



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DEL PINO ORTIZ AND OTHERS v. SPAIN

(Applications nos. 20942/19 and 3 others)

JUDGMENT

STRASBOURG

20 July 2023

This judgment is final but it may be subject to editorial revision.

In the case of Del Pino Ortiz and Others v. Spain,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Mārtiņš Mits, *President*,

María Elósegui,

Kateřina Šimáčková, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the applicants listed in the appended table, (“the applicants”), on the various dates indicated therein;

the decision to give notice of the applications to the Spanish Government (“the Government”) represented by their Agent, Ms H.E. Nicolás Martínez, co-agent of the Kingdom of Spain before the European Court of Human Rights;

the parties’ observations;

Having deliberated in private on 13 July 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The applications concern the refusal by the authorities to grant a survivor’s pension to any of the applicants following the death of their partners. These four cases are part of a group of similar applications submitted by seven women (see the previous judgments of *Valverde Digon v. Spain*, no. 22386/19, 26 January 2023 and *Domenech Aradilla and Rodríguez González v. Spain*, nos. 32667/19 and 30807/20, 19 January 2023), all of which lived in Catalonia and lost their partners, to whom they were not married, between 2013 and 2015. All of them had been cohabitating with their respective partners for at least five years and/or had children in common, and in each case, the applicants were economically dependent on their partners.

2. Prior to April 2014, all of them were in theory eligible for a survivor’s pension in the event that their partner died under Catalan civil law. However, the legal regime applicable in most other regions of Spain (those which, unlike Catalonia, did not have their own Autonomous civil law in this respect) required, additionally, that in order to establish a civil partnership for the purposes of being eligible to receive a survivor’s pension, the couple have been formally constituted as a civil partnership through its registration in a public register set up for this purpose or a notarial deed, and this, at least two years prior to the death of one of the partners.

3. The different requirements for the constitution of a civil partnership and for the eligibility for a survivor’s pension in the different Autonomous Communities in Spain raised concerns about the constitutional rights of

Spanish citizens to be considered equal in the exercise of their rights and duties in the area of social security, and to have a uniform access to social benefits throughout the country.

4. By a judgment published on 10 April 2014, the Constitutional Court ruled that the differences between the legislation of the Autonomous Communities (among which, Catalonia) in respect to the consideration of a couple as a civil partnership and hence, the access to a survivor's pension, were unconstitutional. From that moment on, in order to be considered a civil partnership in Spain, it was required for couples to meet:

- (i) A *substantive* requirement that the partners have cohabited for at least five years prior to the death of the deceased person;
- (ii) A *formal* requirement that – at least two years prior to the death of the deceased person – the couple have been formally constituted as a civil partnership through its registration in a public register set up for this purpose or a public deed.

Only those who had been in a civil partnership as defined above and also met the economic criteria could, in the event of the death of one of the partners, be considered eligible for a survivor's pension.

5. The Constitutional Court further stipulated that the declaration of unconstitutionality applied to all new applications received after the entry into force of the judgment. For a more detailed review of the relevant legal framework and practice, see *Valverde Digon*, cited above, §§ 15-29.

6. The seven applicants were affected by the entry into force of this new legal requirement, which resulted in their application for survivor's pension being rejected, as explained in detail below.

7. The first applicant (application no. 20942/19) and her partner lived together since 1998 and had two children in common. The first applicant's partner died on 22 May 2014. She applied for a survivor's pension on 14 July 2014. The following day, the National Institute of Social Security (*Instituto Nacional de la Seguridad Social* – “the INSS”) issued a decision that rejected the applicant's application for a survivor's pension, on the basis of the applicant's failure to meet one of the legal requirements for eligibility for a survivor's pension: namely, the formalisation of the partnership by way of an entry in a register or by means of the issuance of a notarial deed at least two years prior to the death of one of the partners. The first applicant lodged subsequent appeals, both administrative and judicial, and each time she saw her application for the pension rejected because of the lack of registration of her partnership two years prior to the death of her partner.

8. The second applicant (application no. 33998/19) and her partner started living together on 23 August 2006. They had a daughter in 2013. The second applicant's partner died in a work-related accident on 24 March 2015. On 19 June 2015, the second applicant lodged an application for a survivor's pension with the private insurance company with which the Spanish social security system collaborates, and with which her partner had insurance

covering work-related accidents. On 23 June 2015, the private insurance company issued a decision rejecting the second applicant's application for a survivor's pension based on the applicant's failure to meet the requirements of formalisation of the partnership by way of an entry in a register or by means of the issuance of a public deed at least two years prior to the death of one or other of the partners. The second applicant lodged subsequent appeals. On 6 April 2017 Labour Court no. 33 of Barcelona upheld the applicant's judicial appeal and recognised her right to receive a survivor's pension, to be paid by the private insurance company. The Labour Court considered that "the new formal requirement of registration or certification before a notary two years prior to the death of the partner, could only be complied with in Catalonia from 10 April 2016 – two years after the publication in the Official State Gazette of Constitutional Court judgment 40/2014, which declared the provision that exempted them from that formal requirement null and void". The domestic court ruled that when the applicant's partner died it was still chronologically impossible to fulfil the new requirement (in Catalonia) of formalising the partnership by making an entry in a register or by means of the issuance of a notarial deed at least two years prior to the death of the partner. The INSS and the private insurance company appealed that judgment, and the High Court of Justice of Catalonia upheld the appeals and refused to award the second applicant a survivor's pension. That court of appeals considered that the second applicant and her partner had had "sufficient time in which to formalise their cohabitation situation for the purposes of either of them being eventually entitled to receive a survivor's pension from the social security system, which is governed by the laws and regulations in force at the time of the event giving rise to each benefit". Her *amparo* appeal against that judgment was declared inadmissible.

9. The third applicant (37119/19) and her partner lived together, without interruption, from January 2005. The third applicant's partner died on 12 July 2015. She applied for a survivor's pension on 19 January 2016. On 24 February 2016, the INSS issued a decision rejecting the applicant's application for a survivor's pension on the basis of the applicant's failure to meet any of the legal requirements to be eligible for a survivor's pension, including the formalisation of the partnership at least two years prior to the death of one of the partners. She lodged an administrative appeal, to no avail, and subsequent judicial appeals. Although the labour courts considered that she and her partner had fulfilled all the remaining requirements to be entitled to a pension, it still concluded that they had not registered their partnership pursuant to the requirement provided in the fourth sub-paragraph of section 174(3) of the LGSS.

10. The fourth applicant (application no. 57464/19) and her partner cohabited, without interruption, from 2000. They had two children in common. The fourth applicant's partner died on 3 November 2014. She applied for a survivor's pension on 27 January 2016. The INSS issued a

decision rejecting the applicant's application for a survivor's pension, in view of the applicant's failure to meet any of the legal requirements to be eligible for a survivor's pension, including the formalisation of the partnership at least two years prior to the death of one of the partners. The fourth applicant lodged an appeal, to no avail, but after that her judicial appeal was upheld by the Labour Court no. 11 of Barcelona. That court considered that the applicant met all the other legal requirements (including five years of cohabitation and having children in common). Moreover the Labour Court held that the new formal requirement of registration two years prior to the death of the partner could only be complied with in Catalonia from 10 April 2016 and that the applicant and her partner had been placed in an "absurd, unjustified and disproportionate situation of defencelessness" owing to the impossibility of their complying with the new requirement before the partner died. It held that to find otherwise would violate the right to legal certainty. However, the High Court of Justice of Catalonia later upheld the INSS's appeal against that judgment, overturning the judgment delivered by the Labour Court, and refusing to award the fourth applicant a survivor's pension. The court of appeals considered that the fourth applicant and her partner had had eight months in which to formalise their partnership for the purposes of either of them being eventually entitled to receive a survivor's pension before he died, and that the requirement was fully applicable to them. The fourth applicant then lodged an *amparo* appeal, which was declared inadmissible.

11. The four applicants complained of the refusal of the authorities to grant them a survivor's pension. The applicants submitted that they had had a legitimate expectation of receiving a survivor's pension because they and their respective partners had together constituted, under Catalan civil law, a civil partnership, which rendered them eligible for a survivor's pension in case of death of the respective partner (seeing that the other requirements were also met). Their respective partners had died shortly after the Constitutional Court's judgment STC 40/2014 had introduced, without any prior transitional period, a new requirement that their civil partnerships must have been formally registered at least two years prior to the death of one of the partners. They considered that the authorities failed to have regard to the objective impossibility for them to comply with the new requirement. They further alleged that the application of the new legal regime preventing them from receiving a survivor's pension had constituted indirect discrimination on the basis of gender, since the great majority of recipients of survivor's pensions in Spain were women.

12. The Government considered, firstly, that Article 1 of Protocol No. 1 to the Convention was not applicable to the present case. In their view, the fact that the applicants' partners' deaths had taken place after the Constitutional Court had amended the rules governing access to a survivor's pension had had a clear and undisputable consequence: the applicants had not met the eligibility criteria in respect of obtaining a survivor's pension. As a

result, they could not have had a “legitimate expectation” of obtaining a possession as defined by the Court under Article 1 of Protocol No. 1. The Government also stated that, should the Court consider that the applicant’s mere hope of obtaining a survivor’s pension had amounted to a “legitimate expectation” of obtaining a possession, the deprivation of such a possession would have been justified by reasons of general interest: to render void a previous provision that had been discriminatory and unconstitutional. Lastly, the Government pointed out that having to formally register a partnership two years prior to the death of one of the partners in order for the surviving partner to obtain social benefits could not be considered to constitute an “excessive burden” for the purposes of Article 1 of Protocol No. 1.

THE COURT’S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

13. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE APPLICANTS’ COMPLAINTS AND THEIR LEGAL CLASSIFICATION

14. The applicants invoked Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention. The first applicant lodged her complaint only under Article 1 of Protocol No. 12 to the Convention, on the grounds of the indirect discrimination against women that the measure had created in practice.

15. The Court, being the master of characterisation to be given in law to the facts of the case, considers that the substance of the applicants’ complaints falls to be examined under Article 1 of Protocol No. 1 to the Convention taken alone. That provision reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

16. The Court recalls the general principles enunciated in the case of *Valverde Digon*, cited above, §§ 48-57, and the case-law cited therein.

17. In the present cases, the fact that the applicants and their respective partners met the other legal requirements – namely, uninterrupted cohabitation of more than five years prior to the death of their partners (and in some cases having a child/children in common) – and the economic criteria before the Constitutional Court’s judgment of 11 March 2014 came into force is relevant in the case at hand, as the Court also held in the case of *Valverde Digon*, cited above, § 61.

18. The Court observes that, like in the case of *Valverde Digon*, cited above, all of their partners died before two years had elapsed following the entry into force of the new requirement of registration introduced after 10 April 2014. For the same reasons, the Court concludes that, in the present cases, the applicants could have entertained a “legitimate expectation” that they were eligible for a survivor’s pension (ibid. § 63). It follows that Article 1 of Protocol No. 1 is applicable.

19. The Constitutional Court’s judgment of 10 April 2014 introduced a new legal requirement that objectively could not be met by the applicants. The Court notes that, unlike Ms Valverde Digon and her partner, the applicants never undertook steps to meet the new requirement of registration introduced after 10 April 2014. Notwithstanding that, the Court considers that, in the present case, the crux of the applicants’ claim is that, even if they had done so, they would not have obtained a survivor’s pension because less than two years elapsed between the Constitutional Court’s judgment and the death of their respective partners. It was therefore impossible for the applicants to meet the new requirements. It follows that the applicants were affected by the lack of transitory measures, which was at the origin of the Court’s finding of a violation in *Valverde Digon*, in the same manner as the applicant in that case.

20. On the basis of the conclusions already reached in that case (ibid., §§ 71 - 81), the Court concludes that the imposition of a more stringent formal requirement by the Constitutional Court without any adequate transitional provisions was disproportionate in the light of all the circumstances of the present cases.

21. There has been therefore a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

23. The first applicant claimed the granting of the survivor’s pension from 23 May 2014, as well as 48,380 euros (EUR) as non-pecuniary damage. The

second applicant did not make any claims in respect of just satisfaction. The third and fourth applicants also requested the recognition of a survivor's pension as well as EUR 6,000 each as non-pecuniary damages. The Government held it would not be justified for the Court to decide on granting the applicants the survivor's pension.

24. The Court considers that, in the absence of determination by the domestic authorities that the applicants must receive a pension of a certain amount, it is not in a position to determine the pecuniary damage suffered by them as a result of the violation of their rights under Article 1 of Protocol No. 1. It therefore makes no award to any of the applicants under this head. As in *Valverde Digon*, the Court notes that domestic law provides for the possibility of reviewing final decisions which have been declared in breach of Convention rights by a judgment of the Court (*ibid.*, § 86).

25. The Court considers it reasonable to award the following amounts, plus any tax that may be chargeable, to the first, third and fourth applicants in respect of non-pecuniary damage: EUR 8,000 to the first applicant; EUR 6,000 to the third applicant; and EUR 6,000 to the fourth applicant.

26. The first, third and fourth applicants requested the Court to reimburse some of their alleged expenses incurred in the domestic proceedings and in their applications with the Court. The second applicant did not request the reimbursement of any costs or expenses.

27. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above-noted criteria, the Court does not award any sum in this regard to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months, in respect of non-pecuniary damages, 8,000 euros (EUR) to the first applicant; EUR 6,000 to the third applicant; and EUR 6,000 to the fourth applicant; plus any tax that may be chargeable;
 - (a) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Mārtiņš Mits
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	20942/19	Del Pino Ortiz v. Spain	08/04/2019	Montserrat DEL PINO ORTIZ 1976 Tarragona Spanish	Jeronimo MARTIN DELGADO
2.	33998/19	Bollas Angulo v. Spain	21/06/2019	María Ángeles BOLLAS ANGULO 1974 Sant Joan Despi Spanish	Juan Carlos ANGULO VALDEARENA S
3.	37119/19	Merida Molero v. Spain	02/07/2019	Margarita MERIDA MOLERO 1955 Vilassar del Mar Spanish	Jose Ignacio SAGRADO VILLAMIDE
4.	57464/19	Ribe Perez v. Spain	29/10/2019	Lidia RIBE PEREZ 1977 Vilassar de Mar Spanish	Jose Ignacio SAGRADO VILLAMIDE