



## Readjustment of certain old-age pensions did not breach Convention rights

In its decision in the case of **Aielli and Others and Arboit and Others v. Italy** (applications no. 27166/18 and 27167/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns a reform of the uprating of State pension payments for 2012 and 2013.

The Court observed that the legislature had been obliged to intervene in a difficult economic context. The Legislative Decree in question had sought to provide for redistribution in favour of lower pensions, while preserving the sustainability of the social security system for future generations. The Italian government's room for manoeuvre had been restricted on account of the limited resources and the risk that the European Commission might take action for an excessive budget deficit.

In conclusion, the Court took the view that the effects of the reform were not so severe that they risked causing the applicants difficulties in meeting living costs to an extent that would be incompatible with Article 1 of Protocol No. 1.

### Principal facts

The 10,059 applicants are Italian nationals.

In the context of the budget deficit crisis and its consequences, the Italian government adopted, on 6 December 2011, Legislative Decree no. 201 (known as the "Save Italy Decree"), converted into Law no. 214/2011. Section 24 of that Law entitled "measures to reduce public debt" provided for the freezing, in 2012 and 2013, of the indexing of old-age pensions which were more than three times the guaranteed minimum pension set by the National Social Security Institute (INPS).

The Constitutional Court, ruling on the conformity of that provision with the Constitution in response to a question from the ordinary courts, held in its judgment no. 70 of 10 March 2015 that the legislative intervention had not been proportionate, or reasonable and appropriate, and declared it unconstitutional.

On 21 May 2015 the government adopted Legislative Decree no. 65/2015, converted into Law no. 109/2015, which amended the provision at issue with retroactive effect. In judgment no. 250 of 25 October 2017, the Constitutional Court took the view that the legislature had carried out a new and balanced assessment of the constitutional principles and interests at stake.

Following the entry into force of Legislative Decree no. 65/2015, the applicants, who were all pensioners receiving more than three times the basic minimum pension, sent a warning to the INPS. Relying on judgment no. 70/2015 of the Constitutional Court, they sought the restoration of the automatic uprating of their pensions as applied before Legislative Decree no. 201/2011. They then referred the matter to the domestic courts, arguing that Legislative Decree no. 65/2015 was unconstitutional. As the Constitutional Court then found, in judgment no. 250/2017, that the new Legislative Decree raised no question of constitutionality, the applicants decided to withdraw their case before the ordinary courts.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 8 May 2018.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that the relevant provisions of Legislative Decree no. 65/2015 had produced an immediate interference for the years 2012 and 2013, and a permanent one in respect of successive uprating in subsequent years, which was not in the general interest and was disproportionate. Relying on Article 6 § 1 (right of access to a court), they alleged that this Legislative Decree was incompatible with Constitutional Court judgment no. 70/2015 and had affected their legal positions retroactively.

The decision was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Kristina **Pardalos** (San Marino),  
Guido **Raimondi** (Italy),  
Krzysztof **Wojtyczek** (Poland),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** (the former Yugoslav Republic of Macedonia),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 1 of Protocol No. 1](#)

The Court observed that Legislative Decree no. 65/2015 had not affected the nominal amount of the pension, but had reduced the mechanism for the uprating of the pension in line with the cost of living. In applying the provision at issue to the indexing mechanism for 2012, there had been no impact on pensions of less than three times the basic minimum and for the other categories of pension, such as those received by the applicants, the reduction corresponded to between 1.62% and 2.7% of the pension due. A similar result with a slight rise could be observed for 2013. In the Court's view, the measure did not appear to have had a significant impact on the amount of the applicants' pensions for 2012 and 2013.

As to the alleged continuing effect of the measure from 2014 onwards, the Court pointed out that, under Article 1 of Protocol No. 1, the legislative power of States extended to the reduction or modification of social security benefits.

The Court observed that the legislature had been obliged to intervene in a difficult economic context. The Legislative Decree in question had sought to provide for redistribution in favour of lower pensions, while preserving the sustainability of the social security system for future generations. The Italian government's room for manoeuvre had been restricted on account of the limited resources and the risk that the European Commission might take action for an excessive budget deficit.

The Court attached particular weight to judgment no. 250/2017 of the Constitutional Court, which had found the arrangements for several different pension categories and the staggered application of the freezing mechanism to be fair and in-keeping with the proportionality principle. In addition, the Court observed that a provision of Legislative Decree no. 65/2015 had enabled the applicants to recover, from 2014 onwards, part of the uprating that had been limited for 2012 and 2013.

In conclusion, the Court took the view that the effects of the reform were not so severe that they risked causing the applicants difficulties in meeting living costs to an extent that would be incompatible with Article 1 of Protocol No. 1. The interference could not therefore be regarded as imposing an excessive burden on them. Accordingly, the complaint was ill-founded and had to be rejected.

## Article 6

The Court noted that in principle the legislature was not precluded from regulating rights stemming from the applicable legislation, in civil matters, by new provisions with retroactive effect.

The applicants had taken their case to the domestic courts after the entry into force of Legislative Decree no. 65/2015, to challenge the application to them of that legislation. There had not been any legislative interference in pending proceedings within the meaning of the Court's case-law. That complaint was also ill-founded and had to be rejected.

*The decision is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.