NOTICE TO MEMBERS

Subject: Petition No 0086/2021 by B.H. (German), bearing one signature, on alleged discrimination in connection with the payment of a disability pension

1. Summary of petition

The petitioner states that she lives in Spain with her husband, who receives a disability pension. She further states that the 100% rating applicable to the disability pension from Germany has been downgraded to 33-65% in Spain and that that makes her husband liable for tax in Spain. For that reason, the petitioner and her husband have been requested to resubmit their tax records for 2015 and to make payment. The petition asks whether the Spanish authorities’ grading is lawful.

2. Admissibility

Declared admissible on 17 May 2021. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 5 October 2021

The Commission’s observations

The Commission attaches great importance to the situation of persons with disabilities in all Member States of the EU. In accordance with, and within the limits of, the powers conferred by the EU Treaties, the EU adopts the necessary measures for their inclusion in society and full recognition of their rights. A recent concrete deliverable in this area has been the Strategy for the Rights of Persons with Disabilities 2021-30, adopted on 3 March 2021.

The Strategy provides a framework for EU action, to be supplemented by Member States’

policies, for further progress towards ensuring that all persons with disabilities in Europe enjoy their human rights, have equal access and opportunities to participate in society and economy, are able to decide where, how and with whom they live, and are able to move freely in the EU regardless of their support needs, in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).\(^2\)

The Commission draws, however, the petitioner’s attention to the fact that there is no exclusive EU competence in the field of taxation and social protection of persons with disabilities. Issues like organisation of the social security systems, including pension systems and the recognition of the disability benefits, remain a matter of national competence, and Council Directive 2000/78/EC\(^3\), which prohibits discrimination on the grounds of disability in employment and occupation, does not apply to state social assistance or social security schemes\(^4\).

EU law in the field of social security provides for the coordination and not the harmonisation of Member States’ national social security systems. This means that each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions for eligibility, how these benefits are calculated and what contributions should be paid. The law of the European Union, in particular Regulation (EC) No 883/2004\(^5\) on the coordination of social security systems, establishes common rules and principles, which must be observed by all national authorities when applying national law. These rules ensure that the application of the different national legislations respects the basic principles of equality of treatment and non-discrimination. By doing so, it is ensured that the application of the different national legislations does not adversely affect persons exercising their right to free movement within the European Union.

Nevertheless, it should be noted that given the disparities between the national social security legislations, moving from one Member State to another may be more or less advantageous for the insured person in terms of entitlements and contributions in any particular case.

Moreover, in the absence of harmonising measures at EU level, direct taxation matters such as personal income taxation essentially fall within the exclusive competence of Member States. The level of taxation thus depends on the national rules of Spain and, if concluded, on the contents of a bilateral tax convention (to eliminate double taxation) between that Member State and Germany.

Based on the information available, the Commission has not been able to determine that Spain would be implementing EU law in the situation brought forward by the petitioner, nor has it identified any potential breach of EU law. However, Spain, like all other Member States and the EU, is indeed party to the UNCRPD and has thus committed to comply with its provisions in the field of social protection (Article 28 of the UNCRPD\(^6\)) to the extent that it is competent. As such, it recognises the right of persons with disabilities to an adequate standard of living for themselves and their families and to the continuous improvement of living conditions, and shall

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\(^4\) Article 3(3) of the Directive.


take appropriate steps to safeguard and promote the fulfilment of this right without discrimination on the basis of disability. State Parties to the Convention also recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right.

As Spain has acceded to the Optional Protocol to the UNCRPD, individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention may submit a communication to the UN Committee on the Rights of Persons with Disabilities.

It is therefore for Spain to ensure that its fundamental rights obligations – as resulting from international agreements and from its internal legislation – are respected.

The Commission, in its policy considerations related to social protection for persons with disabilities, and in relation to the commitment of the European Union itself as party to the UNCRPD, promotes decent quality of life, including by encouraging Member States’ consolidation of social protection systems, with a view to encourage independent living of persons with disabilities. This has also been reiterated in the Strategy for the Rights of Persons with Disabilities 2021-2030. However, the final policy choice remains a matter for the Member States.

Conclusion

While reaffirming its support for adequate taxation and social protection systems, which take into account diverse groups of citizens and the particular needs of persons with disabilities, the Commission has not been able to identify any breach of EU law on the basis of which it could take action in the present case.

The petitioner is invited to seek redress at the level of the national administrative or judicial authorities (including national or regional ombudsmen) and/or through the arbitration and conciliation procedures available to them. The Commission advises to refer to these national means of redress because of the advantages they may offer.