JUDGMENT NO. 70 YEAR 2015

In this case the Court heard referral orders questioning the constitutionality of a rule which limited the annual revaluation increase for old-age pensions for larger pensions, allowing the full increase only to pensions up to three times the minimum INPS pension. The Court struck down the legislation as unconstitutional on the grounds that it failed to comply with the principles of reasonableness and proportionality. After a discussion of previous legislation providing for a reduction in automatic annual increases, the Court held that the legislation was "limited to a generic reference to the 'contingent financial situation', whilst the overall design of the legislation does not establish why financial requirements should necessarily prevail over the rights affected by the balancing operation, against which such highly invasive initiatives are adopted." Whilst the right to an adequate pension was not absolute, any sacrifice in the name of budgetary requirements must be justified in detail.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 24(25) of Decree-Law 6 December 2011, no. 201 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted with amendments into Article 1(1) of Law no. 214 of 22 December 2011, initiated by the employment division of the *Tribunale di Palermo* by the referral order of 6 November 2013, by the judicial division for Emilia-Romagna Region of the Court of Auditors by two referral orders of 13 May 2014, and by the judicial division for Liguria Region of the Court of Auditors by the referral order of 25 July 2014, registered respectively as nos. 35, 158, 159 and 192 in the Register of Referral Orders 2014 and published in the Official Journal of the Republic nos. 14, 41 and 46, first special series 2014.

Considering the entries of appearance by C.G. and the National Institute for Social Security (INPS) as well as the interventions by T.G. and the President of the Council of Ministers;

having heard the judge rapporteur Silvana Sciarra at the public hearing of 10 March 2015;

having heard Counsel Riccardo Troiano for C.G., Counsel Luigi Caliulo and Counsel Filippo Mangiapane for the INPS and the State Counsel [*Avvocato dello Stato*] Giustina Noviello for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– The employment division of the *Tribunale di Palermo*, by the referral order of 6 November 2013 (Register of Referral Orders no. 35 of 2014), the judicial division for Emilia-Romagna Region of the Court of Auditors, by two referral orders of 13 May 2014 (Register of Referral Orders no. 158 and no. 159 of 2014) and the judicial division for Liguria Region of the Court of Auditors, by the referral order of 25 July 2014 (Register of Referral Orders no. 192 of 2014), question the constitutionality of Article 24(25) of Decree-Law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted with amendments into Article 1(1) of Law no. 214 of 22 December 2011, insofar as it limits the revaluation of pensions by 100 percent for the years 2012 and 2013 exclusively to pensions worth an overall amount of up to three times the minimum INPS pension, with reference overall to Articles 2, 3, 23, 36(1) 38(2) 53 and 117(1) of the Constitution, the last provision in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law no. 848 of 4 August 1955.

All of the referring courts consider that Article 24(25) is unconstitutional on the grounds that it violates Articles 3, 36(1) and 38(2) of the Constitution in that the failure to provide for revaluation violates the principles of the proportionality and adequacy of pension provision and thus breaches the principles of equality and reasonableness [*ragionevolezza*], thereby resulting in unreasonable discrimination against pensioners as a class.

The contested provision is also alleged to violate Articles 2, 23 and 53 of the Constitution in that the measure adopted amounts to a pecuniary charge essentially

equivalent to a tax, which breaches the principle of universally applicable taxation given equal capacity to pay tax, as it has been imposed only on one single class of taxpayer.

Finally, the judicial division for Emilia-Romagna Region of the Court of Auditors alone contests the aforementioned provision also with reference to Article 117(1) of the Constitution in relation to the ECHR, recalling also Articles 6, 21, 25, 33 and 34 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 and adapted at Strasbourg on 12 December 2007.

2.– The proceedings relate to the same provision, which has been challenged in relation to constitutional parameters, on grounds and on the basis of arguments which largely coincide.

The proceedings must accordingly be joined for resolution in a single ruling (see *inter alia* Judgment no. 16 of 2015, Order no. 164 of 2014).

T.G. intervened *ad adiuvandum* in the proceedings initiated by the employment division of the *Tribunale di Palermo*, despite not being a party to the main proceedings, arguing that he had filed a similar appeal before the judicial division for Lazio Region of the Court of Auditors, seeking recognition of his right to an automatic increase of his pension for the years 2012 and 2013, which had been denied by INPS.

According to the settled case law of this Court (see on all points Judgment no. 216 of 2014), only the parties to the main proceedings and third parties vested with a qualified interest that is directly related to the substantive right averred in the proceedings, and not simply governed, in the same manner as any other, by the contested provision or provisions, may intervene in interlocutory proceedings before the Constitutional Court.

The fact that the intervener is a party to proceedings different from those to which the referral order relates, in which a similar question of constitutionality was raised, is not sufficient to render the intervention admissible (see *inter alia* Order no. 150 of 2012).

Consequently, since T.G. was not a party to the main proceedings within which the question of constitutionality to which Referral Order no. 35 of 2014 relates was raised, and is not vested with a qualified interest that is directly related to the substantive right averred in the proceedings, his intervention must be ruled inadmissible.

3.– In the two referral orders, the judicial division for Emilia-Romagna Region of the Court of Auditors questions the constitutionality of Article 24(25) of Decree-Law no. 201 of 2011, as converted into Law no. 214 of 2011, with reference *inter alia* to Article 117(1) of the Constitution, generically invoking the ECHR as an interposed parameter, whilst then going on to invoke more specifically a series of provisions contained in the Charter of Fundamental Rights of the European Union.

In particular, in addition to the principle of legal certainty as a "common heritage of the contracting states", the other rights guaranteed by the Charter are also invoked, including specifically: "the right of the individual to liberty and security (Article 6), the right of non-discrimination, including also discrimination based on "property", (Article 21), the right of the elderly to lead a life of dignity and independence (Article 25), the right of the family to legal, economic and social protection (Article 33), the right of access to social security benefits and social services (Article 34)".

The question as proposed is inadmissible.

It must be pointed out as a preliminary issue that this Court will consider a question to be inadmissible if the referring court does not provide adequate reasons to establish that it is not manifestly unfounded, limiting itself to invoking the Constitution but without providing arguments which are sufficient to establish that they have been violated (see *inter alia* Order no. 36 of 2015).

In such an eventuality, the failure to provide the reasons for the conflict between the contested provision and the Constitution/constitutional standards invoked will preclude a review of the questions on the merits (see *inter alia* Order no. 158 of 2011), with the result that they will be ruled inadmissible.

In the present case, the referring Court has limited itself to invoking Article 117(1) of the Constitution due to a violation of the ECHR "as interpreted by the Strasbourg Court", without asserting any argument in support of that alleged violation, in particular with reference to the manner in which the contested provision impinged upon the parameter of constitutional law invoked.

In addition, the reference to the ECHR proves to be misconstrued in this case as it is accompanied by a reference to legislative provisions from the Charter of Fundamental Rights of the European Union. As is stated in Article 6(1) of the Treaty on European Union, as amended by the Lisbon Treaty signed on 13 December 2007 and ratified and

implemented by Law no. 130 of 2 August 2008, the Charter has the same legal status as the treaties.

Accordingly, an examination of the referral order does not enable a clear deduction of how the provisions of the ECHR are infringed as a result of the application of the contested provision.

The presence of an argumentative shortcoming of this kind is a reason for ruling the question of constitutionality inadmissible since it precludes an examination as to whether the question is well-founded.

The referring court has not provided sufficient information so as to enable the manner in which the contested provision impinges upon the parameter generally invoked to be assessed, and fails to provide arguments to substantiate the detrimental effects of that impact, mistakenly referring to legislative provisions from primary EU law.

4.– The question of constitutionality objecting to the violation of Articles 2, 3, 23 and 53 of the Constitution on the grounds that the measure under examination is supposedly tantamount to a tax is unfounded.

All of the referral orders assert that, in the present case, irrespective of the designation used in the law, the cancellation of the automatic revaluation for the years 2012 and 2013 for pensions greater than three times the minimum INPS pension amounts to a pecuniary charge equivalent to a tax, which infringes the principle of universally applicable taxation given equal capacity to pay tax, as it has been imposed only on one single class of taxpayer. In requiring the parties to contribute to public expenditure not on account of their capacity to pay tax, it violates the principle of equality.

The referring courts invoke in particular decisions no. 116 of 2013 and no. 223 of 2012 insofar as it is asserted therein that the Constitution does not require uniform taxation according to criteria that are absolutely identical and proportional for all types of tax, but demands that there must be an inseparable link with capacity to pay tax, within the context of a system inspired by the principles of progressive taxation, as a further manifestation, within the specific field of taxation, of the principle of equality (see most recently Judgment no. 10 of 2015). This is related to the task of removing economic and social obstacles which *de facto* limit the freedom and equality of

taxpayers as citizens-human beings, within the spirit of political, economic and social solidarity required under Articles 2 and 3 of the Constitution (see Order no. 341 of 2000, cited on this point in Judgment no. 223 of 2012).

However, the cancellation of the automatic increase objected to in these proceedings does not fulfil the prerequisites for classification as a pecuniary charge comprising a tax, as it does not give rise to a mandatory pecuniary charge established through an act of authority with expropriating effect which is intended to secure resources for the Treasury.

The case law of this Court (see *inter alia* Judgments no. 219 and 154 of 2014) has been settled in stipulating that a tax must satisfy three inderogable prerequisites: the legal provisions must be predominantly aimed at securing a (definitive) financial reduction for the taxpayer; the reduction must not entail the alteration of a reciprocal relationship; and the resources associated with a financially significant condition establishing liability to taxation, and resulting from the said reduction, must be intended to support public spending.

A tax amounts to a "forced levy intended to contribute to public spending which is imposed on a taxpayer on the basis of a specific indication of capacity to pay tax" (see Judgment no. 102 of 2008). This indication must establish the fitness of each person to be subject to an obligation to pay tax (for the earliest rulings, see Judgments no. 91 of 1972, no. 97 of 1968, no. 89 of 1966, no. 16 of 1965 and no. 45 of 1964).

Paragraph 25 of Article 24 of Decree-Law no. 201 of 2011, as converted, which provides for a two-year block on the revaluation mechanism for pensions greater than three times the minimum INPS pension, does not therefore amount to a tax as it does not provide for any reduction of pensions or levy on the recipients of pensions.

On the basis of the criteria elaborated by this Court in relation to pecuniary charges, if there is no financial deduction or levy of the same type against a liable individual, the prerequisite for asserting the provision's status as a tax law provision no longer obtains. Moreover, the prerequisite of the accrual of the resources to the state budget is no longer met, as the provision does not provide cover for public spending, even indirectly, but results exclusively in a cost saving.

Thus, given the failure to satisfy the prerequisites for classification as a tax, and in general as mandatory pecuniary charges, the objections focusing on the failure to

comply with the progressive nature of taxation and the principle of the capacity to pay tax are unfounded.

5.– The question raised with reference to Articles 3, 36(1) and 38(2) of the Constitution is well founded.

Automatic increases, as an instrument for adjusting pensions in line with changes in the purchasing power of money, were governed by Article 10 of Law no. 903 of 21 July 1965 (Preliminary introduction of the reform and improvement of social security pensions), the aim of which was to address the fall in value to which pensions are exposed on account of the fact that they are paid out over long periods of time.

In order to pursue that objective throughout constantly changing stages of the economic cycle, the legislation in question has been subject to numerous amendments.

Article 19 of Law no. 153 of 30 April 1969 (Review of pension schemes and provisions on social security), which made general provision for the adjustment of the value of pensions falling under the compulsory insurance regime, chose to link pension increases in percentage terms to changes in the cost of living calculated by ISTAT [Italian National Institute for Statistics] on the same basis as the automatic adjustment of the salaries of industrial workers in line with inflation [the *scala mobile* or *wage escalator*].

Article 11(1) of Legislative Decree no. 503 of 30 December 1992 laying down "Provisions on the reorganisation of the pension system for private and public sector workers, pursuant to Article 3 of Law no. 421 of 23 October 1992" provided first that automatic increases were to be implemented annually and no longer half-yearly, and also that they were to be calculated on the basis of the average value of the ISTAT index of consumer prices for families, production workers and office workers. This amendment sought to offset the cancellation of the link with wage growth in order to guarantee a link with increases in average national living standards. Article 11(2) also provides that further increases may be established by a finance law, depending upon the performance of the economy.

The automatic revaluation mechanisms for pensions governed by Article 34(1) of Law no. 448 of 23 December 1998 (Measures concerning public finance, stabilisation and development) is intended to protect pensions against the erosion of the purchasing power of money, which tends to affect pensions even where there is no inflation. With

effect from 1 January 1999, the pensions revaluation mechanism is applied for each individual recipient with reference to the overall amount paid as pension out of mandatory general insurance schemes. Pursuant to Article 34(a), the increase provided for by the automatic revaluation is applied to the amount of pension eligible for revaluation as a proportion of the overall amount.

However, Article 69(1) of Law no. 388 of 23 December 2000 (Provisions on the formation of the annual and multi-year budget of the state – Finance Law 2001) provides with reference to the mechanism regulating automatic increases illustrated above that it shall only be applied in full to pensions worth up to three times the minimum INPS pension. It is applied at a rate of 90 percent to pensions worth between three and five times the minimum INPS pension, and is reduced to 75 percent for pensions in excess of five times the aforementioned minimum amount. This arrangement was followed by the legislator in subsequent enactments, confirming an approach which gave priority to protection for weaker categories of pensioner. For example, Article 5(6) of Decree-Law no. 81 of 2 July 2007 (Urgent provisions concerning financial matters), converted with amendments into Article 1(1) of Law no. 127 of 3 August 2007, provides for the 2008-2010 three-year period for a 100 percent increase for amounts falling between three and five times the minimum INPS pension.

In conclusion, the general rules which may be inferred from the overall historical development of the area of law stipulate that only weaker categories of pensioner are fully protected against the erosion induced by inflationary dynamics or in general by the reduced purchasing power of pensions.

6.– As regards suspensions of the mechanism governing increases, which fall to the discretionary choice of the legislator, these have followed different approaches over the years in an attempt to balance out the expectations of pensioners with the varying requirements to contain expenditure.

Article 2 of Decree-Law no. 384 of 19 September 1992 (Urgent measures on social security, healthcare and public sector employment, and tax provisions) provides that, pending the enactment of the law to reform the pension system, and in any case until 31 December 1993, the application of all statutory or regulatory provisions or collective agreements introducing automatic increases to public or private benefits or welfare pensions, including supplementary payments made by bodies from the public sector *lato*

sensu, and revaluation increases in annuities paid by the *INAIL* [National Institute for Insurance against Industrial Accidents] was to be suspended. However, when the Decree-Law was converted into law, Article 2(1-bis) of Law no. 438 of 14 November 1992 (Conversion into law, with amendments, of Decree-Law no. 384 of 19 September 1992 laying down urgent measures on social security, healthcare and public sector employment, and tax provisions) sought to mitigate the effects of the provision, which thus operated not as a bar on increases, but rather as a way of containing the revaluation in line with percentages predefined by the legislator with reference to the benchmark inflation rate [*tasso di inflazione programmata*].

Subsequently, Article 11(5) of Law no. 537 of 24 December 1993 (Measures to correct the public finances) made provision for a one-off increase for 1994, thereby making up the difference between the benchmark inflation rate and the real inflation rate, which had been lost as a result of the provisions contained in Article 2 of Law no. 438 of 1992. As a result, having originally been envisaged by the legislator in 1992 as a general measure applicable without distinction as to income, the block was converted into a less onerous form of partial freezing of pension increases.

After the entry into force of the contributory pension system (Article 59(13) of Law no. 449 of 27 December 1997 laying down "Measures on the stabilisation of the public finances"), the legislature annulled the automatic increase for 1998. This provision, which was upheld as constitutional by this Court by Order no. 256 of 2001, limited its scope only to medium and high pensions greater than five times the minimum pension.

The block introduced by Article 24(25) of Decree-Law no. 201 of 2011, as converted into law, which has now been challenged, was modelled on the precedent of Article 1(19) of Law no. 247 of 24 December 2007 (Provisions to implement the Protocol of 23 July 2007 on social security, employment and competitiveness in order to promote equity and sustainable growth, along with further provisions on employment and social security) which however had limited the temporary bar on revaluation to particularly high pensions eight times higher than the minimum INPS pension.

As was clear from the technical report on the draft bill approved by the Council of Ministers on 13 October 2007, this measure was intended to provide a solidarity-based contribution to the financing of measures relating to retirement pensions following the raising of the eligibility threshold for retirement pensions (known as the "big step"

[*scalone*]) introduced with effect from 1 January 2008 by Law no. 243 of 23 August 2004 (Provisions relating to pensions and authorisation of the Government in the public pension sector, to support complementary pension provision and stable employment and to reorganise pension and mandatory assistance bodies).

The cancellation of the increase provided for under Article 1(19) of Law no. 247 of 2007, cited above, was submitted for review by this Court, which ruled on the question in Judgment no. 316 of 2010. In that ruling, this Court stressed the discretion vested in the legislator, subject to the need to abide by the constitutional requirement that pensions be proportional and adequate, finding that the cancellation for 2008 only of high value pensions (greater than eight times the minimum INPS pension) was not unlawful.

At the same time, it warned the legislator that the indefinite suspension of the mechanism providing for increases or the frequent repetition of measures aimed at freezing it would enter into conflict with the insurmountable principles of reasonableness and proportionality. In fact, it held that "[…] pensions, even those for higher amounts, could not be sufficiently defended against changes in the purchasing power of money".

7.– Article 24(25) of Decree-Law no. 201 of 2011, as converted into law, which has been challenged in these proceedings, was enacted as one of the "Urgent provisions on growth, equity and the consolidation of the public accounts" (the initiative known as "save Italy") and provides that "in consideration of the contingent financial situation", the automatic revaluation of pensions according to the mechanism cited above 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.

As a result of the legislative provision, a 100 percent adjustment was applied to the part of the pension up to three times the INPS minimum, whilst pensions in excess of three times the minimum were not subject to any revaluation. The full block on increases thus applied for pensions worth more than EUR 1,217.00 net.

This mechanism departs from that originally provided for under Article 24(4) of Law no. 41 of 28 February 1986 (Provisions on the formation of the annual and multi-year budget of the state – Finance Law 1986) and confirmed by Article 11 of

Legislative Decree no. 503 of 30 December 1992 (Provisions on the reorganisation of the pension system for private and public sector workers, pursuant to Article 3 of Law no. 421 of 23 October 1992), which did not discriminate between pensions considered overall, but rather between banded values.

In fact, under the previous legislation the percentage increase was applied to the amount not exceeding two times the minimum pension for employee workers. For amounts falling between two and three times the minimum pension, the percentage was reduced to 90 percent. For amounts greater than three times the minimum pension, the percentage was reduced to 75 percent.

The manner of operation of the contested provision was devised in order to apply to pensions considered overall, and not to the individual constituent bands of pension income. They are subjected to one single corrective rule to the effect that, for pensions greater than three times the INPS minimum and for those lower than that limit after being increased by the automatic revaluation quota due, the amount of the revaluation shall under all circumstances be allocated up to the aforementioned increased limit.

The contested provision results from an amendment which, in the light of the observations addressed to the Minister of Employment and Social Policies (Chamber of Deputies, 11th Committee for Public and Private Sector Work, hearing of 6 December 2011), resulted in the replacement of the original formula. This had provided for the cancellation of the increase for all pensions greater than two times the INPS minimum, i.e. EUR 946.00. The Minister clarified at that hearing that the measure to be adopted was not to form part of the reform of pensions, but was to be regarded as an "emergency budgetary measure".

The contested provision was considered in a parliamentary question (Senate of the Republic, session no. 93, question presented on 8 August 2013, no. 3 – 00321), which was not answered, in which the Government was asked whether it intended to promote the review of the measure, in the light of the case law of the Constitutional Court.

It is clear from this history that the contested provision departs significantly from the previous regulations. The suspension has been imposed not only for two years but also affects lower pensions.

In addition, the legislative provision differs from subsequently enacted legislation.

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 – stability law ") provided for the 2014-2016 three-year period for a restructuring of the application of the automatic percentage increase to pensions as a whole in accordance with the mechanism laid down in Article 34(1) of Law no. 448 of 1998, cancelling the increase only for bands of pension income greater than six times the INPS minimum and for 2014 only. In addition, the percentages were in part modified compared to the original law.

Over the three-year period in question the increase was to be applied at 100 percent to pensions up to three times the minimum pension, at 95 percent to pensions greater than three times the minimum pension up to and including four times the minimum pension, at 75 percent for pensions greater than four times up to and including five times the minimum pension, and at 50 percent for pensions greater than five times up to and including six times the minimum INPS pension. The full block on the increase only affected bands of pension income greater than six times the minimum pension for 2014. The legislator has thus reintroduced a distinction between bands of pension income based on progressive criteria, which comply with the constitutional requirement that pension provision must be proportionate and adequate. This fact too confirms the singular nature of the contested provision.

8.– An analysis of the development of the law in this area indicates that the provision for automatic pension increases is a technical instrument intended to guarantee compliance over time with the criterion of adequacy laid down by Article 38(2) of the Constitution. This instrument is at the same time intended to complement the principle of adequate remuneration under Article 36 of the Constitution which, according to the settled case law of this Court, is applied to pensions, which are regarded as deferred remuneration (see *inter alia* Judgment no. 208 of 2014 and Judgment no. 116 of 2013).

Due to its characteristics of neutrality and objectivity and its purpose of implementing the aforementioned constitutional principles, the technique of automatic increases conditions the discretionary choices of the legislator, without however stipulating how the discretion is to be exercised, its task being to set the specific quantum of protection required from time to time. Such action must be based on the

constitutional principles laid down in Articles 36(1) and 38(2) of the Constitution, which are strictly related to each other precisely in view of the goals pursued.

On account of the reasonable nature of these goals it is possible to draw up and pursue a project of substantive equality, in accordance with the requirements laid down in Article 3(2) of the Constitution, thereby avoiding any differences in treatment to the detriment of certain pensioners. In applying the criterion of proportionality with the quality of work performed to pensions, which are conceived of as deferred remuneration (Article 36(1) of the Constitution), in addition to the criterion of adequacy (Article 38(2) of the Constitution), this Court has set out a consistent framework for the legislator with the aim of preventing the adoption of non-uniform and unreasonable measures (see *inter alia* Judgments no. 208 of 2014 and no. 316 of 2010). Compliance with the parameters cited above becomes even more compelling for the legislator following increases in life expectancy along with the expectation – which is widespread amongst pensioners – of leading a free and dignified life, according to the requirements laid down by Article 36 of the Constitution.

It is not by chance that, ever since Judgment no. 26 of 1980, this Court has proposed a systematic interpretation of Articles 36 and 38 of the Constitution with the aim of offering "special protection for workers". It has held that the requirements of proportionality and adequacy must not be met solely upon retirement "but must be ensured at all times thereafter, having regard to the changes in the purchasing power of money", although this need not necessarily entail 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, which may also be staggered over time (see *inter alia* Judgments no. 316 of 2010; no. 106 of 1996; no. 173 of 1986; no. 26 of 1980; no. 46 of 1979; no. 176 of 1975; Order no. 383 of 2004). Nevertheless, it follows from the principle laid down in Article 36 of the Constitution that there is a "constant need to adjust pensions in line with remuneration for persons in work" (see Judgment no. 501 of 1988; followed *inter alia* by Judgment no. 30 of 2004).

On the basis of a reasonable balance between the constitutional values, the legislator must "enact legislation allowing adequate pension provision having regard to the financial resources available and without prejudice to the absolute guarantee of the minimum requirements of individual protection" (see Judgment no. 316 of 2010). In

order to avoid the occurrence of “an untenable mismatch” between pension increases and salary trends, the legislator cannot disregard the limit of reasonableness (see Judgment no. 226 of 1993).

Moreover, it falls to the legislator to identify suitable mechanisms to ensure that pensions are at all times adequately aligned with increases in the cost of living. This requirement has also applied to complementary pension provision which, whilst not directly related to public spending, is not entirely indifferent to the latter as it contributes to the overall solidity of the social insurance system (see Judgment no. 393 of 2000) and thus to ensuring adequate pension provision pursuant to Article 38(2) of the Constitution.

Accordingly, the criterion of reasonableness as set out in the case law cited with regard to the principles contained in Articles 36(1) and 38(2) of the Constitution circumscribes legislative discretion and subjects its choices to the requirement that it adopt solutions consistent with the Constitution.

9.– In assessing the alleged unconstitutionality of the cancellation of the mechanism for increasing pensions in excess of eight times the minimum INPS pension for the year 2008 (Article 1(19) of Law no. 247 of 2007), this Court identified the rationale of the contested provision, which lies in the need to obtain resources necessary “to offset the elimination of the sudden increase to sixty years with effect from 1 January 2008 of the minimum age for eligibility for retirement pensions pursuant to Article 1(6) of Law no. 243 of 23 August 2004”, with “the stated aim of contributing to financing the initiatives relating to retirement pensions rooted in solidarity which were adopted in parallel in Article 1(1) and (2) of the same Law” (see Judgment no. 316 of 2010).

On that occasion, this Court did not consider that the parameters laid down in Articles 3, 36(1) and 38(2) of the Constitution had been violated. The pensions affected for one single year by the provision contested at the time, the value of which was quite high, had “scope to resist the erosion caused by inflation”. The need for constant revaluation of the correlative monetary value appeared to be less pressing for them.

In addition, this Court held that the principle of equality had not been breached since the block on the automatic increase for the year 2008, which was applied exclusively to pensions greater than an unquestionably significant monetary limit, resulted in “different treatment for circumstances which were objectively different from

those – not affected by the contested provision – of the recipients of more modest pensions". The general provision requiring an automatic increase has been defined by this Court as being operable "ordinarily" precisely because "it provides for tapered cover, which reduces as the value of the pension increases". The legislator's choice in that case was based on a redistributive rationale requiring a sacrifice, as confirmation of a principle rooted in solidarity, which accompanied the introduction of more rigorous criteria for establishing eligibility for pensions. The principle of equality was not violated precisely because the arrangements were based on the recognition of different situations.

The provision contested at the time also passed muster as regards the objections of manifest unreasonableness as it was held that there had not been any quantitative reduction in the benefits paid but only a deceleration in the mechanism for increasing higher value pensions. The budgetary requirements, alongside the duty of solidarity, provided a reasonable justification for the cancellation of the automatic annual revaluation for pensions worth more than eight times the INPS minimum which were, according to this Court, "unquestionably significant", and thus less exposed to the risk of inflation.

The judgment referred to sought to highlight the fact that the temporary suspension of a mechanism providing for increases, or the frequent repetition of measures intended to freeze it, "would expose the system to evident tensions with the mandatory principles of reasonableness and proportionality", jeopardising the ultimate goal of protection inherent within the mechanism providing for automatic increases, which provides a tapered defence against the purchasing power of pensions.

This Court had already made findings to that effect a number of years before, in upholding as barely constitutional legislation that impinged "in a significant and definitive manner" on the guarantee of adequacy in relation to pensions, which was not based on a compelling requirement of general interest (see Judgment no. 349 of 1985).

It must be recalled that, due to the manner in which the mechanism providing for automatic increases operates, any loss of the purchasing power of pensions, even if limited to short periods, is by its very nature definitive. In fact, later revaluations will be calculated not on the original real value but rather on the most recent nominal amount, which has already been affected by the failure to apply the adjustment.

10.– If assessed with reference to the principles of the proportionality and adequacy of pensions, it must be concluded as regards the objection relating to paragraph 25 of Article 24 of Decree-Law no. 201 of 2011 that the principles of reasonableness and proportionality have been breached, resulting in detriment to the purchasing power of pensions themselves and the "irremediable thwarting of the legitimate expectations held by the worker with regard to the period falling after his or her retirement" (see Judgment no. 349 of 1985).

This means that the warning addressed to the legislator in Judgment no. 316 of 2010 was not heeded.

There are clear indications in this regard of an inseparable link with the provisions of Articles 36(1) and 38(2) of the Constitution (see most recently Judgment no. 208 of 2014, recalling Judgment no. 441 of 1993). The legislator must operate on this terrain in striking a correct balance whenever the need to make cost savings arises, acting in accordance with an insurmountable purposive restriction "with the aim of ensuring that critical levels that may render corrective action by the Court inevitable are not breached" (see Judgment no. 226 of 1993).

The provision concerning the cancellation of the mechanism providing for the increase, contained in paragraph 24 of Article 25 of Decree-Law 201 of 2011, as converted, is limited to a generic reference to the "contingent financial situation", whilst the overall design of the legislation does not establish why financial requirements should necessarily prevail over the rights affected by the balancing operation, against which such highly invasive initiatives are adopted. Also upon conversion (Law no. 214 of 22 December 2011) no technical documentation is provided concerning the projected higher revenues as provided for under Article 17(3) of Law no. 196 of 31 December 2009 laying down the "Law on public accounts and finance" (see Judgment no. 26 of 2013, which interprets Article 17 as a "technical clarification" of Article 81 of the Constitution).

The interest of pensioners, including in particular those in receipt of modest pensions, is focused on the conservation of the purchasing power of the amounts received, which in consequence gives rise to the right to an adequate pension. This right, which is rooted in constitutional law, has been unreasonably sacrificed in the name of financial requirements which are not illustrated in detail. This means that the

fundamental rights pertaining to the pension relationship, which are rooted in unequivocal constitutional parameters – namely the proportional nature of the pension, understood as deferred remuneration (Article 36(1) of the Constitution) and its adequacy (Article 38(2) of the Constitution) – have been violated. The pension relationship must be construed as a certain, albeit not explicit, assertion of the principle of solidarity enshrined in Article 2 of the Constitution, and at the same time as a manifestation of the principle of substantive equality enshrined in Article 3(2) of the Constitution.

The contested provision is therefore unconstitutional insofar as set out above.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

hereby,

1) rules that the intervention by T.G. is inadmissible;

2) declares that Article 24(25) of Decree-Law 6 December 2011, no. 201 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted with amendments into Article 1(1) of Law no. 214 of 22 December 2011, is unconstitutional 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 at a level of 100 percent”;

3) rules that the question concerning the constitutionality of Article 24(25) of Decree-Law no. 201 of 2011, as converted, raised with reference to Articles 2, 3, 23 and 53 of the Constitution by the employment division of the *Tribunale di Palermo*, by the judicial division for Emilia-Romagna Region of the Court of Auditors and by the judicial division for Liguria Region of the Court of Auditors by the referral orders mentioned in the headnote, is unfounded;

4) rules that the question concerning the constitutionality of Article 24(25) of Decree-Law no. 201 of 2011, as converted, raised with reference to Article 117(1) of

the Constitution, in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law no. 848 of 4 August 1955, by the judicial division for Emilia-Romagna Region of the Court of Auditors by the referral orders mentioned in the headnote, is inadmissible.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 10 March 2015.