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The Italian social security system after the recent economic and financial crisis and the related reforms: are austerity measures the right answer?

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The Italian social security system after the recent economic and financial crisis and the related reforms: are austerity measures the right answer?

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1. Introduction

Over recent decades, the Italian social security system has been affected by a reform process which has changed it significantly, in particular with regard to retirement age and the level of pension benefits.

Instead of being well-organised and coherent, this process has been a rather haphazard one, because the most important laws modifying the Italian social security system (and especially the pension system) have been adopted just after or during an economic and/or a financial crisis. This means that both the Government and Parliament, in designing these reforms, have not had enough time to enact comprehensive measures capable not only of providing an immediate (and necessary) response to the (temporary) economic crisis, but also to give a certain degree of stability to the system in general terms. Accordingly, the two most important reforms of the social security (pension) system adopted in Italy in the last twenty years, i.e. the so-called “Dini reform” (1995) and the so-called “Fornero reform” (2011), had to be amended several times, in order firstly to correct some errors due to the haste which accompanied the respective legislative process and, secondly, to provide for an adjustment of the outcomes of such reforms, which in some cases have not proved as effective as expected.

Against this background, a critical analysis of the Italian social security reform process now follows. More specifically, the essay will first of all take briefly into

account the constitutional principles on which the Italian social security system is based and how they have been interpreted by the Constitutional Court, in order to understand the level of discretion of the national legislator in the construction of this system.

Furthermore, the way in which the Italian Parliament and Government have regulated the pension system will be examined. This will enable the reader to understand the problems relating to the original legislation on retirement issues and the reasons why, from the beginning of the 1980s, this legislation has been considered as no longer sustainable and had therefore to be modified.

Hence, the two most important recent reforms of the Italian pensions system, i.e. the “Dini reform” (1995) and the “Fornero reform” (2011) will be described, pointing out, in particular, how the latter has endeavoured to accelerate the effects of the former, in order to respond to the challenges of the 2009 economic and financial crisis and to let Italy regain credibility in the international markets. Moreover, the proposed analysis sets out to present the current features of the Italian pension system and to critically analyse their degree of sustainability for the future.

Finally, the measures taken by the Renzi Government regarding social security will be briefly described. From this perspective, three main issues in particular will be taken into account.

First of all, the Government’s reaction to the recent decision of the Italian Constitutional Court on the automatic annual uprating of pensions (No. 70/2015) will be briefly presented, in order to clarify how difficult the relationship between these two actors of the Italian legal system is, nowadays.

Secondly, the social security aspects of the latest Italian labour market reform (so-called Renzi’s “Jobs Act”) will be analysed. These aspects essentially concern unemployment benefits and employability outlook for unemployed people: therefore, the “Jobs Act” provides for a comprehensive reform of them, giving particular importance to the “activation” of unemployed people and to the related so-called “conditionality principle”.

Thirdly, the current Italian political debate on pensions will be briefly presented, paying particular attention to the governmental proposals to introduce retirement age flexibility and to the difficulties in financing them.

2. Social security in the Italian Constitution

The Italian Constitution, which was adopted in 1947 and came into force in 1948, contains one fundamental provision concerning social security issues, Art.

38¹. Other constitutional norms, mainly devoted to labour law, play an important role with regard to social security too, but only indirectly. From this point of view, Art. 3 – containing the so-called “equality principle” – and Art. 36, para. 1 – regarding remuneration – have to be necessarily considered by the national legislator when it designs the social security system, and have been also an important reference point for the Constitutional Court in assessing the constitutionality of the respective statute laws².

It is interesting that Art. 38 of the Italian Constitution does not contain the expression “social security” (*sicurezza sociale*) because it does not provide for a unique social security system, but rather distinguishes between social assistance (*assistenza sociale*) and social insurance (*previdenza sociale*)³. Accordingly, on the one hand, Art. 38, para. 1 obliges the state to introduce social assistance for citizens unable to work and lacking the means necessary to live; on the other hand, Art. 38, para. 2, establishes a right to social insurance – again, to be provided by the state – in some specified cases: industrial accident, illness, invalidity, old age, and involuntary unemployment. The wording of these two paragraphs of Art. 38 clearly shows the aim to create, within social security, two different areas: a means-tested and tax-financed social assistance system which potentially covers every Italian citizen and a contributions-based social insurance system confined to workers who are experiencing (one, or more) of the said situations.

Although Art. 38 of the Italian Constitution introduces a right to both social assistance and social insurance, the circumstance that the social security system is so deeply divided into two different areas has, over time, had very important consequences on its development by the national legislator. Indeed, only social insurance has been implemented in a sufficiently determined and coherent way, whereas social assistance still lacks a comprehensive legal and administrative framework⁴.

This has had an important impact on the position of individuals in relation to the social security system. It should be underlined that this position is much stronger with regard to social insurance than social assistance. In other words, the national legislation implementing Art. 38 has provided for enforceable rights

¹ See M. Cinelli, *Diritto della previdenza sociale*, Giappichelli, Torino, 2015, p. 36 et seq.

² On this point see, in general, M. Borzaga, *Country report on Italy*, in U. Becker, D. Pieters, F. Ross, P. Schoukens (eds.), *Security: A General Principle of Social Security Law in Europe*, Europa Law Publishing, Groningen, 2010, p. 300 et seq.

³ See A. Baldassarre, *Diritti sociali*, in *Enciclopedia Giuridica Treccani*, Vol. XI, Istituto dell'Enciclopedia Italiana, Roma, p. 1 et seq.

⁴ On the development of social assistance in Italy see, in particular, V. Molaschi, *I servizi sociali e il modello di welfare delineato dalla l. n. 328/2000*, in R. Morzenti Pellegrini, V. Molaschi (eds.), *Manuale di legislazione dei servizi sociali*, Giappichelli, Torino, 2012, p. 41 et seq.

(*diritti soggettivi*)⁵ only in the field of social insurance⁶; on the contrary, social assistance has been realised in a much weaker way, since individuals are seldom entitled to enforceable rights, and in most cases their position is defined, according to Italian administrative law, as legitimate interests (*interessi legittimi*)⁷.

This distinction has important consequences: indeed, having enforceable rights with regard to social security means that once the conditions provided by law (i.e., for example, being pregnant, being sick, having reached the retirement age, etc.) are met, the public administration has to grant the respective benefit (i.e., for example, maternity allowance, sickness pay, or pension, etc.)⁸; conversely, having a legitimate interest implies that, although the prerequisites established by the law (i.e., for example, lacking of the means necessary to live) are met, the public administration does not have an automatic obligation to provide the relevant benefit (i.e., for example, an economic allowance designed to alleviate poverty), but can exercise discretionary power in this regard⁹. In other words, and depending on the available resources, the public administration can choose, among the individuals fulfilling the legal requirements, the ones who will benefit from the relevant social assistance measure.

The main question here is then to understand why Art. 38 of the Italian Constitution has been implemented by the national legislator in the way which has been described, i.e. why although this constitutional principle generally introduces enforceable rights, these have been fully realised only in the field of social insurance. Many answers to this question are certainly available, since social security issues are complicated: nevertheless, the most convincing one relates to the inherent, very different features of social insurance and social assistance and, consequently, to the differing manner in which they are financed, both going back to times prior to the adoption of the Italian Constitution (i.e. to the beginning of the 20th century, when social security systems were established in different European countries)¹⁰.

Social assistance was created on the basis of the solidarity principle, according to which all society members have to contribute to the maintenance of those who are physically unable to work¹¹. This right, secondly, is aimed to ensure such

⁵ For this category of rights see, in general, F. Santoro Passarelli, *Diritti assoluti e relativi*, in *Enciclopedia del Diritto*, Giuffrè, Milano, 1983, Vol. XII, p. 748 et seq.

⁶ See, for example, M. Borzaga, *Country report on Italy*, cit., p. 327, cit., p. 303 and 304.

⁷ See G. Falcon, *Lezioni di diritto amministrativo, I, L'attività*, CEDAM, Padova, 2005, p. 74 et seq.

⁸ On this point, in general, A. La Spina, *La protezione sociale*, in S. Cassese (ed.), *Trattato di diritto amministrativo, Diritto amministrativo speciale*, Vol. I, Part 2, Giuffrè, Milano, 2003, p. 855 et seq.

⁹ See M. Borzaga, *Country report on Italy*, cit., p. 327 et seq.

¹⁰ On this issue see the comprehensive analysis of N. Contigiani, *Le origini storiche della legislazione sociale e dell'assistenza pubblica*, in R. Morzenti Pellegrini, V. Molaschi (eds.), *Manuale di legislazione dei servizi sociali*, cit., p. 1 et seq.

¹¹ See G. Gurvitch, *La dichiarazione dei diritti sociali*, Comunità, Milano, 1949, p. 107 et seq.

people have the chance of living a dignified life. On the contrary, social insurance was considered, from its origin, a field pertaining to workers (and therefore not to all citizens), namely to people who perform (or have performed) a work activity. Therefore, the right to social insurance has been always linked to a principle of exchange or, at the most, of limited solidarity¹². Hence, the respective benefits have been and are recognized on a mutual basis, in order to respect the reciprocity between these benefits and the quality and quantity of the work performed, as established by Art. 36 of the Italian Constitution regarding remuneration¹³.

As a consequence of this structural difference between social assistance and social insurance, the national legislator has, from the very beginning, established differing ways of financing them. Whereas social assistance, because of the application of the principle of solidarity, is funded by taxes, social insurance is financed by contributions paid both by workers (i.e. normally employees) and their employers applying the exchange principle. Concerning social insurance, it is important to point out that the respective contributions come from the gross salary of workers and that this circumstance can be considered one of the most important ones in explaining why Parliament and Government have designed a quite strong social insurance system based on the recognition of enforceable rights for working people and have provided, over the years, for reforms of this system which certainly have been radical, but at the same time have taken into account the necessity of protecting so-called acquired rights (*diritti quesiti*)¹⁴. Concerning social assistance, on the other hand, the national legislator has not shown the same commitment, at first because the relevant taxes-financed benefits were considered of less importance and accordingly coherent legislation implementing the respective part of Art. 38 of Italian Constitution was not provided for; subsequently, although a comprehensive reform scheme was adopted (statute law No. 328/2000), this reform could not be effectively enacted because of the frequent economic crises and the increasing state indebtedness which was becoming a permanent feature of Italian economic life¹⁵.

The developments described may go some way to explaining why, although Art. 38 of the Italian Constitution introduces enforceable rights with regard to both social assistance and social insurance, the two fields have been developed in a very different way. They also help clarify why, despite the attempts made by scholars and the Italian Constitutional Court to develop a unique social security system

¹² See, again, G. Gurvitch, *La dichiarazione dei diritti sociali*, p. 115 et seq. and A. Cerri, *Profili costituzionali del sistema pensionistico*, in *Diritto e Società*, 1983, p. 288.

¹³ M. Borzaga, *Country report on Italy*, cit., p. 300 and 301.

¹⁴ See G. Ferraro, *I diritti quesiti tra giurisdizione e legiferazione*, in *Rivista Italiana di Diritto del Lavoro*, 1995, Part I, p. 312 et seq.

¹⁵ See, in particular, G. G. Balandi, *L'eterna ghirlanda opaca: evoluzione e contraddizione del sistema italiano di sicurezza sociale*, in *Lavoro e Diritto*, 2015, p. 313 et seq.

(especially through the valorisation of the “equality principle” provided by Art. 3 of the Italian Constitution), social insurance and social assistance have developed differently in Italy and still remain significantly distinct¹⁶.

Starting from the lack of coherence previously referred to between Art. 38 of the Italian Constitution and the legislation implementing its different parts, in the following paragraph the Italian social insurance system will be analysed, paying particular attention to the pension system and the most recent reforms affecting it. Indeed, although also social assistance is an interesting field, the fact that it has been developed in a weak way and has not been reformed since 2000 can be taken as a good reason to omit an analysis. However, some remarks will be devoted to social assistance in the last part of this essay, since the current Renzi Government has recently presented draft legislation aimed at protecting citizens against poverty, i.e. at comprehensively reforming this field of social security which is often neglected in Italy.

3. How should the constitutional principles on social security be implemented? Pension system reforms in times of economic crises

As just noted, over the last seventy years the Italian legislator has progressively designed a social insurance system that, on the basis of the contributions paid by working people (i.e. normally employees), has provided them with enforceable rights regarding precisely the events mentioned in Art. 38, para. 2 of the Italian Constitution (industrial accident, illness, invalidity, old age, and involuntary unemployment)¹⁷.

One of the most important of these events is certainly old age, which implies the obligation on the state to create a public pension system and to provide the employees with an enforceable right to the respective benefit: indeed, old age affects almost everyone and the pension system has gained increasing attention over the last decades (in Italy, as well as in many other western countries) because of the demographic changes and the consequent challenge concerning sustainability¹⁸.

With particular regard to Italy, after an initial period in which the pension system had been set up in a very generous way, especially in terms of retirement age, increasing financial problems and frequent economic crises induced the

¹⁶ On this point see A. Baldassarre, *I diritti sociali*, cit., p. 19.

¹⁷ See M. Borzaga, *Country report on Italy*, cit., p. 325 et seq.

¹⁸ On this point see M. D’Onghia, *Sostenibilità economica versus sostenibilità sociale. La Corte costituzionale, con la sentenza n. 70/2015, passa dalle parole ai fatti*, in *Rivista del Diritto della Sicurezza Sociale*, 2015, p. 319 et seq.

national legislator to introduce significant (although progressive) modifications¹⁹. As indicated in the introduction, two main pension reforms have been passed in Italy in the last twenty years: the so-called “Dini reform” (statute law No. 335/1995) and, more recently, the so-called “Fornero reform” (Decree Law No. 201/2011, converted into statute law No. 214/2011)²⁰. Moreover, between these two reforms, other statute laws have been adopted, in order to adjust the system, but only in a partial (and therefore for us a less important) way.

An analysis of these quite complex legislative developments clearly shows that the Italian Parliament and Government decided in particular, to the detriment of the individuals concerned, to amend two fundamental aspects of the social insurance system: on the one hand, the method for calculating the amount of the pension; on the other hand, the retirement age and the amount of contributory years necessary for retirement.

3.1 The “Dini reform” 1995

Both these aspects were firstly tackled by the “Dini reform”, adopted in 1995, i.e. just a couple of years after the severe economic and financial crisis which affected Italy in 1992²¹. Hence, statute law No. 335/1995 can certainly be considered as a reaction to that economic and financial crisis, but it is, at the same time, and in particular in comparison with the “Fornero reform”, at least an attempt to modify the Italian pension system in a comprehensive and coherent way. Indeed, as will be explained later, the “Fornero reform” has not really changed the pension system as designed by the “Dini reform”, but has just tried to accelerate its effects in terms of cuts to the relevant public expenditure budget, with the aim of restoring confidence in the financial markets²².

Concerning the method for calculating pensions, the “Dini reform” has superseded the so-called “*metodo retributivo*” and has introduced the so-called “*metodo contributivo*”. In other words, whereas before 1995 pensions were determined on the basis of the average of the remuneration earned by employees during the last years of their working lives, after 1995 they are calculated taking

¹⁹ See G. G. Balandi, *L'eterna ghirlanda opaca: evoluzione e contraddizione del sistema italiano di sicurezza sociale*, cit., p. 319 et seq.

²⁰ Regarding this reform process see, in general, A. Avio, *La vecchiaia della pensione*, in *Lavoro e Diritto*, 2013, p. 403 et seq.

²¹ With regard to the effects of economic crises on the Italian reforms of the pension system in general, and on the “Dini reform” in particular, see A. Avio, *Vecchiaia e lavoro. Tra solidarietà e corresponsabilità*, Ediesse, Roma, 2008; see also G. G. Balandi, *L'eterna ghirlanda opaca: evoluzione e contraddizione del sistema italiano di sicurezza sociale*, cit., p. 319 et seq.

²² See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, in *Rivista Italiana di Diritto del Lavoro*, 2012, Part 1, p. 385 et seq.

into account the amount of the contributions paid by the employees during their entire working life²³. This change can be seen as fundamental in terms of cutting public expenditure in the field of social insurance, since statistical evidence makes clear that pensions calculated according to the “*metodo contributivo*” are much lower than the ones determined through the “*metodo retributivo*”²⁴. Hence, in the future pensions will certainly be worth less, but, at the same time, the pension system will be more sustainable.

Although the “Dini reform” has radically altered the method of calculating pensions, nonetheless it should be noted that the effects of this modification have firstly been mitigated by the introduction of a very long transitional period that has, in fact, made the “*metodo contributivo*” applicable only to the employees having paid in less than 18 years of contributions before the end of 1995 (applicable *pro rata temporis*) and being hired as from the 1st of January 1996 (fully applicable)²⁵. For all the other employees (i.e. for the ones having made more than 18 years’ worth of contributions) the old (and much more protective and expensive) “*metodo retributivo*” continued to apply. The choice of providing for such a long transitional period was due to the fear on the part of the Italian legislator of violating acquired rights and legitimate expectations of employees with regard to their future pensions, according to the strict interpretation of the constitutional principles contained in Art. 38, Art. 3 and Art. 36 adopted, over the years, by the Italian Constitutional Court²⁶.

With regard to the retirement age, the “Dini reform” also introduced important changes, which again, as will be explained below, were only partially effective, because of the simultaneous establishment of transitional measures. In this respect, it should firstly be underlined that with the “Dini reform” the Parliament intended to eliminate a very particular feature of the Italian pension system, i.e. the co-existence of two different retirement schemes, the service pension (*pensione di anzianità*) and the old age pension (*pensione di vecchiaia*)²⁷. Indeed, the existence of service pensions in particular and the fact that this retirement scheme had been used extensively had made the pension system as a whole very costly and had thereby created the sustainability issue .

Before analysing the modifications introduced by the “Dini reform”, with regard to the retirement age it is important to properly understand the difference between service pensions and old age pensions. This difference mainly consists in

²³ On this issues see, for example, C. Cester, *Il quadro giuridico: principi generali e linee di tendenza*, in Id. (ed.), *La riforma del sistema pensionistico*, Giappichelli, Torino, 1996, p. 12 et seq.

²⁴ See, in general, D. Franco, M. Marè, *Le pensioni: l'economia e la politica delle riforme*, in *Rivista di Politica Economica*, luglio-agosto 2002, p. 197 et seq.

²⁵ See M. Borzaga, *Country report on Italy*, cit., p. 318 et seq.

²⁶ See. A. La Spina, *La protezione sociale*, cit., p. 846 et seq.

²⁷ On this point see, for example, R. Pessi, *La riforma delle pensioni e la previdenza complementare*, CEDAM, Padova, 1997.

the circumstances that allow the access to them. While old age pensions can be granted only after the achievement of the retirement age, the recognition of service pensions depends solely on the attainment of the established number of paid contribution years²⁸. In the case of service pensions, then, the age of the workers involved plays absolutely no role.

This short description of the main differences between old age and service pensions clearly shows that an attempt to make the pension system more sustainable from the point of view of retirement age could not be carried out without modifying the regulation of service pensions. Indeed, the latter were based on a certain minimum number of years of contributions paid (generally 35, before the “Dini reform” was adopted), i.e. irrespective of achieving a certain age: accordingly, people who had started to work very early could already retire when they were fifty or even earlier (especially in some sectors of the public administration)²⁹.

Against this background, the “Dini reform” confronted the issue of retirement age not only modifying, but rather completely superseding service pensions (at least in theory, as will now be explained) and at the same time making the retirement age flexible³⁰. Indeed, the “Dini reform” established that employees could decide to retire if they had reached between 57 and 65 years of age. However, this possibility was only conceded if employees who wanted to retire had accumulated 35 years of contributions and were at least 57 years old or had paid in 40 years’ worth of contributions, irrespective of their age.

The modifications introduced by the “Dini reform” with regard to retirement age and the related elimination of service pensions are certainly very far-reaching and could therefore have a positive effect on the sustainability problems of the Italian pension system as a whole. Nevertheless, also with regard to this second main aspect of statute law No. 335/1995, the national legislator decided to introduce a very long transitional period, intended to progressively raise both the minimum retirement age upwards to 57 years and the minimum years of contributions paid up to 40³¹. In other words, also in relation to retirement age (and, consequently, to service pensions) the Italian Parliament did not wish to violate acquired rights and legitimate expectations of employees³² and therefore provided for a transitional period that would end in 2008, after 13 years³³.

²⁸ See M. Miscione, *La pensione di anzianità nel sistema retributivo*, in C. Cester, *La riforma del sistema pensionistico*, cit., p. 98 et seq.

²⁹ As happened, for instance, with regard to school teachers.

³⁰ See A. La Spina, *La protezione sociale*, cit., p. 845.

³¹ See M. Borzaga, *Country report on Italy*, cit., p. 316.

³² On this issue S. M. Miscione, *La pensione di anzianità nel sistema retributivo*, cit., p. 101 et seq.

³³ As established by Art. 1, para. 25 of the statute law No. 335/1995 and by the annexed table b.

One of the most significant consequences of introducing this long transitional period was not only the very gradual raising of the retirement age, but also (and much more importantly) the postponement of the elimination of service pensions. Indeed, as has been pointed out just above, the “Dini reform” abolished them in theory, but not in practice.

3.2 The “Fornero reform” 2011

After this short description of the two main pillars of the “Dini reform” it is quite clear that concerning both the calculation method of pensions and the retirement age (i.e. retirement age and service pensions) statute law No. 335/1995 has altered the system profoundly: however, the respective (and very long) transitional periods introduced by the same reform have *de facto* reduced its impact to a large degree, at least for the near future, especially in terms of cutting public expenditure and so making the pension system as a whole more sustainable.

This is the reason why the national legislator, just a few years after the approval of the “Dini reform”, decided to introduce modifications to it, in order in particular to raise the retirement age with regard to service pensions. These two (very partial) reforms, adopted respectively in 2004 and 2007, only served to make access to the (still existing) service pensions more difficult in terms of retirement age, without shortening the transitional periods described above³⁴.

When the global financial and economic crisis broke in 2009, the Italian pension system, despite the measures taken from 1995 onwards, was held to be insufficiently sustainable and in particular to have an excessive impact on Italian public finances. More particularly, the loss of credibility by the international markets in the last Berlusconi Government in the summer 2011 caused an extremely rapid increase of the spread between the Italian and the German government bonds and this led to pressure, applied by some important institutions of the European Union, to adopt new, more radical reforms in order to cut public expenditure, also in the field of social security and pensions³⁵.

On 5 August 2011, Trichet and Draghi (at that time the current and the future President of the European Central Bank, ECB) wrote a letter to Prime Minister Berlusconi³⁶, in which a number of quite drastic measures were sought, in order to

³⁴ See R. Pessi, *Delega previdenziale e modello contributivo: contraddizioni e criticità*, in *Massimario di Giurisprudenza del lavoro*, 2004, p. 832 et seq.; M. Borzaga, *Country report on Italy*, cit., p. 317.

³⁵ See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull’art. 24 della l. n. 214 del 2011*, cit., p. 385 et seq.

³⁶ The text of this letter is available at: <http://www.ilsole24ore.com/art/notizie/2011-09-29/testo-lettera-governo-italiano-091227.shtml?uuid=Aad8ZT8D>. See also P. Sandulli, *Il settore pensionistico tra una manovra e l’altra. Prime riflessioni sulla legge n. 214/2011*, in *Rivista del Diritto della*

make the Italian public debt more sustainable: not surprisingly, the ECB was asking the Italian Government and Parliament to pass legislation intended not only to cut public expenditure generally, but also to adjust the pension system and some other aspects of the social security system (unemployment benefits in particular) and to modify some fundamental aspects of labour law, such as the rules concerning the protection of employees in case of unfair dismissal and the organisation of the collective bargaining system, which, according to the ECB, had to be radically decentralised³⁷. A number of “austerity measures” that the Government was not able to introduce, because of the intensifying of the Italian sovereign debt crisis and the consequent resignation of Berlusconi and his Ministers in November 2011.

After the complete failure of the Berlusconi Government to manage the emergency economic situation, the Monti Government was appointed by the former President of Republic Napolitano precisely to bring about the “austerity measures” requested by the ECB. Accordingly, just a few weeks after its appointment, the Monti Government approved Decree Law No. 201/2011 (converted into statute law No. 214/2011), that introduced many different measures aimed at cutting public expenditure and, among these, some aimed at amending the regulation of the pension system. These measures, enacted under Art. 24 of Decree Law No. 201/2011, are known as the “Fornero reform” of the Italian pension system³⁸.

As pointed out at the beginning of this section, the “Fornero reform” has not really radically altered the main features of the current national pension system, but rather has provided for fundamental adjustments with regard to the most problematic aspect of the “Dini reform”, i.e. the transitional periods and their excessive length³⁹.

Before describing the contents of Art. 24 of Decree Law No. 201/2011, it should be recalled that this was an emergency piece of legislation, which was prepared in a few days and that therefore led in some cases to absolutely unexpected results. A very good example of this is that the “Fornero reform” announces a number of

Sicurezza Sociale, 2012, p. 3 et seq.; M. Minenna, *Le condizionalità imposte dal Fiscal compact e gli impatti sul sistema previdenziale italiano*, in *Rivista del Diritto della Sicurezza Sociale*, 2014, p. 3 et seq.

³⁷ The decentralisation of the collective bargaining system probably is the only one reform sought by the European institutions which has not been adopted yet, because of the difficulty the Government faces in finding an agreement with the social partners on this very delicate issue.

³⁸ Regarding the “Fornero reform” see, for example, P. Sandulli, *Il settore pensionistico tra una manovra e l'altra. Prime riflessioni sulla legge n. 214/2011*, cit., p. 1 et seq. and M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 385 et seq.

³⁹ See M. Cinelli, *Diritto della previdenza sociale*, cit., p. 550.

goals to be reached and principles to be applied, which are then not really (or at least not completely) implemented by the national legislator⁴⁰.

Indeed, the first part of Art. 24 (para. 1) clearly points out, on the one hand, the goals which the Government wished to achieve through the further modification of the pension system and, on the other, the principles that should characterize the reform.

Regarding the first issue, Art. 24 para. 1 of Decree Law No. 201/2011 affirms that the latter is aimed at ensuring the fulfilment of the Italian commitments to international institutions and to the European Union (EU), and of the related budgetary constraints; additionally, the modification of the pension system should reinforce its long-term sustainability and, more generally, improve the economic and financial stability of the country. In order to reach these purely economic objectives and to respond to the pressures of the ECB and of the international markets, the Italian Government tried to build the reform on some fundamental principles, such as fairness and non-discrimination between categories of employees, allowing pension-related privileges only for the weakest of them; flexibility in accessing pensions, for example through incentives to prolong working life; adjustment of the requisites for retirement to modifications of average life expectancy; simplification, harmonisation and hence efficiency in the functioning of the diverse pension institutions⁴¹.

As most Italian scholars pointed out, the Italian Government and Parliament, through the next part of Art. 24 of Decree Law No. 201/2011, have been able (at least in some measure) to achieve the economic purposes of this piece of legislation and so to reassure the international markets and to contribute to the reduction of the spread between the Italian and the German government bonds; however, according to these scholars, the national legislator has only partially applied the described principles, and sometimes even contradicted them, possibly because of the necessity to design and to approve the reform in a very short period of time⁴².

Although the “Fornero reform” does not radically modify the features of the Italian pension system, as designed by statute law No. 335 of 1995, the changes introduced by the national legislator are numerous and sometimes very complex. However, as pointed out before, there are two main aspects that the “Fornero reform” has tackled, which are exactly the same ones the “Dini reform” had tried to

⁴⁰ See O. Bonardi, *Sistemi di welfare e principio di eguaglianza*, Giappichelli, Torino, 2012, p. 181 et seq.

⁴¹ On this point see P. Sandulli, *Il settore pensionistico tra una manovra e l'altra. Prime riflessioni sulla legge n. 214/2011*, cit., p. 7 et seq. M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 386; O. Bonardi, *Sistemi di welfare e principio di eguaglianza*, cit., p. 182.

⁴² See, in particular, M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 386 et seq.

modify: the method of calculating pensions, on the one hand, and the retirement age (in connection to service pensions), on the other. With regard to both aspects, the “Fornero reform”, precisely in order to make the system more sustainable, has firstly decided to significantly shorten (or even to eliminate) the transitional periods provided for by the “Dini reform”; at the same time, this new piece of legislation has increased the retirement age, correlating it to average life expectancy, and in so doing also ensuring that it will be raised again in the near future.

Starting from the first aspect, the method of calculating pensions, the national legislator has generally confirmed the application of the so-called “*metodo contributivo*”, under which pensions are calculated on the basis of the contributions paid by the employees during their entire working life, and, at the same time, has partially cut the respective transitional period introduced by statute law No. 335/1995. Indeed, as established by Art. 24, para. 2 of Decree Law No. 201/2011, starting from the beginning of 2012, every pension is calculated applying the “*metodo contributivo*”⁴³: as Italian scholars have pointed out, this does not really imply a big difference to the past regulation, especially in terms of cutting public expenditure, since it only affects the situation of employees who in 1996 already had at least 18 years of paid contributions, whose pension will be calculated with the “*metodo retributivo*” for the period until the end of 2011 and with the “*metodo contributivo*” for the period starting from the beginning of 2012; however, completely superseding the expensive “*metodo retributivo*” for the future can be taken as an important sign of the determination of Government and Parliament to really reform the system and also to understand the concept of “acquired right” relating to social insurance in a more flexible way than in the past⁴⁴.

If, then, the decision to override the “*metodo retributivo*” has mainly symbolic value, the one to raise the retirement age and to eliminate service pensions (through the removal of the respective transitional period introduced by the “Dini reform” and only partially modified by subsequent statute laws) represents a much more significant and effective measure⁴⁵. On this issue, the national legislator has adopted different provisions which, although in line with the trend launched by the “Dini reform” in 1995, have had a very important impact in terms of the sustainability of the pension system, because of postponing the retirement of a large number of working people.

⁴³ On this point see P. Sandulli, *Il settore pensionistico tra una manovra e l'altra. Prime riflessioni sulla legge n. 214/2011*, cit., p. 13 et seq.

⁴⁴ For this opinion see M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 389 et seq.

⁴⁵ See, in general, A. Avio, *La vecchiaia della pensione*, cit., p. 406 et seq.

According to this part of the “Fornero reform” 2011, the first fundamental issue to be noted is certainly the definitive elimination of service pensions. Indeed, Art. 24 of Decree Law No. 201/2011 clearly considers old age pensions as the single way for working people to retire. However, the same piece of legislation allows employees, under certain conditions and in some cases with penalties, to retire early. This possibility resembles the service pension scheme, but in truth is completely different from it: until 2011, thanks to the long transitional period introduced by the “Dini reform” 1995, working people could choose between the old age pension and service pension schemes; starting from 2012 they have no choice, because only the old age pension scheme exists, despite the limited possibility of retiring early, but within this unique scheme⁴⁶.

Furthermore, the 2011 “Fornero reform” profoundly modifies all previous requisites to access old age pensions, in order to prevent employees from retiring and so cutting public expenditure. The most important modification in this respect certainly is the rise in the retirement age: according to Art. 24, para. 6 ff. of Decree Law No. 201/2011, the retirement age generally is 66 years (for all employees in the public sector and for men in the private sector; the retirement age for women, historically lower in the Italian pension system⁴⁷, will increase in the private sector from 62 years in 2012 to 66 in 2018)⁴⁸. Moreover, this retirement age is intended to be further increased in the future: automatically to 67 years from 2021 (Art. 24, para. 9) and then progressively, in accordance with the rise of the average life expectancy of the Italian population (Art. 24, para. 12 and 13)⁴⁹. As scholars have pointed out, the main idea of the national legislator was not only to immediately increase the retirement age in order to reach the short-term goal of solving the 2011 financial crisis, but also, in the long run, to force employees in the private sector to work until the age of 70 years, or even longer⁵⁰. Indeed, the adjustment of the retirement age to average life expectancy should, by 2050, transform it to 70 years.

In addition to this increase in the retirement age, the Italian legislator has also introduced a contributory requisite: at least 20 years of paid contributions, provided, however, that the resulting pension is equal to an amount corresponding

⁴⁶ See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 397 et seq.

⁴⁷ See. O Bonardi, *Sistemi di welfare e principio di eguaglianza*, cit., p. 111 et seq.; Ead., *Non è un paese per vecchie. La riforma delle pensioni e i suoi effetti di genere*, in *Rivista del Diritto della Sicurezza Sociale*, 2012, p. 513 et seq.

⁴⁸ See P. Sandulli, *Il settore pensionistico tra una manovra e l'altra. Prime riflessioni sulla legge n. 214/2011*, cit., p. 19 et seq.

⁴⁹ On this point see, for example, M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 393 et seq.

⁵⁰ See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 394.

to 1,5 times of the so-called “*assegno sociale*”, i.e. the old age allowance, paid by the state (and financed by taxes) in the case of insufficient contributions having been made⁵¹.

Lastly, the “Fornero Reform” has provided for measures, in the private sector⁵², providing for economic incentives for employees who, in spite of reaching retirement age, decide to continue working. These economic incentives mainly consist in the assessment, when these employees retire, of a higher pension⁵³.

Next, concerning the issue of early retirement, the regulation adopted by the “Fornero reform” is probably the most radical one of this piece of legislation, especially compared to the rules, which prevailed until the end of 2011, governing the “similar” service pension scheme.

In general, this part of the “Fornero reform”, removing the long transitional period provided for by the “Dini reform”, achieves (*ex abrupto*) the goal of the complete elimination of service pensions, but, at the same time, introduces penalties (not contained in statute law No. 335/1995) in order to discourage workers from taking too early retirement.

More specifically, the “Fornero reform” adopts two different regulations with regard to early retirement, the first one concerning employees who started working before the end of 1995 (and therefore retiring according to a mixed method, partly “*retributivo*” and partly “*contributivo*”) and the second one regarding employees who started working as from the beginning of 1996 (and therefore retiring with a purely “*metodo contributivo*”)⁵⁴.

Concerning the first category of working people, the national legislator has introduced a very tough regulation, establishing that, in order to retire early, men must have paid contributions for 42 years and one month and women for 41 years and one month (both periods increasing by one month a year) (Art. 24, para. 10, first part); however, although this requisite may be met, penalties are applied to employees who have not attained the age of 62 years. This penalty (Art. 24, para. 10, second part) consists in a reduction of the pension granted by 1% a year for the

⁵¹ On this issue see, for example, M. Cinelli, *Diritto della previdenza sociale*, cit., p. 552 and O. Bonardi, *Sistemi di welfare e principio di eguaglianza*, cit., p. 186 and 187.

⁵² Concerning the public sector, on the contrary, the national legislator has fixed a rigid retirement age, in order to force civil servants to retire at that age and, doing so, to make room for younger employees in the public administration. As Italian scholars have pointed out, this choice could have consequences in terms of age discrimination: see, for example, M. Borzaga, *Die Bekämpfung der Altersdiskriminierung im italienischen Arbeitsrecht*, in G. Wachter (ed.), *Jahrbuch für Altersdiskriminierung*, Neuer wissenschaftlicher Verlag, Graz-Vienna, 2015, p. 34 et seq.; D. Izzi, *Invecchiamento attivo e pensionamenti forzati*, in *Rivista Italiana di Diritto del Lavoro*, 2014, Part I, p. 614 et seq.

⁵³ M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull’art. 24 della l. n. 214 del 2011*, cit., p. 395 et seq.

⁵⁴ See O. Bonardi, *Sistemi di welfare e principio di eguaglianza*, cit., p. 186 and M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull’art. 24 della l. n. 214 del 2011*, cit., p. 397 et seq.

first two years and by 2% for the further years, meaning, for example, that the pension of an employee retiring at the age of 58 will be cut by 6%⁵⁵. In truth, the application of these penalties has been postponed (frozen) until the end of 2017⁵⁶.

Next, concerning the second category of employees (who will retire under a purely “*metodo contributivo*” scheme) the “Fornero reform” has introduced the following regulation: employees aged at least 63 years, and with a minimum of 20 years of contributions paid are given the possibility of early retirement, provided, however, that the resulting pension is equal to an amount corresponding to 2,8 times the old age allowance (“*assegno sociale*”)⁵⁷. According to Italian scholars, since the old age allowance currently amounts to 448 € a month, by paying contributions for only 20 years it is almost impossible to reach a pension which corresponds to at least three times this sum⁵⁸.

Although the “Fornero reform” provides for other measures in order to cut public expenditure and to make the pension system more sustainable - which will be partly discussed in the next section - the new rules concerning the calculation method of pensions and, even more, the retirement age and the early retirement provisions clearly show that this reform can undoubtedly be seen as an “austerity measure”, mainly aimed at saving public money at the cost of the principles paradoxically announced by the same piece of legislation⁵⁹.

This assertion is particularly true with regard to the principle of fairness between different generations of employees, since the ones who had to face the radical elimination of service pensions and the simultaneous introduction of a new (and extremely unfavourable) regulation concerning early retirement have been seriously disadvantaged, compared to other employees who could retire, only a few months before them, under completely different rules⁶⁰.

In addition to this, the fact that a very complicated reform was adopted in a few days, led at times to unexpected results, because the Government was not able to comprehensively manage a very complicated pension system like the Italian one and made a number of mistakes that had to be resolved by the subsequent Governments, as will be explained in the next sections.

⁵⁵ See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 398.

⁵⁶ See Art. 1, para. 113 of statute law No. 190/2014.

⁵⁷ See Art. 24, para. 11 of Decree Law No. 201/2011.

⁵⁸ See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 399; see also A. Avio, *La vecchiaia della pensione*, cit., p. 411 et seq.

⁵⁹ M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 385 et seq.

⁶⁰ Regarding, more particularly, the unfair impact of the reform on women see O. Bonardi *Non è un paese per vecchie. La riforma delle pensioni e i suoi effetti di genere*, cit., p. 535 et seq.

4. Social security in Renzi's "Jobs Act" and onward: unemployment benefits, the conditionality principle, measures against poverty and flexible retirement age.

As pointed out in the previous section, the "Fornero reform" caused a number of problems, i.e. producing unexpected results which had to be tackled, in the following years, by the same Monti Government and by the subsequent ones, the Letta and Renzi Governments. Subsequently, we will briefly analyse these problems and the way in which they have been resolved. Moreover, the current approach of the Renzi Government to social security issues will be also taken into account, describing the measures adopted on this issue and also the plans for the near future, especially in terms of making the retirement age more flexible.

With regard, firstly, to the unexpected results of the "Fornero reform", two main issues have to be taken into account: the future for the so-called safeguarded people ("*salvaguardati*"), and the question of the annual automatic uprating of pensions.

The category of safeguarded people really can be considered an unexpected result of the "Fornero reform", which also explains very well how quickly (too quickly) and in some ways inaccurately this piece of legislation was drafted and adopted. In short, safeguarded people are the victims of the transition from service pensions to the early retirement scheme, which was characterized by the immediate and high rise in the pension age. These people had almost reached pension age under the previous regulation and therefore, in cases of financial troubles of their employer, had negotiated their exit from the company exactly because of the possibility of getting an early pension⁶¹. Since for most of them the "Fornero reform" increased the age for early retirement by some years, they had to face a very difficult situation and for that very reason had to be safeguarded. Consequently, the Monti Government and the subsequent ones had to provide for new measures in order to guarantee these people a pension⁶². These measures were quite problematic, not only because of the need to invest public resources for them, but also because the number of the people to be safeguarded was unclear and therefore the Governments had to intervene many times before the problem could be considered as resolved.

Next, concerning the question of the annual automatic uprating of pensions, the "Fornero Reform", once more in order to cut public expenditure, had decided to partly confirm blocking pensions which amount to three times the minimum

⁶¹ On the so-called "*salvaguardati*", see, in general, M. Cinelli, D. Garofalo, G. Tucci, "*Esodati*", "*salvaguardati*", "*esclusi*" nella riforma pensionistica Monti-Fornero, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2013, p. 337 et seq.

⁶² The categories of these people are accurately described in M. Cinelli, D. Garofalo, G. Tucci, "*Esodati*", "*salvaguardati*", "*esclusi*" nella riforma pensionistica Monti-Fornero, cit., p. 346 et seq.

pension, introduced some months before by the Berlusconi Government⁶³. This measure was then confirmed by the Letta Government, but held to be unconstitutional by the Italian Constitutional Court by decision No. 70/2015, because of the violation of the fundamental principles of reasonableness and proportionality⁶⁴. As a consequence, the Renzi Government had to enact a specific measure in order to supplement the pensions which had been illegally cut and so had to invest public resources again, in order to correct past mistakes⁶⁵.

With regard, more generally, to social security issues, it should be pointed out that the Renzi Government has not, so far, introduced very significant modifications to the “Fornero reform”, but has provided for some interesting measures which are contained in the so-called “Jobs Act”, the labour market reform adopted through enabling statute law No. 183/2014 and eight legislative decrees implementing it⁶⁶.

These measures mainly concern the condition of unemployed people, which had been traditionally disregarded by Italian labour and social security law for many decades and therefore, not surprisingly, was one the aspects that the ECB had asked the Italian Government to reform in its letter of 5 August 2011.

Indeed, national legislation had, until recently, concentrated on employees rather than on unemployed people, in an effort to preserve their position within firms for as long as possible. This happened, in particular, through a “very Italian” institution, called “*cassa integrazione guadagni*”, i.e. a special fund intended to subsidise firms in economic trouble, in order to prevent redundancies⁶⁷. This fund has been used for paying a benefit to employees, that partly replaces their remuneration, although they do not work, with the aim of preserving their jobs. Accordingly, most of the resources that in other countries are devoted to unemployment benefits have, in Italy, been invested to finance the “*cassa integrazione guadagni*”. However, the use and sometimes the misuse of this institution, together with the changes in the labour market structure, have led to a new approach, timidly launched by the so-called “Monti-Fornero reform” of the labour market (statute law No. 92/2012)⁶⁸ and then much more strongly

⁶³ See M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull'art. 24 della l. n. 214 del 2011*, cit., p. 391 et seq.

⁶⁴ On this decision see, for example, M. D'Onghia, *Sostenibilità economica versus sostenibilità sociale. La Corte costituzionale, con la sentenza n. 70/2015, passa dalle parole ai fatti*, cit., p. 319 et seq.

⁶⁵ See Decree Law, No. 65/2015, converted into statute law No. 109/2015.

⁶⁶ On this very complex piece of legislation see, in general, G. Zilio Grandi, M. Biasi (ed.), *Commentario breve alla riforma “Jobs Act”*, CEDAM, Padova, 2016.

⁶⁷ See, on this institution, M. V. Ballestrero, *Cassa integrazione e contratti di lavoro*, Franco Angeli, Milano, 1985.

⁶⁸ See S. Spattini, *Il nuovo sistema di ammortizzatori sociali dopo la legge 28 giugno 2012*, n. 92, Giuffrè, Milano, 2012; A. Alaimo, *Politiche attive del lavoro, patto di servizio e “strategia delle obbligazioni reciproche*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2013, p. 507 et seq.

confirmed in particular by two legislative decrees implementing Renzi's "Jobs Act", No. 22/2015 and No. 150/2015⁶⁹.

According to these measures, the "*cassa integrazione guadagni*" has not been completely eliminated, but is nowadays much weaker and therefore less important than in the past. At the same time, through the previously-mentioned legislative decrees, the Italian Government has paid much more attention to jobseekers: on the one hand, the amount and the length of unemployment benefits have been increased; on the other, employment services have been rationalised and should therefore work better in the future⁷⁰.

This part of the "Jobs Act" has been completed by the decision of the national legislator to give special emphasis, for the first time, to the concept of "conditionality", i.e. to the idea that public authorities have a duty to help jobseekers to find a new occupation, but that at the same time jobseekers must show their willingness to actively seek employment⁷¹. This means, for example, that they have to accept attending a retraining course and, in any case, accept the offer of "adequate" employment: if they do not do so, public authorities can decide to partly or completely cut the relevant unemployment benefits⁷². The "activation" concept generally is hotly debated, but seems to be one of the new frontiers of modern labour and social law in many western countries, especially because of widespread job insecurity, which is a feature of labour markets over recent years⁷³.

As has been previously noted, the modification of national legislation concerning the "*cassa integrazione guadagni*" and unemployment benefits can be considered as the single comprehensive reform definitively adopted by the Renzi Government. However, there are some other measures concerning social security law, that have been partly enacted or are in preparation for the future.

One important example of the first kind of measures concerns the fight against poverty: an enabling statute law on this issue has been recently approved by the Chamber of Deputies and should be definitively passed by the Senate in the near future⁷⁴. This measure introduces a so-called "*reddito di inclusione*", i.e. an income contribution for poor people, which seems to be a quite important novelty in a

⁶⁹ See, in general, A. Lassandari, *La tutela immaginaria nel mercato del lavoro: i servizi per l'impiego e le politiche attive*, in *Lavoro e Diritto*, 2016, p. 237 et seq.

⁷⁰ On this point see, in particular, R. Salomone, *Le prestazioni di politica attiva del lavoro al tempo del Jobs Act*, in *Lavoro e Diritto*, 2016, p. 281 et seq.

⁷¹ See R. Salomone, *Le prestazioni di politica attiva del lavoro al tempo del Jobs Act*, cit., p. 287 et seq.

⁷² See A. Donini, *Effettività dei servizi per l'impiego: forme e garanzie nella ricerca di lavoro*, in *Lavoro e Diritto*, 2016, p. 301 et seq.

⁷³ On this issue see, in particular, M. D. Ferrara, *Il principio di condizionalità e l'attivazione del lavoratore tra tutela dei diritti sociali e controllo della legalità*, in *Lavoro e Diritto*, 2015, p. 639 et seq. and U. Nothdurfter, *The Street-Level Delivery of Activation Policies: Constraints and Possibilities for a Practice of Citizenship*, in *European Journal of Social Work*, 2016, p. 420 et seq.

⁷⁴ This piece of legislation was adopted by the Chamber of Deputies on 14th July 2016.

country, like Italy, where a basic income for citizens does not yet exist, at least at national level⁷⁵. Interestingly, the above-mentioned enabling statute law creates a link between the income contribution and a personalised activation and inclusion project, which should help the person concerned to escape poverty through a working activity⁷⁶. This provision makes clear, once again, how central the “activation” concept has recently become in Italian labour and social law.

Lastly, it should be emphasised that the Renzi Government is preparing a pension reform which should partly correct some of the effects of the “Fornero reform”. The latter, as is well known, has not only produced unexpected results (most of which have already been corrected), but has generally increased the retirement age in an immediate and harsh way, *de facto* eliminating the flexibility which, on this issue, had characterised the “Dini reform”⁷⁷. Therefore, the Renzi Government is trying to reintroduce a certain flexibility in the retirement age and, at the same time, to increase minimum pensions, which are really low. The success or failure of this attempt - quite expensive in terms of public expenditure - will mainly depend on the room for manoeuvre that the European institutions will grant to the Italian Government over the next months⁷⁸.

5. Conclusions

The description of the social security reforms adopted in Italy over the last decades clearly show the difficulties (or perhaps the inability) of the national legislator to provide for comprehensive, coherent and not too complicated schemes in which rights and legitimate expectations of individuals are respected or at least modified in a fair way.

This is particularly true with regard to pensions: although the first of the two main reforms adopted over the last decades (the so-called “Dini reform” 1995) aimed at modifying the system in a comprehensive way, this attempt was largely thwarted due to the then economically and financially hard times. Indeed, the “Dini

⁷⁵ See, on this issue, S. Sacchi, *I nodi critici dell’attuazione di uno schema di reddito minimo in Italia: alcune proposte*, in *Giornale di Diritto del Lavoro e di Relazioni industriali*, 2011, p. 247 et seq.; P. Bozzao, *Reddito minimo e welfare multilivello: percorsi normativi e giurisprudenziali*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2011, p. 589 ss.; E. Gagnoli, *Gli strumenti di tutela del reddito di fronte alla crisi finanziaria*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2012, p. 573 et seq.

⁷⁶ See Art. 2, para. 1, lett. a) of the cited draft legislation, which is available at: <http://www.senato.it/service/PDF/PDFServer/BGT/00982885.pdf>.

⁷⁷ On this point see, in general, M. Cinelli, *La riforma delle pensioni del «governo tecnico»: appunti sull’art. 24 della l. n. 214 del 2011*, cit., p. 385 et seq.

⁷⁸ See, for example, M. Minenna, *Le condizionalità imposte dal Fiscal compact e gli impatti sul sistema previdenziale italiano*, cit., p. 3 et seq.

reform” had to be modified several times in order to cut public expenditure and, more recently, to combat the effect of the sovereign debt crisis.

The latter was precisely the goal of the “Fornero reform”, which was adopted at the end of 2011 as an “austerity measure” aimed at making the pension system more sustainable, especially through the raising of the pension age and the related, complete elimination of service pensions.

Although there is no doubt that Italy’s public debt is too high, making the country particularly vulnerable to economic and financial crises, it is also true that pensions reform should be drafted and enacted not only with a view to cutting public expenditure, but also with the aim of taking into account in a coherent way the challenges of the pension system in an ageing society and of avoiding a probable conflict of generations on this point⁷⁹.

In this regard, the “Fornero reform” can certainly be considered as unsuccessful: not only did it contain technical errors, which have led to the unexpected results already discussed, but it is also incomplete because the retirement age was raised without providing for measures aimed at promoting the employment of long-term (senior) unemployed people or at combating youth unemployment⁸⁰. In other words, the “Fornero reform” is imprecise and incomplete, and certainly not able, in the long run, to avoid the probable conflict of generations mentioned above.

In conclusion, austerity measures may be necessary to confront the difficulties arising from economic and financial crises, but should be considered, at the same time, as an occasion to rethink current labour and social law institutions and to adapt them to the needs of individuals in a rapidly changing society. In this sense, austerity measures “Italian-style”, like the “Fornero reform”, are not the right answer⁸¹.

Whether and, if so, how the Italian social security system will be modified in the next years is, for the moment, very hard to say⁸²: however, the measures adopted by the Renzi Government with regard to unemployment benefits are quite coherent and comprehensive, which gives some hope for the future.

⁷⁹ On this issue see, critically, M. Cinelli, *L’«effettività» delle tutele sociali tra utopia e prassi*, in *Rivista del Diritto della Sicurezza Sociale*, 2016, p. 21 et seq.

⁸⁰ Concerning in particular the relation between increase of the retirement age and active ageing see, for example, R. Casillo, *L’innalzamento dell’età di pensione: profili problematici*, in M. Esposito e G. della Pietra (eds.), *L’accesso alla sicurezza sociale. Diritti soggettivi e tutele processuali*, Giappichelli, Torino, 2015, p. 3 ss.; M. Corti, *Active ageing e autonomia collettiva. “Non è un Paese per vecchi”, ma dovrà diventarlo presto*, in *Lavoro e Diritto*, 2013, p. 383 et seq.

⁸¹ For these criticisms see, for example, G. G. Balandi, *L’eterna ghirlanda opaca: evoluzione e contraddizione del sistema italiano di sicurezza sociale*, cit., p. 321.

⁸² Some proposals are made by P. Sandulli, *L’adeguatezza delle prestazioni fra parametro retributivo e compatibilità economica*, in *Rivista del Diritto della Sicurezza Sociale*, 2015, p. 687 et seq. and by R. Pessi, *Ripensando il welfare*, in *Rivista del Diritto della Sicurezza Sociale*, 2013, p. 473 et seq.