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THE CONSTITUTIONAL COURT DECLARES THE UNCONSTITUTIONALITY OF THE DEPRIVATION OF A WIDOW'S ALLOWANCE, AS NO PUBLIC OR SOCIAL INTERESTS JUSTIFY THIS MEASURE

The Plenary Session of the Constitutional Court has declared the unconstitutionality and invalidity of additional provision 44 of Law 39/2010, dated December 22nd, on the General State Budget for 2011. It does so on the grounds that *"the purpose of public utility or social interest that must legitimize any measure of an expropriatory nature does not occur in this case"*. The question considered by the Court concerned the appellant's deprivation of her right to a widow's pension. Judge Fernando Valdés Dal-Ré was the Rapporteur of this ruling.

The Seventh Section of the Contentious-Administrative Chamber of the *Audiencia Nacional* (The National High Court) brought a question of unconstitutionality before the Constitutional Court with respect to additional provision 44 of Law 39/2010, dated November 22nd, on the General State Budget for 2011. Said provision reads as follows: *"Exceptional allowance. In view of the circumstances highlighted by the judgment of the Second Chamber of the Supreme Court of 18 February 2010, we hereby declare the invalidity of the exceptional allowance recognised in favour of the person concerned by the Second Additional Provision of Royal Decree Law 8/2004, dated November 5th, on compensation to participants in international peace and security operations"*.

The *Audiencia Nacional* considered that the aforementioned regulations violated Article 33.3 of the Constitution, since the criteria of public or social interest required for the deprivation of the right to a pension granted by law and belonging to the claimant's assets did not occur. In addition, the provision in question triggered fully retroactive effects, and was thus in breach with Article 9.3 of the Spanish Constitution. Indeed, by taking its effects back to February 18th 2010, it required the refund of all the sums accrued, collected and spent as of the date of its entry into force.

In the Court's view, the issue regarding the constitutionality of the provision that has given rise to this constitutional process requires "an investigation into the legal nature of the measure adopted by said additional provision 44 of Law 39/2010". This doubt *"is projected on a singular law that adopts an expropriatory measure"*.

The judgment considers that the additional provision in question involves a *"singular deprivation of a subjective right of a patrimonial nature, which fully corresponds to the concept of compulsory expropriation as enshrined in constitutional case law (see the following rulings: STC 166/1986; STC 204/2004 and STC 154/2015)"*. In this sense, the decision further states that *"as a self-applying expropriatory law, it is subject to the limits established by constitutional case law for this type of singular laws. The principle of equality requires that every singular law must respond to an equally singular exceptional situation"*.

It is therefore *"not possible either to condition or to prevent the exercise of fundamental rights through singular laws, when such reserved matters correspond to general laws"*. As a consequence, *"when*

exercising its function of control over this type of law, the Court must employ the elements of reasonableness, proportionality and adequacy as its parameter of constitutionality".

The Court concludes by stating that it agrees with the approach taken by the *Audiencia Nacional*, endorsed by the General Attorney, in finding that "*the purpose of public utility or social interest that must legitimize any measure of an expropriatory nature does not occur*" in the case of additional provision 44 of Law 39/2010.

Madrid, 27 April 2018