SPANISH CONSTITUTIONAL COURT
Cabinet of the President
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THE TC UPHOLDS THE CONSTITUTIONALITY OF THE DECREE SUSPENDING A PENSIONS UPDATE IN 2012

The Plenary Meting of the Spanish Constitutional Court (TC) has upheld the constitutionality of Royal Decree-Law of November 2012, which nullified, for that financial year, a pensions update based on the Retail Price Index (IPC). The judgment, which dismisses the appeal lodged by the Socialist Parliamentary Group, Izquierda Unida (IU), Iniciativa per Cataluña Verdes-Esquerra Unida y Alternative (ICV-EUIA), Chunta Aragonesista (CHA), La Izquierda Plural, Partido Nacionalista Vasco (EAJ-PNV), Convergencia i Unió (CiU) and Unión Progreso y Democracia (UPyD), points out that, when the Royal Decree was passed, pensioners held a mere expectation of entitlement to a pension update, not a "*consolidated, right, accepted and integrated in their personal wealth*", which is why the measure is constitutional. The reporting judge in the Judgment was the Judge Encarnación Roca. Judges Fernando Valdés Dal-Ré and Luis Ortega presented a particular dissenting vote, adhered to by the Vice President, Adela Asúa, and the Judge Juan Antonio Xiol.

According to the appellants, the challenged rule foresees a retroactivity measure that infringes Art. 9.3 of the Spanish Constitution (CE) (non-retroactive nature of the law), insofar as it breaches pensioners' rights to receive "*adequate and periodically updated pensions*".

According to repeated Court case-law, referred to in the judgment, the non-retroactive nature of the law, enshrined in Art. 9.3 CE "*is not a general principle*" but "*exclusively*" refers to sanctioning rules or others that restrict individual rights. Consequently, beyond these two cases, "*there is no constitutional obstacle preventing the legislator from making a law non-retroactive to the extent necessary*". Furthermore, what Art. 9.3 CE forbids is a new law affecting "*consolidated rights, accepted and integrated into the subject's personal wealth, not pending, future and conditioned rights and expectations*".

In this case, according to the appellants, the challenged rule overlooks the need to update pensions already paid in 2012. In other words, all pensioners were entitled to receive a pension compensation based on actual RPI increases. Consequently, in their opinion, the Royal Decree-Law is affecting a consolidated right.

According to the Plenary Meeting, the General Social Security Act (Art. 48.1) and the consolidated version of the Act on Passive Groups belonging to the State (Art. 27.1) contain two different mandates: on the one hand, to revaluate pensions at the beginning of each year according to the RPI estimated for that year; on the other, to update such revaluation if the RPI for the period transpiring between November the previous year and November of the revaluation year is higher than expected. In this latter case, if there is a difference between the actual RPI and RPI initially foreseen, pensions will be updated "*according to what is established in the General State Budgets Act (LPGE)*".

The Plenary Meeting states that the reference made by both laws to the LPGE cannot be interpreted, as claimed by the appellants, as "*a mere reference to the possibility of the law including an extra item in the budgetary expense*"; rather, "it *means that the legislator has recognised a margin of discretion when specifying a future revaluation update according to economic and social circumstances existing at the time, all in order to ensure that the Social Security System is sufficiently solvent*".

The Court has also pointed out that the "*November to November*" reference is a mere calculation rule and that a future pension update "*will only accrue*" and, thus, "*be consolidated*" on 31 December each year. This means that only then (31 December) "*would there be an acquired right to update a pension revaluation made in the terms of the Budget Act*". Consequently, on 30 November 2012, when the challenged Royal Decree was passed, "*pensioners only held a mere expectation to receive the difference between actual and estimated RPI, an expectation that required specification in the General State Budgets Act for each year, and was annulled in 2012 as it had been suspended before it became consolidated*".

Therefore, concludes the Plenary Meeting, given that at the time the Royal Decree was passed "*there was no enshrined or exhausted relationship included in each pensioner's personal wealth, but a mere expectation, the challenged rule has not incurred an actual or maximum retroactivity forbidden by Art. 93 CE*".

In their particular vote, Judges Valdés, Ortega, Asúa and Xiol believe that the challenged provision should have been declared unconstitutional due to a breach of the principle of non-retroactivity of the law. In their opinion, the "*expectation*" to have a pension updated becomes an "*acquired right*" as soon as the legal condition is met for pension updates, i.e. when actual RPI exceeds the estimated RPI. Once this condition has materialized, the right to an update covers the entire year, between 1 January and 31 December. "*Consequently*- they state- *fulfilling this condition means that this oft-repeated right to an update matures or is consummated, and is included and automatically becomes part of all pensioners' legal wealth*".

Madrid, 13 March 2015.