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Court of Justice of the European Union

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Judgment in Case C-431/16

Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS) v José Blanco Marqués

The pension supplement granted in Spain to workers suffering from total permanent incapacity is compatible with the receipt of a retirement pension from another Member State or from Switzerland

Although those benefits must be regarded as being of the same kind, the provision for suspension of a benefit under Spanish law is not applicable to that supplement

Mr José Blanco Marqués is the beneficiary of a Spanish pension for total permanent incapacity. For the purposes of calculating the amount of that pension, account was taken only of contributions to the Spanish social security scheme. Given that Mr Blanco Marqués was, on the date of the decision recognising his entitlement to a pension, over the age of 55, he was granted a supplement of 20% of the regulatory base used to determine the amount of the pension. Such a supplement to the total permanent incapacity pension is provided for under Spanish law in cases where the worker is at least 55 years of age. When he reached the age of 65, Mr Blanco Marqués obtained, as from March 2008, a retirement pension from the Swiss social security system. That retirement pension was granted to him by taking exclusively into account the contributions that he had made to the Swiss compulsory scheme. In February 2015, the Instituto Nacional de la Seguridad Social (INSS) (National Institute for Social Security, Spain) withdrew the 20% supplement being paid to Mr Blanco Marqués on the ground that that supplement was incompatible with the receipt of a retirement pension. The INSS requested Mr Blanco Marqués to reimburse the amount of EUR 17 340.95, corresponding to the amounts paid in respect of the supplement.

Mr Blanco Marqués brought an action challenging that decision before the Juzgado de lo Social No 1 de Ponferrada (Social Court No 1, Ponferrada, Spain), which ruled in his favour. That court held that the 20% supplement was not incompatible with the receipt of a Swiss retirement pension, since, pursuant to the regulation on the application of social security schemes to employed persons moving within the Community,¹ there can be incompatibility only when national law provides, for the purpose thereof, that benefits and income acquired abroad should be taken into account. There is, however, no such rule in Spanish law.

The INSS appealed against that judgment to the Tribunal Superior de Justicia de Castilla y León (High Court of Justice, Castilla y León, Spain). The INSS argues that, according to the case-law of the Tribunal Supremo (Supreme Court, Spain), the 20% supplement is suspended not only in the case where the beneficiary is in work, but also in the case where he receives a retirement pension in another Member State or in Switzerland, as such a retirement pension is a substitute for employment income. As the national courts are in disagreement, the Tribunal Superior de Justicia de Castilla y León has requested the Court of Justice to interpret the regulation.

By today's judgment, the Court rules that the 20% supplement granted to the worker in Spain and the retirement pension acquired by that same worker in Switzerland must be regarded as being of the same kind within the meaning of the regulation, which might render them incompatible. The Court points out that that supplement is intended to protect a category of

¹ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 (OJ 2008 L 177, p. 1).

particularly vulnerable workers — namely, workers between the ages of 55 and 65 who suffer from total permanent incapacity and who find it difficult to obtain employment in an occupation other than that in which they were previously engaged. The Court adds that the 20% supplement and the total permanent incapacity supplement are comparable to old-age benefits, inasmuch as they are intended to guarantee a means of subsistence to those workers during the period between the declaration of total permanent incapacity and retirement age.

In addition, **the Court declares that the provision of Spanish law providing for the suspension of the 20% supplement, a national rule designed to prevent overlapping which constitutes a provision on reduction of benefit for the purposes of the regulation, is not applicable to that supplement, as the latter is not referred to in an annex to that regulation (namely, Annex IV, part D).** That regulation provides, in particular, that provisions on reduction of benefit under the law of a Member State apply to a benefit calculated by the national institution on the basis solely of the provisions of the legislation that that institution administers (as was the case for the calculation of the amount of the Spanish total permanent incapacity pension and of the Swiss retirement pension), but **only when two cumulative conditions are met:** (i) the amount of the benefit must not depend on the length of the periods of insurance or of residence completed (which it is for the Tribunal Superior de Justicia de Castilla y León to ascertain in respect of the 20% supplement) and (ii) the benefit must be referred to in the abovementioned annex to the regulation.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher 📞 (+352) 4303 3355