

THE ITALIAN PENSION SYSTEM. THE RELOCATION AGREEMENT: TECHNICAL ASPECTS AND OPERATIONAL PROCESSES¹

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SUMMARY: 1. INTRODUCTION. 2. THE EVOLUTION OF THE ITALIAN PENSION SYSTEM: THE FIRST SEASON. 2.1. The second season of reforms. 3. THE ITALIAN PENSION SYSTEM: THE PENSION ADVANCE (EPA). VOLUNTEER OR FACILITATED. 4. THE RELOCATION ALLOWANCE. 5. THE RELOCATION AGREEMENT. 6. TECHNICAL ASPECTS: THE REQUEST FOR A CHECK BY THE WORKER. 6.1. Intensive care service. 6.2. Benefits for the employee and the employer. 6.3. Reservation of the relocation agreement. 7. FINAL CONSIDERATIONS.

ABSTRACT: The Italian pension system is a complex and constantly evolving plant. The revision of the internal mechanisms of social security have led to the transition to a multiplastro functional system to a redistribution of the safeguards. The season

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1 Este trabajo de investigación ha de insertarse en el Proyecto de investigación del Programa Estatal de I+D+i Orientada a los Retos de la Sociedad: “El futuro del sistema español de protección social. Análisis de las reformas en curso y propuestas para garantizar su eficiencia y equidad (V). Salud, familia y bienestar” DER2016-76557-R.

of reforms that affected the social protection system of workers finds its origin as well as in art. 38 of the Italian Constitution, also in the articles 4, second paragraph and first paragraph 35. Together they make up the structure through which to achieve the protection of every activity or function performed in fulfillment of the general duty that everyone has to contribute with his own work to the material or spiritual progress of society. From them originates the justification of pension protection designed and revisited to face the challenges that the changes in regulatory systems as well as economic ones have created. Unfortunately the serious economic crisis has hit the world of work, increasing unemployment levels and, at the same time, undermining some traditional labor law bases in almost all the countries of the European Union. The adaptability of the person to the imminent and unforeseen transformations of the labor market reshapes a new notion of social security which aims to guarantee the unemployed and the unemployed suitable methods of survival before the loss of work. Not only that: they become recipients of active policies for the search for new jobs and our legislator uses an instrument of North European origin: the relocation contract. The Ministry of Labor and the ANPAL, thanks to the Circular no. 11 of June 7, 2018, highlighted the modalities of early access to the re-placement allowance by workers in business areas and professional profiles at risk of redundancy. In the mentioned circular, the agencies provide the operating instructions for the use of the benefits, for the employer and the employee, following the establishment of a new employment relationship.

RESUMEN: El sistema de pensiones italiano es complejo y en constante evolución. Las reformas, que afectaron al sistema de protección social de los trabajadores encuentra su origen, en el art. 38 de la Constitución Italiana, y en los artículos 4, segundo párrafo, y 35, primer párrafo. Juntos conforman la estructura a través de la cual se logra la protección de cada actividad o función realizada en cumplimiento del deber general que todos tienen para contribuir con el progreso material y espiritual de la sociedad. A partir de ellos, se origina la justificación de la protección de pensiones diseñada y revisada para enfrentar los desafíos que se han creado con los cambios en los sistemas regulatorios y económicos. Lamentablemente, la grave crisis económica ha afectado al mundo laboral, aumentando los niveles de desempleo y, al mismo tiempo, socavando algunas bases de la legislación laboral tradicional en casi todos los países de la Unión Europea. La adaptabilidad de la persona a las inminentes e imprevistas transformaciones del mercado laboral remodela una nueva noción de seguridad social cuyo objetivo es garantizar a los desempleados y desempleadas, métodos adecuados de supervivencia antes de la pérdida del trabajo. Pero no solo eso. Los trabajadores se convierten en receptores de políticas activas para la búsqueda de

nuevos empleos y nuestro legislador utiliza un instrumento de origen del norte de Europa: el contrato de reubicación. El Ministerio de Trabajo y el ANPAL, el 11 de junio de 2018, destacó las modalidades de acceso temprano a la asignación de reubicación por parte de los trabajadores en áreas comerciales y perfiles profesionales en riesgo de redundancia. En la circular mencionada, las agencias proporcionan las instrucciones de operación para el uso de los beneficios, tanto para el empresario como para el trabajador.

KEYWORDS: Old-age pension; retirement pension; anticipation; social equity; remuneration system; contributory system; relocation agreement; intensive care system, ANPAL.

PALABRAS CLAVE: Pensión de vejez; pensión de retiro; anticipación; Igualdad Social; sistema de remuneración; sistema contributivo; acuerdo de reubicación; Sistema de cuidados intensivos.

1. INTRODUCTION

The pension system rests on the dilemma of how to provide for the needs of that part of population that has reached the old age and that is in the condition of having to meet their needs by resorting to the support of other generations².

As every pension scheme, the Italian³ one also has the objective of guaranteeing the citizen maintaining an adequate standard of living after retirement by ensuring a minimum level of income. This objective is retracting in the welfare and social security functions identified by art. 38 of the Italian Constitution.

In the subject of pension, themes are intertwined in which the implications of public finance are intersecting with considerations of intergenerational equity that derive their origins from the conflict of income redistribution⁴.

The whole system is affected by changes in the demographic, economic and political scenarios: this inevitably affects the development of social security benefits, intervening on how resources are allocated and on the functioning of the labor market⁵, in terms of supply and demand.

The Italian system is a complex and particular plant that boasts a plurality of reform interventions. This is a set of corrective measures aimed at establishing a system designed to meet the expectations of the citizens. But it should be reported as the continuous touch-ups, often imposed by unavoidable budgetary needs, we have not improved its stability, making it more unstable and less shared by the population.

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2 MEF, *Le tendenze di medio lungo periodo del sistema pensionistico e socio sanitario*, 2017, in http://www.rgs.mef.gov.it/_Documenti; D. FRANCO, M. MARÈ, *Le pensioni: l'economia e la politica delle riforme*, 2002.

3 A. M. BATTISTI, *Il sistema pensionistico*, 2017, Universitalia.

4 E. FORNERO, "Pensioni e Costituzione: lo spirito della Carta tutela l'equità tra le generazioni", 2017, in [www.http://www.cerp.carloalberto.org/it/pensioni-e-costituzione-lo-spirito-della-carta-tutele-lequita-tra-le-generazioni/](http://www.cerp.carloalberto.org/it/pensioni-e-costituzione-lo-spirito-della-carta-tutele-lequita-tra-le-generazioni/).

5 Cfr. statistical information on the structure of the pension system offered by ISTAT, *Rapporto annuale 2018*, in <https://www.istat.it/it/archivio/pensioni>.

2. THE EVOLUTION OF THE ITALIAN PENSION SYSTEM: THE FIRST SEASON

Several were the stages of reform of the Italian pension system. At various times and cyclically, the Italian legislator has revisited the plant since the years '70. Two are the moments affected by these reforms: a first phase, earlier than the years 2000, characterized by the reforms particular in the seventies, eighty and ninety, that led to the overcoming of the salary system in favor of the contributory one (Amato Reform, Dini Reform)⁶.

At this stage another was succeeded, following the year 2000 represented by the reforms Maroni, Prodi and Fornero⁷.

The decades in question have been particularly sensitive to many Western countries. On one side during these years we witnessed the slowdown of the economy (years '70), which had its culmination with the oil crisis of the years 1973-1976. In the following decade (the years '80), Governments reinforced the awareness of having to rebalance public accounts strongly unbalanced because of increase in public debt caused by the crisis of the decade previous. At the end of this decade in Italy a maneuver was carried out to correct the budget deficits by tightening up the fiscal pressure.

The last period corresponds to years '90 in the course of which several structural reforms focused also on the pension theme.

The set of such revisions that represented an attempt to fix the system anomalies and interventions that have constituted the real historical watershed in Italian social security policy, are contained in the law delegated 23 October n. 421 of 1992 and in law 8 August 1995, n. 335.

The Italian pension system presents anomalies influenced both by the structure on which the public system is based, and by the area in which this system exists.

With regard to the first aspect, it should be stressed that the Italian pension system rested on the allocation criterion, whereby the contributions which the workers and the companies pay to the benefits are used to disburse pensions to those who have left the job. Such criterion implies, inevitably, that between the flow of revenue (contributions) and the one of the outputs (pensions paid) there is balance.

With regard to the second aspect should be highlighted how three were the circum-

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6 Amato Reform D. lgs 30 december 1992, n. 503, Dini Reform Lex 8 august 1995, n. 335 in www.giornata-nazionale dellaprevidenza.it

7 Maroni Reform lex n. 243/2004 with D.lgs. n. 252/2005 in www.borsaitaliana.it; Prodi Reform Fornero Reform D.L. 6 december 2011, n. 201 (Lex n. 214/2011) in M. Cinelli, *Diritto della Previdenza Sociale*, Giappichelli, 2018, p. 530 ss.

stances that characterized this structure: on the one hand a strong financial imbalance derived from the difficulties of covering pensions with existing rates; on the other hand a strong redistributive inequity, determined both by the separate rules governing the different regimes, both from the pay formula, on which it was the calculation of benefit; finally from the incentive system to the early abandonment of the active working.

Due to the gradual increase in the average life of the Italian population, the system developed it destabilizes by failing that balance between indispensable entrances and exits. In order to counteract this situation, several reforms have been initiated in Italy aimed at rebalancing expenditure pension.

These interventions were born from the fact that in Italy, until the years '90, the provision of pension it corresponded to the average wage of the last decade of work, appropriately reassessed. The mechanism, which remained in force until 1992, was known as the pay regime and gave rise to a annual pension resulting from the product between the annual retirement salary⁸, the seniority contributory⁹ multiplied by a so called rate of return. This system presented itself particularly favorable for those whose career had had an increase in the last stage work, based on the close correlation between retirement and final salary.

During this scheme the expenditure was not financed by the contributions paid during the working from the new retirees, but from the contributory voices of the subjects still at work.

In 1990 the Italian government had to face two problems: on the one hand the continuous increase of the public debt, on the other the progressive aging of the population.

To cope with this situation in 1992 the Amato Reform (Legislative Decree No. 503 of 1992) intervenes with a harmonizing perspective, expanding, both the retirement age (from 55-60 to 60-65) and the number of years of minimum contribution (from 15 to 20). The interventions contained in the Amato reform undermine a system that remained so until 1992, within which the role of the complementary pension scheme is tentatively represented by the banks and in some companies from specific pension funds created for the sole employees of the same companies.

To the timid effects produced by the Amato reform follow one another in 1995, those contributed by Dini reform (Law No. 335 of 1995) which disrupts the existing system by intervening on the calculation no longer supported by remuneration but by contributions.

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8 Understood as the average salary received in the last five years of work (10 if self-employed and 1 for public employees).

9 Understood as the total contributions paid in years, up to a maximum value of 40.

Firstly it should be reported that the Amato Reform stimulates the introduction of an organic discipline of complementary social security, favoring the creation of pension funds for collective and open collective membership (d.lgs. Decree No. 124/1993)

However, this reform should be credited with having implemented the principle of fairness by linking the pension to the contributions paid throughout the working life regardless of the type of work carried out. In addition to this new reform rewrites the system of career progression, implemented near the end of working life by denying them the role they had in the previous system and leaving the worker free (within certain limits) to withdraw from work¹⁰.

In spite of the innovative scope it was in the complex a structural reform often too timid, enriched by numerous even jurisprudential¹¹ interventions tending on the one hand to progressively controlling the expansion of public expenditure intended for pensions (compared to the gross domestic product), on the other hand to create a double-span system where the social security system was accompanied by the complementary pension plan.

In the final drawing of these reforms, the relationship between pension and final salary is replaced by a more appropriate reference to wages (Amato Reform) or contributions (as will happen with the Dini reform) of the worker's entire working life.

The reformist stimulus triggered by the economic crises of the years '70 and the interventions of containment of performance, started in the years '80, to seek a balance point in the public accounts by scaling current spending¹² and the subsequent interventions of the years '90 have highlighted as a pension system structured according to the criterion of non-distribution would respond more to changing needs.

The shift from a pay-to-a-contribution system came with the Dini Reform of 1995, contained in law n. 335 that contains a structural reform of pensions that disrupts the payroll-based calculation methods, by accepting the contribution system. With the new system the difference between a system based on a salary criterion and one which instead adopts the contributory one was clear. While in the first the pension corresponds to a percentage of the salary, suffering from the seniority and salaries (especially those of the last period), in the second it depends on the individual contribution pillar paid by the subject in the course of their working life, regardless of type of work done.

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10 INPS, XV rapporto annuale (on line), 2016, in www.inps.it.

11 With regard to the revaluation of pensions and the interventions of the Constitutional Court on item v. G. MARINO, La Consulta returns on the equalization of pensions, in *Law & Justice*, fasc. 86, 2018, p. 4; M. CINELLI, Illegitimate blocking of the indexation of pensions: the good reasons of the Court (Court cost 30 April 2015, No. 70), *Rivista del Diritto della Social Security*, 2015, 2, 429-446; ib. From the sentence n. 70/2015 to the sentence n. 7/2017: pensions and the Constitutional Court, in *Rivista del Diritto della Social Security*, 2017, 2.

12 V. for an analysis of the pension system between the two conflicts, L. BELTRAMETTI, R. SOLIANI, The Italian pension system in the period 1919-39: some macroeconomic and redistributive effects, 1999, Department of economics and quantitative methods, University of Genoa.

As in previous reforms, the transition from one system to another is accompanied by a gradualness and a momentary coexistence between the two systems, aimed at encouraging a harmonization made by slipping into the new system without affecting the workers who started their working life in the previous system. The transition was thought “*in gradually, sharing the burden of adjustment inversely proportional to age, so that the most important weight (pits) supported by the generations having higher possibility to activate for time social security mechanisms*”¹³.

Before coming to the last structural reform of the pension system, contained in the Reform Fornero of 2012, the matter is in more moments revisited by the legislator who, in 2000 with Dlgs decree n. 47 reviews the tax treatment of those who adhere to a pension fund, enriching the opportunities offered by supplementary pensions (open pension funds, individual pension plans).

2.1. The second season of reforms

Among the various corrective measures to the Dini Reform of 1995 there are the Prodi Reform (Law 27 December 1997, No. 449); the Maroni Reform of 2004, (Delegated Law n. 243); the Legislative Decree no. 252 of 2005; the Prodi Reform (Welfare Protocol), law n. 247 of 2007; the D.L. n. 112 of 2008 eliminating the prohibition of cumulation of pension-income from work; the 2010 Manovra economica (Decree Law No. 78 of 2010 - Law No. 122 of 2010), which is credited with identifying new times for access to retirement treatment and to equify the retirement age for the working women of the public sector to that of men; law n. 102 of 2009; law n. 148 of 2011 which raised the retirement age of women workers in the private sector and anticipated the entry into force of the adjustment mechanism of the anagrafic requirement. Follow the decree Salva Italia, converted into law n. 214 of 2011¹⁴ and the Decree Mille Proroghe contained in law n. 14 of 2012.

This is a plurality of interventions aimed at encouraging those who remain at work, postponing the retirement pension and providing for the provision of a super bonus corresponding to the contribution that would be paid to the pension fund. In particular, the 2004 is the year in which age is increased for retirement and old age pensions, while maintaining the women the opportunity to leave work at 57 years of age (progressively brought to 65 years for public employees by Law No. 102 of 2009), applying in full the contributory criterion and where the delegation criteria for a redefinition of a pension

13 A. MARANO, M. SOLOMBRINO, (a cura di), *La riforma delle pensioni*, 2004, Gruppo editoriale Esselibri.

14 M. CINELLI, *La riforma delle pensioni del governo tecnico*. Appunti sull'art. 24 della legge n. 214 del 2011, in *Rivista Italiana di diritto del lavoro*, 2012, 2, p. 385.

system are set complementary (among the measures, the conferral of end-of-relationship treatment by the employees for supplementary pensions¹⁵ also with tacit mode). Interventions on supplementary pensions are outlined in D.lgs. n. 252 of 2005¹⁶, which replacing D.lgs. n. 124 of 1993.

In 2007, the quotas for access to the retirement pension are introduced under law n. 247. The quota system calculated by adding the age of the beneficiary with the years worked is still in force: from the original forecast of the quota 95 (with at least 59 years of age), the current government is thinking of a 100 quota¹⁷.

The last stage of system reform is contained in the Save Italy decree, launched by the Monti government and known as Fornero Reform (law No. 214 of 2011). This plant is currently still in force despite the current Government wants to revise it.

Since 2012 the Italian pension system has therefore been renewed, undermining some of the fundamental pillars on which it rested.

Firstly, the reformist text abolishes the retirement pension (now replaced by pension in advance) and raises the personal requirements (both for subordinate and self-employed workers) indispensable for the achievement of that of old age (maintaining the length of the contribution of 20 years).

From 1 January 2012, Italian workers have a plurality of pension schemes: old-age pension, early retirement (voluntary and / or facilitated), invalidity, disability and survivors' pensions.

In addition to these forecasts, the reform introduces a dual requirement to be able to access the pension (personal/contribution data); the application of the contribution calculation system for all the all workers in lieu of remuneration and envisage a new calculation system (pro-rata contribution) for all pension payments.

Complete the reform the confirmation and extension of the application of the adjustment mechanism to life expectancy of the requirements of access to pension treatments (after 2019 the adjustment will be biennial).

The reform, which extends to all subjects the method of contribution calculation to be given since January 2012 and designs a system in which, for certain categories of subjects, pensions calculated with the salary system and pensions calculated according to the contributory method, coexist. The watershed date for pension benefits calculated with

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15 V. FERRANTE, La previdenza complementare al tempo della crisi finanziaria: vicende dei fondi e tutela delle posizioni individuali, in *Rivista italiana di diritto del lavoro*, 2009, 4, p. 531 ss.

16 M. PICCARI, La disciplina delle forme pensionistiche complementari nel decreto legislativo n. 252 del 2005, in *Diritto e relazioni industriali*, 2007, n. 2, p. 430 ss.

17 C. A. NICOLINI, M. CINELLI, Verso la fine della XVII Legislatura - La manovra finanziaria per il 2018: ancora pensioni, sgravi per le assunzioni dei giovani... e non solo, in *Rivista italiana di diritto del lavoro*, 2018, n. 1, GIUFFRÈ, III, p. 55.

the various systems is December 31, 1995. According to the new regulations, those who at 31/12/1995 already had at least 18 years of contributions will be entitled to a pension calculated using the retribution method until the end of the year 2011. To this pension will be added a pension calculated for the period after January 1, 2012 (entry into force of the law Fornero) with the contributory method.

Unlike those who could not boast 18 years of contributions on 31 December 1995, the calculation of the pension will be by salary method until 31 December 1995 and by the method of contribution from January 1, 1996 onwards. The effects of the reform will be on the whole for those who have been recruited from 1 January 1996, which have not been established at the 31s December 1995. For these, the calculation of the pension will take place entirely in the contributory method.

3. THE ITALIAN PENSION SYSTEM: THE PENSION ANTICIPE (APE). VOLUNTARY OR EASY

One of the pivotal points around which the pension system is redesigned is the advance pension scheme, governed by art. 24 of law n. 214/2011 in experimental form for a two years in the two formulas of the voluntary Ape and facilitated Ape¹⁸.

The institute is a way of exiting flexibility from the market that allows you to apply for an advance on the amount of pension treatment in the years preceding the fulfillment of the required anagraphic requirement.

This is a performance that allows from 1 January 2017 to 31 December 2019 workers to leave the work beforehand with respect to the age requirements of the retirement pension. The APE allows those born until 1954 to retire early after being made the 63 years of age with 20 years of contributions paid. As of 2019 these age limits are intended to increase, being subject to adaptation to life expectancy. The advance, to the extent of 80-95% of the expected old-age pension, is paid (monthly for twelve months) by INPS¹⁹ and is financed by a bank loan provided by credit institutions and insurance companies. This “bridge” financing (also assisted by an insurance policy against the risk of the applicant’s premortification) will be returned from the date of retirement including interest and charges.

18 A. BERNARDINI, L'Anticipo pensionistico, in *Informazione previdenziale*, 2017, p. 1-17.

19 INPS, the National Social Security Institute is one of the greatest and most complex social security organisations in Europe. It manages almost the entire Italian social security with a budget which size is second only to the State own budget. Most employees from the public and private sector and free-lancers are insured by INPS. INPS tasks and internal organisation are regulated by legislation, in www.inps.it.

The EPA facilitated or social, unlike the voluntary, has a welfare soul in total state load. Recipients of this “bridging income” disbursed by INPS and which should not be returned, are the subjects in need that the Stability law of 2017 individuated (law No. 232 of 2016, article 1, paragraph 179 ff.) in those who are at least 63 years of age; they have gained the right to retirement pension within 3 years and 7 months; they have a seniority of at least 30 years (or 36 years if they are employed in weary professions) and fall under the categories indicated by the stability law.

They may, in fact, be recipients of this care treatment those who are, respectively, or unemployed as a result of termination of the employment relationship by dismissal, even collective, including collective termination, due to just cause or consensual resolution, and who have finished in full to perceive the provision for unemployment for at least three months; or attending at the time of request and for at least six months, the spouse or a first-degree relative cohabiting with a disability in a situation of seriousness pursuant to Article 3, paragraph 3, of Law 104; or who have a reduction of working capacity, verified by the competent commissions for the recognition of civil invalidity, greater than or equal to 74%; or who are employee at the time of the starting of the indemnity and carry out work that is particularly difficult or risky for at least six years. For this hypothesis requires a minimum contribution age of at least 36 years.

The treatment, delivered monthly for twelve months a year, also assumes that the subject must have ceased any work which is not the proprietor of a pension treatment is not intended to be the recipient of other income support treatments such as those related to the unemployment rate or unemployment allowance ²⁰(ASDI) or compensation for termination of the business. The payment is equal to the amount of the monthly payment of the pension calculated at the time of access to the service and may not in any case exceed the maximum monthly amount of 1,500 euros and is not subject to revaluation. Delivery ceased to meet the requirements for the retirement pension or for early retirement.

The other measure at the disposal of workers is the old-age pension intended, on demand, to employees (public and private) and self-employed, who are enrolled in the Compulsory General Insurance (AGO) (which includes the Employees Pension Fund, FPLD and the management of the for self-employed workers, that is, craftsmen, traders, farmers, farmers and sharecroppers) and the Separate Management. The recipients must be in possession of three basic requirements: personal data, insurance, social security contribution. Under the Fornero law of 2012 the new retirement pension is conditioned, from 1 January 2012, to the possession of a seniority at least twenty years in addition to the possession of

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²⁰ The benefit is only compatible if you receive income from employment or quasi-subordinate employment up to a limit of € 8,000 per annum and income from self-employment in the limit of € 4,800 per year.

the new age requirements (retirement age) that varies between men and women, between sectors and between work public and private. In a unifying perspective the reform started a process aimed at convergence towards a uniform age, which in the drawing of the legislator was indicated, to be given by 2018, in the possession of 66 years and 7 months. It is an age that serves as a watershed even if destined to be affected by upgrades made necessary on the basis to longevity, life expectancy in compliance with the safeguard mechanism wanted by Europe ²¹.

The retirement age has been historically different for men and women and for different sectors, public, private and autonomous work. With the reform in question it is completed a process of convergence towards a uniform age which had already begun from time, age identified without gender differences at age 66 and 7 months with the canons 20 years of minimum contribution. This age rise in 2019 as the increase in the average life of Italians will raise that minimum age for the retirement at 67 years old.

The subject of pensions necessarily implies some reflections related to the female condition that should be analyzed both with reference to the asymmetries that the market presents and with regard to career opportunities²² and training of women, both in the last with regard to the phenomenon of gender pay gap²³. The pension rights of women unfortunately suffer from the discriminatory phenomenon²⁴.

Generally in 2018, for old age retirement as mentioned, needs at least 66 years and 7 months of age and 20 years of contributions are necessary (both men and women in the public sector and the private sector). For early retirement, however, 41 years and 10 months of contributions are needed (42 years and 10 months for men) regardless of age.

Only in particular situations, sorting differs from these values: it is the case of sectors that have specific characteristics related to the type of work carried out or the condition of the worker. Among these cases are the creation of facilitated channels to encourage the exit for weary jobs, for disabled persons by 80%, for the defense, security and public rescue sectors (eg police, military, financial police, police of the fire), for the traveling staff at public transportation services, some categories of entertainment workers, professional sportsmen, some categories of workers in the maritime sector and airline crew (flight fund).

From 2017 there is also the possibility of withdrawing to 41 years of contributions regardless of the age for early workers. This measure is intended for those persons who have carried

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21 The minimum 20-year contribution requirement is excluded for the cds. 15-year-old workers, as clarified by Circular Inps 16/2013.

22 C. ALESSI, Lavoro e conciliazione nella legislazione recente, in *Diritto delle relazioni industriali*, 2018, 3, p. 804 ss.

23 Please refer to *Gli avvocati oggi, tra U.E., studi di genere, A.D.R. e P.C.T.*, F. LOCATELLI, (a cura di), 2018, Pacini Ed.

24 M. BUSCATTO, C. MARRY, Le plafond de verre dans tous ses éclats, in *Sociologie du travail*, 2009, vol. 51, n. 2, p. 170 ss.

out at least 12 months before the 19th years of age and are in profiles deserving of a particular protection. The retirement age is subject annually to special updates based on longevity and life expectancy (both in the old-age pension and in the early retirement the personal and contributives are adapted to the so called life expectancy calculated by the Istat. The more life expectancy increases, the higher the retirement age and the seniority of contributions will go up. This is a safeguard mechanism wanted by Europe).

In this regard it should be noted as in the 2018 Manovra in art. 1, in paragraphs 82 to 89, provides for specific methods for adjusting pension requirements to increases in life expectancy reported by ISTAT. In addition to protecting workers, the free totalisation mechanism (which is opposed to costly reunification) was also encouraged, allowing those who, during their working life, have carried out different activities, paying contributions in several pension schemes, to combine all the periods insurance, not coinciding, held in different pension schemes, in order to obtain a single pension.

Despite the many reforms, there are still many shadows that characterize the Italian pension system. Considering the measure adopted by the Government, Italian Pension system gives further instrument to help the worker that is, unfortunately, outside from labour law market. These have been delineated in the JOBs Act (2015). For example, the relocation agreement.

4. THE RELOCATION ALLOWANCE

The relocation allowance²⁵, regulated by art. 23 of Legislative Decree n. 150/2015, is an active labor policy tool that facilitates the unemployed to improve the chances of relocating and is characterized by an amount²⁶ to be used by those who provide intensive care services looking for a job²⁷.

More precisely, the mentioned art. 23 ratifies and recognizes “to unemployed recipients of the New Social Insurance for Employment (*Naspi*), whose duration of unemployment exceeds four months (...) if they request it to the employment center with whom they have entered into the personalized service agreement, a sum called individual relocation allowance, graduated according to the personal profile of employability, which can be spent at the employment centers

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25 OLIVIERI, A., “L’assegno di ricollocazione: una nuova condivisione di diritti e doveri”, *Argomenti di diritto del lavoro*, Vol. 2, 2016, pp. 272-300; CHAPPELLU, D., “Politiche attive del lavoro dopo il Jobs Act. L’approccio a rete e l’assegno di ricollocazione”, *Jus: Rivista di Scienze Giuridiche*, Vol. 65, num. 1, 2018, pp. 123-143.

26 The amount is between 250 and 5,000 euros, based on the employability profile.

27 In particular, the Employment Centers or Accredited Employment Agencies.

or at the accredited services (...).” The amount of the allowance is recognized to the institution providing the relocation assistance service only if the person, beneficiary of the check, finds work, being sufficient the establishment of a permanent contract, including the apprenticeship or fixed-term, longer than or equal to 6 months - reduced to 3 months for Campania, Puglia, Basilicata, Calabria and Sicily.

At the moment, the beneficiaries of NASpI²⁸, who have been unemployed for at least 4 months, can request the check, however, pursuant to art. 1 paragraph 136 of the Budget Law 2018, which introduced Legislative Decree no. 148/2015 the art. 24-bis regarding the relocation agreement, the early assignment of the relocation allowance is recognized to those workers who belong to business areas or professional profiles at risk of redundancy, expressly request it to the National Agency for active policies of work. The relocation allowance consists of a “voucher” aimed at purchasing intensive care services in the job search. The denomination “check” generates many misunderstandings because it is not a cash emolument of which the worker has free availability.

Being a “voucher”, it gives the right to purchase some services, in particular, those useful to support the relocation of the worker. On this point it is necessary to remember that the allowance, originally attributed exclusively to workers who have been unemployed for more than 4 months and recipients of NASpI, has subsequently been extended to beneficiaries of the inclusion income (Rei), when the (personalized) project provides for the stipulation of the service agreement, and also to particular categories of workers placed in the extraordinary wage supplement scheme and involved in relocation agreements.

In other words, the measure under examination increases the number of public administration interventions in favor of the worker in employment difficulties, in fact, the legislator intends to ensure, to the worker belonging to the category of beneficiaries, the financial resources necessary to take advantage of some active labor policy services. As highlighted, it is a benefit subordinated to the request by the worker, a request that can be presented to the employment center where he signed the “service agreement” or to the ANPAL²⁹, through the electronic procedure provided for by art. 20, c. 4 of Legislative Decree no. 150/2015.



28 It is possible to claim NASpI if you are an apprentice, worker, artist or cooperative member with a dependent working relationship or a fixed-term employee of a Public Administration or you have involuntarily lost your job or your fixed-term employment contract has finished and you have declared your availability (DID) to begin a new working activity or training course to the Job Centre in good time. You are entitled to receive NASpI for half the number of weeks covered by contributions in the last four years prior to losing your job. Perulli, A., “Il contratto a tutele crescenti e la Naspi: un mutamento di “paradigma” per il diritto del lavoro”, Fiorillo L., Perulli A (a cura di), *Contratto a tutele crescenti e Naspi*, Giappichelli, Torino (2015).

29 ANPAL is the National Agency for Active Labour Policies established by the “Jobs Act” reform (Leg. Decree no. 150 of Sept. 14, 2015). The Agency implements active labour policies for job seekers and for the unemployed who are entitled to allowances (Naspi, Dis-Coll, Asdi). ANPAL also coordinates the National Network of labour policies which includes all regional and national structures dealing with active employment policies. The Agency is responsible for the information system managing the labour market, which includes the monitoring of services offered, the Register of accredited entities involved in active policies, and the national database of employment incentives. Being a public institution, the Agency operates under the supervision of the Ministry of Labour.

It is therefore clear that the active participation of the worker is the *conditio sine qua non* to the use of the benefit, because if the worker does not want to react to the state of employment difficulties, the tool does not produce effects. The worker maintains the choice of the subject from which to “purchase” the services, which can be freely identified by the worker between the employment centers and the accredited subjects. It notes that it is not, at least this time, the public administration to purchase services for the worker, stimulating public and private structures to improve their services, precisely because it is the beneficiary who is invested with purchasing power.

5. THE RELOCATION AGREEMENT

The Article 24 bis of Legislative Decree n. 148/2015 states that “*In order to limit the use of dismissal at the end of the extraordinary wage integration intervention*” in cases of company reorganization or corporate crisis for which full employment recovery is not expressly envisaged, the consultation procedure may lead and conclude with an agreement that provides a plan for the relocation of workers with the indication of the business areas and professional profiles at risk of redundancy³⁰.

The relocation agreement is therefore admissible in cases of reorganization or corporate crisis, excluding cases of cessation of the company’s production activity or of a branch thereof, which does not result the employment recovery.

Consequently, it is not possible to resort to this institution in the event that the extraordinary intervention of wage integration is determined by a solidarity contract. Until 30 September 2018, during the first application, it is possible that the redeployment agreement is distinct, as well as temporally subsequent, to the consultation report, rather than enclosed to the report.

In any case, within 7 days from the stipulation, the agreement is transmitted to the ANPAL, by the employer, in the way provided by the ANPAL itself. The Directorate General of Training and Labour Policies Department shares with the ANPAL the list of names of workers affected by the suspensions or reductions of time transmitted with the request for the granting of salary integration treatment.

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30 Fili, V., “L’assegno individuale di ricollocazione tra welfare e workfare”, G. ZILIO GRANDI-M. BIASI (a cura di), *Commentario alla riforma “Jobs Act”*, Cedam, Padova (2016).

6. TECHNICAL ASPECTS: THE REQUEST FOR A CHECK BY THE WORKER

Within 30 days from the date of signing of the agreement, workers involved in the reduction or suspension of work, belonging to the business areas and professional profiles, for which it has been declared redundant, can ask the ANPAL for the attribution advance of the relocation allowance, within the limits and conditions foreseen by the CIGS programs.

The request for early allocation of the relocation allowance must be submitted within 30 days from the date of signing the relocation agreement, in the manner indicated by the ANPAL.

Applications will be accepted according to the chronological order of presentation and the number of requests can not exceed the quota limits foreseen, for each area or profile, by the CIGS program.

6.1. Intensive care service

The “relocation assistance service”, set out in article 23 of Legislative Decree no. 150 of 2015, consists of activities of “intensive assistance in active job search”, and consists of two performances.

The first concerns personal assistance and tutoring aimed at continuously assisting the worker in all the activities necessary for his relocation, through the assignment of a tutor, thanks to the definition of a personalized program for active job search. The second performance is related to the intensive search for employment opportunities, aimed at promoting the professional profile of the relocation allowance towards potential employers and includes the selection of vacancies, pre-selection assistance and support until early stages of job placement. The recipient of the check has the duty of carrying out the activities identified by the tutor and of accepting a suitable job offer, on the other hand, the provider of the service has the obligation to communicate to the employment center and to the ANPAL the unjustified refusal, by the person concerned, to carry out one of the activities proposed within the service or a suitable job offer, for the purpose of implementing the cross-compliance mechanisms referred to in Article 21, paragraphs 7 and 8 of the Decree Legislative n. 150 of 2015.

The intensive assistance service for relocation has a duration corresponding to that of the wage integration treatment and in any case can't be less than 6 months. At the end of this period, it is possible to extend the service up to a further 12 months, after agreement between the worker and the service provider, in the case that it has not been used, by the end of the extraordinary wage integration treatment, the full amount of the check. The intensive care

program must be compatible with the residual work activity and with the relocation agreement, consequently the active policy initiatives proposed must be carried out outside the working hours.

Workers admitted in advance to the relocation allowance do not apply the obligation to accept a suitable job offer: they will therefore be able to freely refuse a job offer and this choice will not have consequences in relation to the perceived salary integration.

6.2. Benefits for the employee and the employer

If the worker accepts, during the period in which he takes advantage of the assistance service, the offer of a work contract with another employer, who does not have ownership structures (substantially) coinciding with those of the current employer, will be applied, for the same worker, a double benefit. In particular, the exemption from taxable income for income tax purposes of the sums received depending on the termination of the employment relationship, within the maximum limit of 9 months of the reference salary for the calculation of severance pay as well as payment by the INPS a monthly contribution equal to 50% of the extraordinary salary supplement treatment that would be paid to him for the remaining period foreseen by the reorganization or corporate crisis program.

The employer who hires the worker, during the period in which he receives the relocation allowance, will be entitled to exemption from the payment of 50% of the total social security contributions due, excluding the premiums and contributions due to INAIL, within the maximum limit for an amount equal to 4.030 euros per annum, for a period not exceeding 18 months in case of employment with a permanent contract or 12 months, in case of employment with a fixed-term contract, to which may be added a further 6 months in case of transformation indefinitely. The benefit is only valid if the employers' ownership structures do not coincide. For the purpose of benefiting from the benefit, the ANPAL communicates to the INPS the data relating to employers who have hired workers during the period of use of the relocation allowance.

The ANPAL, with the Note n. 9352 of 23 July 2018, illustrates the procedures for requesting the relocation allowance by workers involved in the relocation arrangements in the event of CIGS for reorganization or corporate crisis.

In particular, please note that, within seven days of signing, the employer must send the relocation agreement to the ANPAL, with a prospectus containing the data of the workers involved in the reorganization or corporate crisis program.

The request for early assignment of the relocation allowance must be presented, by the workers involved in the reduction and / or suspension of the work activity, belonging to the business areas and to the professional profiles for which a surplus has been declared,

within 30 days from the date to sign the relocation agreement. The first operating instructions to request, pursuant to the aforementioned art. 24-bis, the relocation allowance was provided by ANPAL with Note no. 9352 of 23 July 2018.

6.3. Reservation of the relocation agreement

From 24 July 2018, the workers involved in the relocation agreements can book the check by accessing the following address <http://adrcigs.anpal.gov.it>, after registering on the portal of the ANPAL. After logging in, the worker will need to enter some information³¹, after which the system will provide a printable communication containing the checkbook number, date and time of the check.

Following the booking of the check and after 30 days from the signing of the agreement, the infomratic system will automatically check the signing of the relocation agreement and the presence of the data relating to the request for extraordinary salary integration received by the Ministry of Labor. Once these checks have been completed, communication will be sent via e-mail to the address associated with the user, with the possibility of completing the request. The worker concerned, within the next 30 days, will be able to insert the data useful for his profiling into the procedure and choose the provider to be assisted in the relocation process.

Otherwise, in the event of a negative outcome, the system will send a notice if the applicant is not among the workers affected by the request for salary supplementation and the booking was made after 30 days from the signing of the agreement, the booking was made in after reaching the maximum number of requests provided for in the agreement³².

7. FINAL CONSIDERATIONS

The Italian social security system is a very complex system. It is based on a plurality of autonomous entities and management operating in different ways and disciplines.

In the face of this vastness, the discussion focused only on some pension formulas belonging to the general scheme managed by INPS.

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31 The data are: the company's tax code, the mobile phone number of the worker himself, the e-mail address and the reading of the Information on the processing of personal data, mandatory to be able to proceed with the request.

32 The employer must send the relocation agreement to the ANPAL within seven days from the stipulation, together with an excel prospectus containing the following data of the workers involved in the reorganization program or the company crisis.

This subject is constantly moving.

2019 announces itself as a year of novelty on the pensions front: not only for the reform, which will be implemented by the Government, but also for the adjustment with life expectancy that will lead to a general increase in retirement requirements.

Among the new features announced are those relating to the new methods for calculating pension, with possible penalties for gold checks; those relating to changes in terms of equalization, as well as those relating to changes in the capitalization rate to be applied to the contribution amount for the revaluation of contributions.

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