

# JUDGMENT NO. 116, YEAR 2013

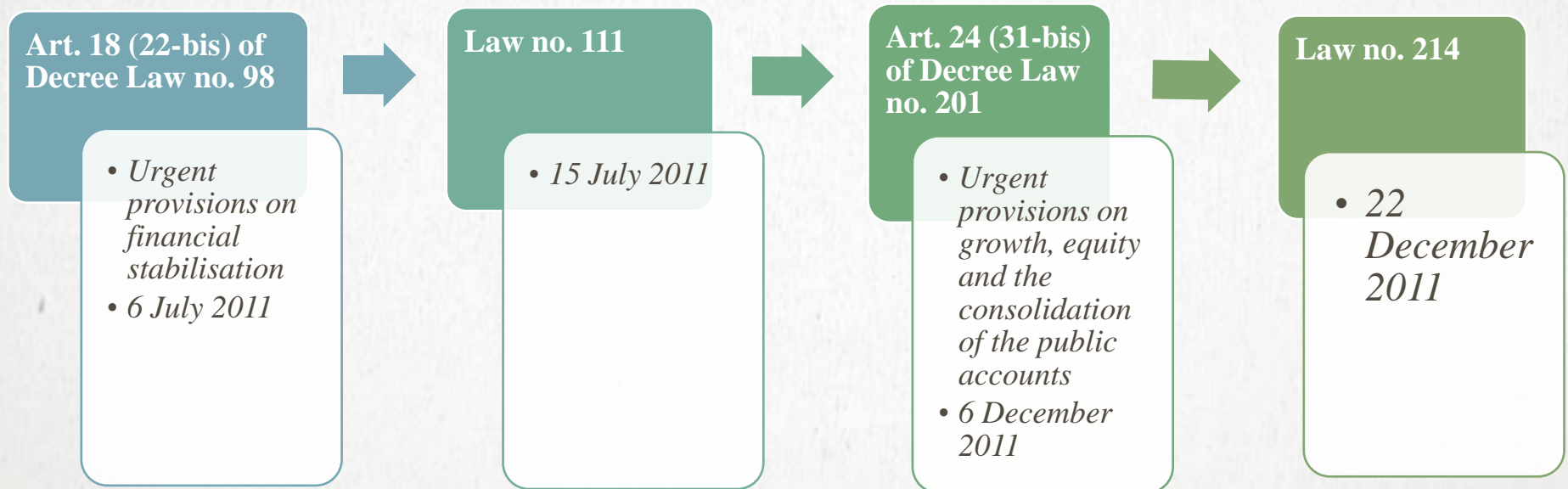
*“An unreasonable and  
discriminatory tax on single  
class of taxpayer”.*



Corte costituzionale



# WHAT LAW IS IT ABOUT?



# WHO ARE THE CLAIMANTS?

- The Court of Account for Lazio region
- The Court of Account for Campania region



# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

1. The Constitutional Court has been reffered questions concerning the constitutionality of the matter of law.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

According to the Court of Accounts, with effect from 1 August 2011 until 31 December 2014, pensions paid by bodies operating mandatory pension schemes shall be subjected to an equalising contribution following this scheme:

| INCOME                    | PERCENTAGE |
|---------------------------|------------|
| From €90.000 to €150.000  | 5%         |
| From €150.000 to €200.000 | 10%        |
| Over €200.000             | 15%        |



# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

2. The contested provision violates Articles 2, 3, 36 and 53 of the Constitution.

Art. 2 The Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.

Art. 3 **All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.** *It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.*

Art. 36 Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence. Maximum daily working hours are established by law. Workers have the right to a weekly rest day and paid annual holidays. They cannot waive this right.

Art. 53 **Every person shall contribute to public expenditure in accordance with their capability. The tax system shall be progressive.**

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

Those provisions violates those articles because:

- It affects only public sector pensioners
- Other taxpayers with the same income of the public sector pensioners are not subjected to any similar tax measure.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

2. Moreover, when compared with the contribution provided for under *Article 2(2) of Decree-Law no. 138 of 13 August 2011 (Further urgent measures for financial stabilisation and development)*, converted with amendments into *Law no. 148 of 14 September 2011*

The levy is claimed to be unjustified because **taxpayers with an overall income in excess of €300.000 would be required to pay a solidarity contribution of 3% on the part of that income**, irrespective of how their overall income, including pension income.



# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

3. All the referral orders relate to the same provision and therefore the proceedings are to be joined for the purposes of settlement by a single ruling.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

4. Intervention by the “Gruppo Romano Giornalisti Pensionati” was inadmissible.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

5. Again as a preliminary matter, it is necessary to reject the objection raised by the INPS that the question is inadmissible on the grounds that jurisdiction does not lie with the referring court, but rather with the tax courts.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

6. The question raised with reference to Articles 3 and 53 of the Constitution is well founded.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

7. The contested provision (which is part of the Decree-Law no. 98 of 2011) was issued as a part of a broader stabilization initiative.

It pursues a general “cooling” of wage dynamics within the public sector employment, in addition to temporary measures to reduce pay, and to “solidarity” measures which were imposed both on employees of the public administrations as well as taxpayers as a whole.



# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

7. It should be observed that, the provision applies vis-a-vis the disbursement of mandatory pension payments: both to staff from public sector employment and to all other payments made by bodies operating mandatory pension schemes, *as well as pension arrangements that guarantee additional or supplementary payments to the mandatory pension.*

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

7. Violation of Art. 3 and 53 is connected because the court reiterates the status of the contested provision as a tax because there is the reduction on pension payments, and the allocation of the relative amount to the state budget.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

7. The principal challenges made by the referring courts consider the measure concerned to be an **unreasonable and discriminatory tax on one single class of taxpayer.**

In fact, **the measure applies to pensioners only**, without guaranteeing respect for the fundamental principles of equal treatment for persons with equal income by unreasonably limiting the class of individuals liable to the levy.

# WHAT ARE THE CONCLUSIONS ON POINT OF LAW?

- The question refers to “the universal status of taxation” because what is violated is the equal treatment established between taxpayers.

“The Constitution requires an **inseparable link with capacity to pay tax**, within the context of a system inspired by the principles of progressive taxation, as a further manifestation within the specific field of taxation of the principle of equality, which is related to the task of **removing de facto financial and social obstacles to the freedom of and equality between people**, within a spirit of political, economic and social solidarity (Art. 2 and 3 of the Constitution)”.



# WHAT IS THE EFFECTIVE CONCLUSION?

- **Art. 18 (22-bis) of Decree-Law no. 98 of 6 July 2011** (*Urgent provision on financial stabilisation*), converted with amendments into Law no. 111 of 15 July 2011, as amended by Article 24 (31-bis) of Decree Law no. 201 of 6 December 2011 (*Urgent provisions on growth, equity and the consolidation of the public accounts*), converted with amendments into Law no. 214 of 22 December 2011, **is incostitutional**.

Decided in Rome at the seat of the Constitutional Court, Palazzo della Consulta, on 3 June 2013.



## WHAT HAPPENED IN REALITY?

- This judgment had a strong impact on the Italian public finances. The net amount that the State planned to collect through this tax, at the end of 2014, was **84 million Euros** (150 million Euros is the gross amount).
- The unexpect uncolletion of this amount of money has caused a deficit.

Dott. Pierluigi Roesler Franz, the president of Gruppo Romano Giornalisti Pensionati, in November 2012 wrote an open letter to the high state offices to warn them about the aforementioned issue.

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# REFERENCES

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