices (Article 17(3) and (7) of Law no. 196 of 31 December 2009, providing a "Law of accounting and public finance," and, more generally, Article 18 of Law no 243 of 24 December 2012, establishing "Provisions for implementing the principle of a balanced budget under Article 81(6) of the Constitution").
6.5.2. Contrary to the allegations of fourteen of the fifteen referral orders (referral orders no. 36, 101, 124, 188, 237, 242, 243 and 244 of 2016, and no. 24, 25, 43, 44, 77 and 78 of 2017), challenged sections 25 and 25-*bis* result from legislative choices that were not unreasonable.
The purpose of its intervention was to "implement the principles laid out in Judgment no. 70 of 2015 of the Constitutional Court, in compliance with the principle of a balanced budget and with public finance goals, assuring the protection of the basic level of the social services concerning civil and social rights, including for the purpose of safeguarding intergenerational solidarity" (heading of Article 1(1) of D.L. no. 65 of 2015). The provisions are illustrated in detail in the "Report," "Technical report," and

"Verification of the quantifications" relating to the decree's draft conversion law (A.C. no. 3134). These parliamentary documents contain the financial data that confirm the approach taken by the legislator, within the framework of national and European rules.
In light of these factors, we must conclude that, unlike the regulatory scheme under review in Judgment no. 70 of 2015, the overall design of challenged sections 25 and 25-*bis* present, with evidence, the financial requirements taken into consideration by the legislator in the exercise of its discretion. In implementing the principles of adequacy and proportionality of pensions, these financial requirements are preserved by means of a partial and temporary sacrifice of the interests of pensioners in protecting the purchasing power of their pensions.
That the legislator complied with these principles is confirmed by the not-unreasonable choice to provide for automatic adjustment in decreasing percentages inversely proportionate to increasing overall pension amounts, and not providing them at all for those pensions greater than six times the minimum INPS pension. The legislator thus designated the limited financial resources available giving the priority to categories of pensioners receiving smaller pensions.
In assessing the compatibility of the measures to adjust pensions with the limitations imposed by the public financial situation, this Court has held that corrective action taken by the Parliament may well exclude from the adjustment the "highest-income" pensions (Order no. 256 of 2001). The legislator has often replicated the choice to privilege modest income pensions, satisfying the criterion of being not unreasonable, as reflected in the greater margins of resistance to the effects of inflation that characterize higher-income pensions. The legislator made the same choice in the challenged provisions.
6.5.3.– Challenged sections 25 and 25-*bis* cannot be held to violate the principle of adequacy of pensions under Article 38(2) of the Constitution, which requires that workers be guaranteed "adequate means for their subsistence needs" in circumstances like old age, which require protection.
6.5.3.1.– As described above, Article 24(25)(*e*) provides for the nullification of the automatic pension increase for the years 2012 and 2013 for those pensions greater than six times the minimum INPS pension. Under section 25-*bis*, challenged by some of the referring judges, this nullification, which also blocks the base number for calculating the adjustment of these pensions for later years, produces negative effects for pensioners.
Nevertheless, these measures do not impact pensions greater than six times the minimum INPS pension in such a way as to affect their adequacy.
The principle established under Article 38(2) of the Constitution "cannot be interpreted to require, as a matter of constitutional necessity, that increases must occur at an annual rate for all pensions" (Judgment no. 316 of 2010).
It also bears noting that the block on the automatic adjustment laid down for two years by sections 25(*e*) and 25-*bis*, unlike that of the same duration laid down by former section 25 from D.L. no. 201 of 2011, does not impact "modest" pensions (a factor this Court had attributed particular importance to in striking down that provision), but only those pensions with a middle or high income, which are considered to be those with an overall income greater than six times the minimum INPS pension (Judgment no. 70 of 2015).

These pensions, because of their greater amount, have a margin of resistance to the erosion of their purchasing power by inflation, which, incidentally, was moderate during 2011 and 2012, as the "Technical report" mentioned above illustrates.
Therefore, the argument that the block on the automatic increase for pensions greater than six times the minimum INPS pension for the years 2012 and 2013 provided by the challenged sections 25(*e*) and 25-*bis* may undermine the adequacy of those pensions, considered as a whole, to meet the cost of living, must be rejected.
Nor is this assessment marred by the fact (emphasized by some of the referring judges) that the challenged block of the automatic increase does not provide for any form of recovery and produces its effects, which are negative for pensioners, on the automatic adjustment for later years as well. The absence of forms of recovery and the effect of the so-called "carry-over" are indeed (in the absence of any specific provisions to the contrary) consequences of the measures blocking the automatic adjustment of the pensions, as this Court pointed out in Judgment no. 70 of 2015 (point 9 of the *Conclusions on points of law*).
6.5.3.2.– Letters *b*), *c*) and *d*) of challenged section 25, as mentioned above, provide automatic revaluation for the years 2012 and 2013 for pensions greater than three times and up to six times the minimum INPS pension, to decreasing degrees inversely proportionate to the increasing amounts of the pensions. Under section 25-*bis* (which is also challenged by some of the referring judges), this automatic revaluation for the years 2012 and 2013 is provided, for purposes of computing the base figure for calculating the increase in the following years, at: 20 percent for the years 2013 and 2015, and 50 percent beginning in the year 2016.
Here, too, it cannot be said that the challenged regime jeopardizes the adequacy of the pensions greater than three times and up to six times the minimum INPS pension to meet life needs.
Providing for automatic increases in progressively decreasing measure relative to the increasing overall value of pensions (found in letters *b*, *c* and *d* of challenged section 25) differs from the earlier form of blocking automatic increases (established by former section 25). This Court has held that these "progressive criteria" do "comply with the constitutional requirement that pension provision must be proportionate and adequate" (Judgment no. 70 of 2015 and 173 of 2016, both in reference to Article 1(483) of Law no. 147 of 2013). Indeed, they ensure that the pensions will be protected from the erosion of their purchasing power by establishing a mechanism that gradually increases as their income diminishes, causing a decline in their ability to resist this erosion.
Keeping in mind the discretion to which the legislator is entitled in balancing the interests of pensioners in the protection of the purchasing power of their pensions with the financial requirements of the State, the decreasing percentages provided for the automatic adjustment of middle-income pensions for the years 2012 and 2013 (pensions which are greater than five times and less than or equal to six times the minimum INPS pension), as well as more modest ones which, however, are still greater than three and four times the pension that is considered the "essential nucleus" of social security (Judgment no. 173 of 2016), are not unreasonable. Indeed, they do not concretely undermine the adequacy of the pensions, considered in their entirety, to meet the cost of living.
Nor can the mere fact that, under challenged section 25-*bis*, the adjustment increments provided for 2012 and 2013 are to be used for purposes of determining the numerical

basis for calculating the adjustment beginning in 2014, according to the limited percentages laid out in that section, lead to a different conclusion.

6.5.4.– The argument that challenged sections 25 and 25-*bis* violate the principle of proportionality of pensions to the quality and quantity of work performed by pensioners found in Article 36(1) of the Constitution must also be rejected.

Applying the principle of proportionality to retirement pensions (considered, as mentioned above, according to their function of replacing one's preexisting work income), this Court has explained that this does not require "that the pension must necessarily be equal to the final salary, as the legislator is allowed a certain level of discretion in implementing these principles," including the one in question (Judgment no. 70 of 2015, point 8 of *Conclusions on points of law*).

More recently, it has said that the guarantee under Article 38 of the Constitution is "also linked with Article 36 of the Constitution, but not in an inalienable or strictly proportional way" (Judgment no. 173 of 2016). Thus, the determination of a pension and its adjustments also takes into account the individual's role in the quality and quantity of the work performed during his or her working life.

Considering the orientation provided by this Court, the arguments laid out heretofore, with reference to the principle of adequacy found in Article 38(2) of the Constitution, move in the direction of concluding that the balancing operation underlying sections 25 and 25-*bis* between the interests of pensioners and the financial requirements of the State is not unreasonable. Moreover, these provisions comply with the principle of proportionality of retirement pensions with the quality and quantity of work performed.

In conclusion, the limits on measures of cutting costs, which, in changing economic contexts, have had a bearing on pensions, must be identified in the constant interaction between the constitutional principles found in Articles 3, 36(1), and 38(2) of the Constitution. The identification of a balance between the various values at stake leads to the conclusion that the challenged provisions are not unreasonable.

6.5.5.– In referring to Judgment no. 316 of 2010, Judgment no. 70 of 2015 emphasized its arguments leading to the conclusion that there was no contradiction between Article 1(19) of Law no. 247 of 2007 (blocking the automatic increase for pensions greater than eight times the minimum INPS pension for the year 2008) and the principles of reasonableness and of adequacy and proportionality of social security. These arguments took into consideration, among other things, the mere one-year duration of the block, its impact on only "particularly high pensions" and its being "rooted in solidarity." Contrary to the claims of some of the referring judges, Judgment no. 70 of 2015 did not interpret these characteristics to be inalienable constitutional conditions for measures blocking (or limiting) the automatic increase of pensions, since each of them must be examined both individually as well as in relation to its historical context.

7.– Now we turn to the examination of the constitutionality of Article 1(483)(*e*) of Law no. 147 of 2013, in the part in which it regulates the automatic revaluation of pensions greater than six times the minimum INPS pension for the year 2014, which was questioned by the Tribunal of Brescia (in referral order no. 188 of 2016).

This question is unfounded.

In its Judgment no. 173 of 2016, this Court held that a question concerning the constitutionality of all of section 483 of Article 1 of Law no. 147 of 2013 was unfounded. That question, raised by the jurisdictional division for the Calabria Region of the Court of Auditors, referred to the same constitutional parameters and relied upon grounds and arguments that are substantially similar to those used by the Tribunal of

Brescia. Despite the fact that "the limitation of the monetary revaluation of the pensions, for the years 2012-2013, under quoted Article 24(5) of D.L. no. 201 of 2011 [was] declared unconstitutional by this Court's Judgment no. 70 of 2015," the Judgment pointed out that "that same Judgment (at point 7 of the *Conclusions on points of law*) underscored how that norm (the source of a 'total block' on revaluation for pensions with an income greater than three times the minimum) 'differs' from Article 1(483) of Law no. 147 of 2013 (therefore not sharing the reasons for the latter's unconstitutionality), which, on the contrary, 'provided for a re-modulation in the application of the percentage of automatic adjustment on the entirety of pensions, according to the mechanism found in Article 24(1) of Law no. 448 of 1998, with a zero amount increase only for the pension categories with an income greater than six times the minimum INPS pension and only for the year 2014,' inspired by 'progressive criteria, based upon the constitutional values of proportionality and adequacy of retirement pensions.'"

Because, as stated above, the referring judge has not presented grounds or arguments that differ from those already brought before this Court in the aforementioned referral order from the jurisdictional division for the Calabria Region of the Court of Auditors, and which could, therefore, lead to a different holding on the question of constitutionality, the present question must be held to be unfounded.

[omitted]

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

[omitted]

2) declares that the questions concerning the constitutionality of sections 25 and 25-*bis* of Article 24 of Decree-Law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted, with modifications, from Law no. 214 of 22 December 2011 – as replaced (section 25) and inserted (section 25-*bis*), respectively, by numbers 1) and 2) of Article 1(1) of Decree-Law no. 65 of 21 May 2015 (Urgent provisions concerning pensions, social welfare, and severance pay guarantees), converted, with modifications, by Law no. 109 of 17 July 2015 – raised with reference to Articles 2, 3, 23, 36, 38, 53, 117, section 1 (in relation to Article 6 of the ECHR the first Protocol of the same), and 136 of the Constitution, raised by the Ordinary Tribunals of Milan, Brescia, Naples, Genoa, Turin, La Spezia, and Cuneo, as well as by the regional jurisdictional division for Emilia-Romagna of the Court of Auditors, with the referral orders indicated in the headnote, are unfounded;

3) declares that the questions concerning the constitutionality of Article 1(483)(*e*) of the Stability Law for 2014 (Law no. 147 of 27 December 2013, laying down "Provisions on the formation of the annual and multi-year budget of the State," as modified by Article 1(286) of the Stability Law for 2016 (Law no. 208 of 28 December 2015, laying down "Provisions on the formation of the annual and multi-year budget of the State," raised by the Ordinary Tribunal of Brescia with the referral order indicated in the headnote, in reference to Articles 3, 36(1) and 38(2) of the Constitution, are unfounded;

[omitted]

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 25 October 2017.