



INFORMATION NOTE No. 27/2014

THE TC GRANTS UPHOLDS AN UNCONSTITUTIONALITY MOTION LODGED BY THE SUPREME COURT AND REPEALS AN ARTICLE OF THE GENERAL SOCIAL SECURITY ACT FOR INFRINGING THE RIGHT TO EQUALITY

The Plenary Meeting of the Spanish Constitutional Court has repealed Article 174.3 (section five) of the General Social Security Act (LGSS) on the grounds that it violates the right to equality by establishing, depending on the Autonomous Community of residence, different eligibility requirements for a widowed spouse's pension in cases of co-habiting couples. Judge Luis Ignacio Ortega acted as Reporting Judge of the judgment, which upholds an unconstitutionality motion filed by the Labour Chamber of the Supreme Court. The judgment includes the particular dissenting votes of judges Encarnación Roca and Juan Antonio Xiol.

Article 174 of the LGSS sets the requirements that must be met by co-habiting couples in order to be eligible to receive a widowed spouse's pension. Among others, a material requirement is stable and uninterrupted co-habitation for at least five years immediately prior to the partner's death; and another formal requirement is registration, at least two years before the partner's death, at the local Registry Office of Co-Habiting Couples. Paragraph five of Article 174, the object of constitutionality issued raised by the Supreme Court, refers to the legislation of Autonomous Communities with competences in civil law matters for anything related to the "*consideration*" and "*accreditation*" of co-habiting couples, except for the "*co-habitation requirement*".

Thus, explains the TC, the LGSS "*distinguishes two different regimes depending on whether the co-habiting couple resides in an Autonomous Community with its own applicable Civil Law*". "*The problem arises in practice due to different existing criteria*", a point the judgment confirms when analysing the different laws on co-habiting couples issued by Autonomous Communities with competences in civil law matters.

The Plenary Meeting affirms that "*the public Social Security system must be one uniform regime for all citizens (Article 41 CE), whilst guaranteeing the equality of all Spanish citizens in the exercise of their Social Security rights and duties; both matters are entrusted to the State (Article 149.1.17 CE)*". "Consequently", the judgment adds, "*The determination of individuals who will be eligible for a Social Security benefit, in this case a widowed spouse's pension, constitutes a basic rule that is entrusted to the State according to Article 149.1.17 CE; it must be carried out in a standard form for all subjects included within its scope, save for exceptional reasons that are duly justified or linked to the needs for which protection is sought*".

In this case, the sentence states, the criterion used to differentiate the survivors of co-habiting couples under the LGSS (residence in Autonomous Communities with their own civil law) "*has no objective justification*". It cannot be affirmed that the needs of co-habiting couples are aggravated depending on where they reside, which would in

fact justify the need for different rules, or that the aim of the benefit (to cover a real need of the surviving partner) changes depending on the Autonomous Community.

Nor is the challenged provision justified by upholding autonomous competences, since *“it does not constitute a civil law rule linked to Article 149.1.7 CE, but a Social Security rule which (...) should establish the particular conditions co-habiting couples must meet in order to be entitled to eventually receive a widowed spouse’s pension, by strictly upholding the principle of equality”*. *“The opposite”, states the judgment, “Would introduce regulatory diversity in a matter where it is necessary to maintain equality throughout national territory as a result of Article 14 CE in relation to Article 149.1.17 CE”*.

The Court adds that with the questioned provision, the legislator has introduced *“a diversity factor which determines unequal treatment in the legal regime applicable to widowed spouse’s pensions”*; this in equality, as explained, lacks any justification. Furthermore, it can lead to *“a disproportionate outcome, given that that depending on the Autonomous Community of residence, the surviving partner of a co-habiting couple may or may not be entitled to receive the corresponding pension”*.

Finally, *“it is not possible to presume an objective, reasonable and proportionate purpose justifying differentiated treatment amongst the applicants of a widowed spouse’s pension, depending on whether or not they reside in an Autonomous Community with competences in civil law matters that has passed specific legislation on co-habiting couples”*.

The declaration of unconstitutionality of paragraph five of Article 174.3 of the LGSS delivered by the Spanish Constitutional Court will only affect new cases that are raised in the future and any other suits that are still pending a final resolution.

In their particular dissenting vote, judges Roca and Xiol disagree with the judgment for two reasons. First of all, they consider that the motion should have been rejected due to not meeting the *“applicability requirement”*, i.e. the Supreme Court should not have applied the disputed provision to resolve a matter raising constitutionality issues. Secondly, the application of the provision does not generate inequality depending on the Autonomous Community of residence. *“The configuration of Spanish Civil Law as a plural system has not been declared unconstitutional by this Court, or contrary to the principle of equality”*, they affirm.

Madrid, 27 March 2014.