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The Controversial Maternity Supplement Due to Demographic Contribution: Practical Issues and Regulatory and Judicial Responses

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Abstract: *This paper addresses the study and analysis of the establishment of the maternity supplement towards the current contributory pension supplement for the reduction of the gender gap from three key points. In the first place, and to understand the establishment of the pension supplement, the basis and legal regime of the so-called maternity supplement is analysed. Secondly, the arguments of the CJEU of 12 December 2019, case C-450/18 are set out, which, as a result of the practical application of the maternity supplement for demographic contribution, declared that there was direct discriminatory treatment on grounds of sex between men and women and that the Spanish legislation was contrary to Council Directive 79/7/EEC, of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. Likewise, due to its relevant interest in the matter, the latest CJEU in the matter is addressed, specifically the CJEU of 14 September 2023, case C-311/22. Finally, the legal regime of the new pension supplement for the reduction of the gender gap is briefly described.*

Keywords: *demographic contribution supplement; pension gap; pension supplement; gender discrimination; positive action.*

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Introduction: an overview of the maternity supplement towards the current contributory pension supplement for the reduction of the gender gap

The family is a central institution in our society and there is no doubt that it is the object of protection from an economic and social perspective. The basis for the protection of the family in Spain is found in article 39 of the Spanish Constitution (hereinafter CE), which imposes on the public authorities the mandate to ensure the social and economic protection of the family, specifying who should be the object of this special guardianship (children and mothers), guaranteeing, at the very least, the protection provided for in international agreements in this regard. (GARCÍA ROMERO, BELÉN, (number 14/2000):1)

The constitutional precept guides the implementation of a policy for the protection of the family institution from the economic and social point of view but doesn´t identify the specific mechanisms or specific measures that must contribute to guaranteeing the well-being or "the quality of life of the persons who are integrated into a family" (CRUZ VILLALÓN, JESÚS, (2003): 1375). Although the above-mentioned provision doesn´t establish clear guidelines in this regard, it is clear that the public authorities are obliged to protect the family in the manner and with the instruments determined by law (SÁNCHEZ-URÁN AZAÑA, M. ª YOLANDA (Vol. 1/2021):461). and to promote real and effective equality in social life by improving the living conditions of those who may be in a position of social disadvantage politically, economically or culturally, removing the obstacles that hinder its fulfilment.

The political and socio-economic strategy of the family institution was devised in 1995 through the so-called Comprehensive Family Support Plans with the aim of facilitating the stability, quality of life, autonomy, and well-being of the family by eliminating as much as possible the obstacles or difficulties that directly affect it (SÁNCHEZ-URÁN AZAÑA, M. ª YOLANDA (Vol. 1/2021):464). In this regard, different mechanisms are established to achieve this objective, such as various labour, tax, social security techniques, etc. We will focus on the effects that interest us, from the perspective of Social Security and on the so-called maternity supplement for demographic contribution. Therefore, to have a clear overview of the evolution and legal regime of the so-called maternity supplement towards the current contributory pension supplement for the reduction of the gender gap, it is intended to address it from three key points. First, we refer to the

regulatory establishment of the maternity supplement for the demographic contribution. Secondly, we analyse the CJEU Judgment of 12 December 2019, case C-415/18, which arises due to the practical application of this supplement, and we also dwell on the latest CJEU judgment of 14 September 2023, case C-311/22, for its relevance, to describe the legal regime of the new contributory pension supplement finally briefly for the reduction of the gender gap. Although we are talking about a new pension supplement, the current supplement is heir to the old maternity supplement, which the new wording of the same became mandatory due to the declaration of the maternity supplement discriminatory towards men. In addition, both supplements aim to make visible and try to address, albeit in a partial and biased way, the pension gap that currently exists between men and women in our Social Security system, trying to compensate, together with other measures, the negative effects that maternity or childcare have on the contribution career of women (art. 235 TRLGSS) and of men and women (arts. 236 and 237 TRLGSS).[1] (For all, GARCÍA ROMERO, BELÉN, (no. 74/2016) :116 et seq.) However, the challenge it faces, from a

[1] For all, GARCÍA ROMERO, BELÉN, The literal wording of article 235 of the TRLGSS, relating to contribution periods assimilated for childbirth, is: "*For the purposes of contributory retirement and permanent disability pensions, a total of one hundred and twelve full days of contributions for each birth of a single child and fourteen more days for each child from the second onwards shall be computed in favour of the worker applying for the pension. this is included, if the birth is multiple, unless, as a worker or civil servant at the time of delivery, contributions have been paid for the entire sixteen weeks or for the corresponding time if the birth is multiple*"; Article 236 of the TRLGSS provides for childcare benefits: "*1. Without prejudice to the provisions of the preceding article, the period in which contributions have been interrupted due to the termination of the employment relationship or the end of the receipt of unemployment benefits shall be counted as a contribution period for all purposes, except for the fulfilment of the minimum contribution period required, when such circumstances have occurred between the nine months prior to the birth, or the three months preceding the adoption or permanent foster care of a child, and the end of the sixth year following such situation.*

The period that can be counted as a contribution period will be a maximum of two hundred and seventy days per adopted or fostered child or minor, and in no case may it exceed the actual interruption of the contribution.

This benefit will only be granted to one of the parents. In the event of a dispute between them, the right shall be granted to the mother.

2. In any event, the application of the benefits provided for in this article may not result in the period of care for a child or minor, considered as a period of contributions, exceeding five years per beneficiary. This limitation shall also apply when the aforementioned benefits coincide with those referred to in Article 237.1."
While article 237.1 TRLGSS establishes: "*Periods of up to three years of leave that workers, in accordance with article 46.3 of the revised text of the Workers' Statute Law, enjoy by reason of the care of each child or minor in permanent foster care or guardianship for the purpose of adoption, shall be considered an effective contribution period for the purposes of the corresponding Social Security benefits for retirement, permanent disability, death and survivorship, maternity and paternity*".

legal point of view, is how to achieve this goal effectively and comprehensively without affecting the right to non-discrimination on grounds of sex (GALA DURÁN, CAROLINA, *(*no. 158/2021): 123). Below, we will address the three key points of this topic.

The maternity supplement for demographic contribution

The genesis of the maternity supplement is in the proposal made by the Government of Spain in May 2015 when approving the so-called Comprehensive Family Support Plan for the period 2015-2017. The proposal, presented as a measure to support maternity, consisted of increasing the initial amount of retirement, permanent disability and widowhood pensions for mothers who have had two or more children since 1 January 2016. Thus, an increase of 5% is established for mothers with two children, for mothers with three children an increase of 10% and for mothers with four or more children an increase of 15%. If the initial pension exceeds the maximum limit, the supplement will be determined by applying the percentage corresponding to that limit. In June 2015, the Council of Ministers agreed to submit to the Toledo Pact Commission a proposal "... in order to recognise the demographic contribution to the Social Security system of working women who combine their professional careers with motherhood, in particular, it is committed to introducing an additional supplement to the amount of the high contributory pensions (retirement, widowhood and permanent disability) of women who have had two or more children".

The operation of the additional supplement was reasoned that once the new pension had been calculated, in accordance with the calculation rules for each benefit, the corresponding percentage would be applied according to the number of children and the result would be the amount of the pension increased by that amount. In addition, the effect of the measure was cumulative, since in 2017 the registrations of pensioners in 2016 plus the registrations of pensioners for the year and so on.

The purpose of this proposal was to recognize the efforts of working women with children through a demographic contribution in the form of an economic incentive that contributes to closing the gender gap when it comes to generating pensions. With this measure, Social Security wanted to recognise the contribution of families as a key element for the future sustainability of the pension system, which, being a system of pay-as-you-go and intergenerational solidarity, depends not only on employment but also on demographic developments. Hence, the number of children who

contribute is considered, which is key to the future sustainability of the system as far as they are future contributors. The proposal alludes to the fact that this formula also serves to correct the "double penalty" on working women because of maternity: a) lower salaries or shorter or discontinuous contribution careers and b) greater recourse to "part-time", in short, to lower pensions for women.

The provision was that the supplement would be financed annually as an additional pension amount charged to the contributory system, i.e. the Social Security budget. This proposal materialized through the approval of the so-called maternity supplement in the contributory pensions of the Social Security system, introduced into our system by the General State Budget Law for 2015 through the Second Final Provision, as article 50 bis and integrated into the current Consolidated Text of the General Social Security Law (hereinafter TRLGSS) as article 60. Its establishment aims to recognize the impact that motherhood has on women's careers and, therefore, on their pensions. This supplement seeks to compensate for the gender gap in pensions that occurs, in part, due to career interruptions or the reduction in working hours that many women face when taking on family responsibilities.

This supplement consists of an amount equivalent to the result of applying a certain percentage to contributory pensions, depending on the number of children: a) in the case of 2 children, a percentage of 5% is applied; b) in the case of 3 children, 10% is applied and c) in the case of 4 or more children, a percentage of 15% is applied, counting only those born or adopted prior to the event giving rise to the corresponding pension.

This additional supplement only applies to pensions recognised from 1 January 2016 to 3 February 2021 and is not applicable in cases of access to voluntary early retirement (MARTÍNEZ BARROSO, M. ª DE LOS REYES, (no. 6/2020, BIB 2020\12152):3) [2] or in cases of partial retirement, although it will be recognised when full retirement is accessed from partial retirement, that is, once the age that corresponds in each case has been reached. The law doesn´t specifically refer to single-parent families or male gay person families, nor does it refer to adoptive fathers or mothers of only children.

[2] The exclusion of the supplement in cases of access to the voluntary early retirement pension has been the subject of a question of unconstitutionality filed by the Labour Court No. 1 of Barcelona. However, the Constitutional Court rejected it as "notoriously unfounded". On this subject, see MARTÍNEZ BARROSO, M. ª DE LOS REYES, "Co-responsible parents, discriminated? or a restrictive and ignorant interpretation of social reality. Regarding the CJEU of 12 December 2019 (WA vs National Institute of Social Security case, C-450/18)"

The implementation and development of the project (MONEREO PÉREZ, JOSÉ LUIS, and RODRÍGUEZ INIESTA, GUILLERMO, (No.31/2022): 16 - 17[3] generated controversy over the question of whether it was discriminatory to exclude men from access to it and whether the demographic contribution was valued only from the second child onwards. The issue of discrimination gave rise to a reference for a preliminary ruling by the Labour Court No.3 of Girona (Juzgado de lo Social nº 3 de Girona) to the Court of Justice of the European Union (hereinafter CJEU), the judgment of which will be set out below.

Judgment of the CJEU of 12 December 2019 (case C-450/18)

The facts on which the CJEU's decision is based are summarised in the fact that a father of two, a beneficiary of the pension for permanent disability in the degree of absolute, applies to the National Social Security Institute for recognition of the supplement for demographic contribution. That claim was rejected by the National Social Security Institute on the ground that it was a benefit intended only for women in receipt of a contributory benefit. Against that decision, the interested party filed an action before the Labour Court number 3 of Girona, arguing that the principle of equality and non-discrimination does not justify the difference in treatment, since if the maternity supplement is based on the demographic contribution of the beneficiary of a contributory benefit to the system, men have also participated in that contribution. The National Institute of Social Security puts forward the argument of positive action, arguing that reasons of social policy and the correction of the gender gap justify its establishment, supported by statistical data. The court has doubts about the dual nature of the supplement at issue, since it considers that, if one of the purposes is to reward the demographic contribution to the social security system through procreation, it is attributable to both parents.

In order to respond to the application and in view of the concern raised by the issue, it submits the question referred for a preliminary ruling in the following terms, linked to the principle of equal pay and its scope to contributory benefits: Does it infringe the principle of equal treatment which

[3] In relation to the management of this maternity supplement, the following issues have arisen: (a) whether or not it should be recognized in the event that the child does not acquire civil personality; (b) who was the beneficiary of the maternity supplement in the case of a child given up for adoption, the biological mother or the adoptive mother; (c) a child born or adopted abroad; (d) determination of the causal event and (e) whether or not it is possible to waive the supplement..

precludes any discrimination on grounds of sex, recognised by Article 157 TFEU and Directive 79/7, a national law (art. 60. LGSS) which recognises the entitlement to a pension supplement, due to their demographic contribution to Social Security, to women who have had biological or adopted children and are beneficiaries in any scheme of the Social Security system of contributory retirement, widowhood or permanent disability pensions and is not granted, on the contrary, such entitlement to men in the same situation?

The CJEU was asked to rule on whether Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security should be interpreted as precluding national legislation which, due to the demographic contribution of women to Social Security, it establishes the right to a pension supplement for those who have had at least two biological or adopted children and are beneficiaries of contributory permanent disability pensions under any scheme of the national Social Security system, while men who are in an identical situation are not entitled to such a pension supplement. The CJEU's ruling of 12 December 2019 (case C-450/18) considered that there was direct discriminatory treatment on grounds of sex and that the Spanish legislation was contrary to Directive 79/7.

How did the managing body interpret the CJEU's ruling in case C-450/18? Before the ruling, the Social Security management body categorically rejected the recognition of this supplement in favour of men, but even after the CJEU's ruling, the National Social Security Institute evaded compliance with it to the extent that it established its own guidelines for action through management criterion 1/2020 in which it argued that the supplement established for permanent disability pensions, retirement and widowhood, regulated in article 60 of the TRLGSS, until the corresponding legal amendment of the aforementioned article is carried out, only women who meet the requirements demanded therein would continue to be recognized, as had been done until the date of the CJEU's pronouncement, and this without prejudice to the obligation to execute those final judgments issued by the courts of justice that recognize the aforementioned complement pension for men. Practically, the INSS did not accept in its entirety the dimension of the CJEU's ruling since it forced the men to sue to be entitled to this supplement and to incur additional expenses. In relation to this situation, it is worth mentioning the latest Judgment of the Court of Justice of the European Union of 14 September 2023, case C-113/22.

Judgment of the CJEU of 14 September 2023, case C-113/22

Within the scope of the scenario described above, there is a new ruling by the CJEU of 14 September 2023, (case C-113/22). The factual situation is that a father of two children applies for the so-called maternity supplement, which the Spanish managing body refuses. Faced with this refusal by the National Social Security Institute, the applicant filed an action before the Labour Court, which, by judgment of 15 February 2021, *ex* CJEU of 12 December 2019, recognised his right to the pension supplement, but fixed its economic effects from the three months prior to his application. In addition, it rejected the claim for damages which had also been brought by the applicant in parallel.

Not satisfied with that decision or its economic effects, both the applicant and the National Social Security Institute itself appealed against the judgment of the lower court. While the National Social Security Institute considered that the applicant was not entitled to the supplement claimed under Article 60 of the TRLGSS, he sought recognition of the right to that supplement from the date of access to his pension since, if he had been a woman, it would have been recognised from that date. In addition, it again sought reparative and dissuasive damages for infringement of the principle of non-discrimination.

The High Court of Justice of Galicia referred two questions to the CJEU for a preliminary ruling so that it could decide whether the practice of the INSS exposed and published in Management Criterion 1/2020 consisting of systematically denying men the granting of the maternity supplement in their pension and forcing them to claim it in court, should be considered, according to Directive 79/7, discrimination other than discrimination derived from article 60 of the LGSS, as declared by the judgment of 12 December 2019 (C-450/18). And, secondly, whether it would be appropriate, in order to ensure the effectiveness of EU law, for the costs and fees incurred in the course of the proceedings to be included as an item for compensation for infringement of EU law, on the ground that, under national law, the INSS could not be ordered to pay the sums corresponding to those costs and fees, since the labour process was free of charge for all litigating parties.

In these circumstances, the CJEU determined that an administrative practice such as that contained in management criterion 1/2020 of the National Social Security Institute entailed discrimination against male applicants in relation to the procedural requirements governing the granting of the pension supplement, by forcing them to assert their right through the

courts, which, in particular, exposed them to a longer period of time for obtaining them and, where appropriate, to additional costs.

To correct this, the CJEU established that, where, in view of the specific characteristics of the infringement of the principle of equal treatment in question, pecuniary compensation is the measure adopted to achieve the objective of restoring effective equality of opportunity, it must be proportionate and remediate, in the sense that it must make it possible to compensate in full for the damage actually suffered as a result of the discrimination. But it must also be a deterrent. In short, the Court of Justice of the European Union, in its judgment of 14 September 2023, case C-311/22, in addition to the retroactive recognition of the pension supplement requested, enables the possibility of establishing a pecuniary compensation that allows full compensation for the damage suffered because of discrimination. In addition, it emphasises the fact that its decisions are binding not only on national judicial bodies, but also on all bodies of the national administration.

A new supplement to contributory pensions to reduce the gender gap: legal regime.

The legislative amendment of the maternity supplement is carried out by means of article 1 of Royal Decree-Law 3/2021, of February 2, 2021, adopting measures for the reduction of the gender gap and other matters in the fields of Social Security and economic,[4] which is now called "contributory pension supplement for the reduction of the gender gap". In addition, two new additional provisions are added to the LGSS, which are: the Thirty-sixth Additional Provision entitled "*Financing of the contributory pension supplement for the reduction of the gender gap*"; the Thirty-seventh Additional Provision entitled *"Temporal scope of the contributory pension supplement for the reduction of the gender gap*", and a new Transitional Provision, the thirty-third to the TRLGSS, is added, called "*Transitory maintenance of the maternity supplement in contributory pensions of the Social Security system*".

In the explanatory memorandum of the Royal Decree-Law 3/2021, the reform of the maternity supplement is justified by the flawed legal configuration as compensation for demographic contribution and its redefinition is understood as an opportunity to turn it into an effective instrument in reducing the gender gap in pensions. It is evident that the

[4] Royal Decree-Law 3/2021, of February 2, 2021, adopting measures to reduce the gender gap and other matters in the fields of Social Security and economics, can be consulted at the following link https://www.boe.es/buscar/doc.php?id=BOE-A-2021-1529.

gender gap constitutes the main insufficiency in the protective action of Social Security in the field of pensions, as a reflection of a historical and structural discrimination against women in the labour market for assuming the role of caregivers of children. In this sense, motherhood decisively affects the employment trajectory of women in their working stage and is one, if not the most important, cause of this gap: the greater the number of children, the lower the number of years of contributions, the lower the proportion of full-time contracts or equivalent and the lower the pension is ultimately recognized. The innovative design of the complement is aimed at reducing the gender gap, in which the number of children is the objective criterion used to articulate the measure, since their birth and care is the main cause of the gender gap. However, it leaves the door open for those parents who can prove a loss in their contribution career on the birth or adoption of a child due to the assumption of these care tasks to have access to the supplement. The new supplement combines positive action in favour of women (if neither of the parents proves the harm in their contribution career, the supplement is received by the woman), with the provision of an "open door" for those men who may find themselves in a comparable situation.(OLMOS PARÉS, ISABEL, (no. 7/ 2023): 103-114).

The new financial supplement will be temporary and is linked to the achievement of the objective of reducing the gender gap in contributory retirement pensions to below 5 per cent. The reconfiguration of this pension supplement has been discussed by the Government in the framework of social dialogue with the social partners.

The new supplement has several novelties with respect to the previous one for maternity, and these are the following: a) there are different access requirements according to the sex of the applicant; (b) it shall be paid from the first child and not from the second; (c) shall not be taken into account in the application of the pension ceiling; (d) its amount shall not be considered as income or income from work in order to determine whether the requirements for entitlement to the minimum supplement are met; (e) reaches beneficiaries of voluntary early retirement; (f) this supplement shall be applicable to pensions arising on or after 4 February 2021; (g) it is temporary, and (h) the maternity supplement in contributory pensions of the Social Security system is maintained on a transitional basis.

The main characteristics of the legal regime of the new contributory pension supplement to reduce the gender gap can be summarised as follows:

A) Different requirements depending on the sex of the applicant.

With regard to the different requirements required according to the sex of the applicant, it should be noted that women who have had one or more

children and who are beneficiaries of a contributory retirement, permanent disability or widow's pension will be entitled to the contributory pension supplement, due to the incidence that, In general, there is a gender gap in the amount of contributory social security pensions for women. The right to the supplement for each child shall be recognized or maintained by the woman if there is no application for and recognition of the supplement in favour of the other parent and if the other parent is also a woman, it shall be recognized to the one who receives public pensions whose amount is of a lesser amount.

In order for men to be entitled to the pension supplement, one of the following conditions must be met: (a) a widow's or widower's pension must be due to the death of the other parent for the children in common, provided that one of them is entitled to receive an orphan's pension; (b) To be entitled to a contributory retirement or permanent disability pension and to have interrupted or been affected by the birth or adoption, subject to the following conditions: in the case of children born or adopted up to 31 December 1994, to have more than 120 days without contributions between the 9 months prior to the birth and the 3 years after that date, or, in the case of adoption, between the date of the court decision establishing it and the following 3 years, provided that the sum of the amounts of the pensions granted is less than the sum of the pensions to which the woman is entitled. In the case of children born or adopted since 1 January 1995, the sum of the contribution bases for the 24 months following the birth or the date of the court decision establishing the adoption is more than 15% lower than that of the 24 months immediately preceding it, provided that the sum of the amounts of the pensions recognized is less than the sum of the pensions to which the woman is entitled.

If both parents are men and the above conditions are met in both parents, the one who receives public pensions with a lower amount will be recognised.

The requirement, to give rise to entitlement to the supplement, that the sum of the amounts of the pensions recognised is less than the sum of the pensions to which the other parent is entitled, will be required at the time when both parents become entitled to a contributory benefit under the terms provided for in the regulation.

In other words, the new regulation of the pension supplement is linked in the case of women to the fact that they have been mothers, but, at the same time, it allows fathers to prove a detriment to their contribution career, on the birth of a child (also adoption) or because of the assumption of care tasks, to profit from the complement. In short, positive action in favour of women is combined (if neither of the parents proves the damage

to their contribution career, the pension supplement is received by the woman, as it is presumed that she is the one who took care of the children), with the provision of the possibility of requesting this supplement in favour of men who may be in a comparable situation.

B) Effects of the recognition of the contributory pension supplement for the reduction of the gender gap for the second parent

The recognition of the supplement to the second parent will entail the extinction of the supplement already granted to the first parent and will produce economic effects on the first day of the month following that of the resolution, if it is issued within six months of the application or, where appropriate, the recognition of the pension that causes it. Once this period has elapsed, the effects will take effect from the first day of the seventh month. Before issuing the decision recognising the right of the second parent, the person who has been receiving the supplement will be heard.

C) Amount and payment of the supplement

The supplement is a contributory state pension. Its amount will be fixed in the General State Budget Law and will be paid in fourteen payments, together with the pension that determines the right to it. The amount shall be limited to four times the amount fixed per child. The supplement will be paid if the beneficiary receives the pension. This means that its birth, suspension, and extinction will coincide with that of the retirement, permanent disability or widow's pension that has determined its recognition. However, when, at the time of the suspension or termination of this pension, the beneficiary is entitled to receive a different pension, the payment of the supplement will be maintained, being linked to that of the latter. The supplements that may be recognised in any of the Social Security schemes will be incompatible with each other, being paid in the scheme in which the person causing the pension has more periods of registration.

D) Exclusions

You will not be entitled to this supplement in cases of partial retirement, as referred to in article 215 and the sixth section of Transitory Provision 4 of the TRLGSS. However, the appropriate supplement will be recognised when full retirement is accessed from partial retirement once the age has been reached.

E) Financing

In accordance with Additional Provision 36 of the TRLGSS, the financing of the contributory pension supplement to reduce the gender gap will be conducted through a transfer from the State to the Social Security budget.

F) Temporality

The right to recognition of the supplement will be maintained if the gender gap in retirement pensions, caused in the previous year, is greater than 5%. The gender gap in retirement pensions is defined as the percentage that represents the difference between the average amount of contributory retirement pensions caused in a year by men and women. To ensure the adequacy of the correction measure introduced to reduce the gender gap in pensions, the Government of Spain, within the framework of the social dialogue, must conduct a periodic evaluation, every 5 years of its effects. As soon as the one-year gender gap is less than 5%, Article 60 of the TRLGSS will be repealed.

G) Other things to note.

It should be noted that the receipt of the supplement will also be subject to the following rules: each child will only be entitled to the recognition of one supplement. For the purposes of determining entitlement to the supplement, as well as its amount, only children who were born alive or adopted prior to the event giving rise to the corresponding pension shall be considered.

The right to the supplement shall not be recognized to a father or mother who has been deprived of parental authority by a judgment based on the failure to comply with the duties inherent therein or issued in a criminal or matrimonial case. Nor will the right to the supplement be recognized for the father who has been convicted of violence against women, currently in the terms defined by law or by the international instruments ratified by Spain, exercised against the mother, or the father or mother who has been convicted of exercising violence against the children.

The amount of the supplement shall not be considered in the application of the maximum pension ceiling provided for in Articles 54 and 58. 7 of the TRLGSS.

The amount of this supplement will not be considered as income or income from work to determine whether the requirements to be entitled to the minimum supplement provided for in article 59 of the TRLGSS are met. When these requirements are met, the minimum amount of pension will be recognized as established annually by the corresponding General State Budget Law. To this amount will be added the supplement for the reduction of the gender gap. When the contributory pension that determines the right to the supplement is caused by the aggregation of periods of insurance on a *pro rata temporis basis in application of international regulations, the actual amount of the supplement will be the result of applying to the amount referred to in the previous paragraph, which will be considered the theoretical amount, the pro-rata applied to the pension to which it accompanies.*

Conclusions

Based on the obvious that there is a gender gap in pensions and the need to design a strategy to prevent and, where appropriate, eliminate them, the truth is that some considerations can be made that are not entirely positive about the current design of the gender gap supplement. First, it is an add-on that is tedious and complex to regulate. The fact that it is complex can be deduced from the fact that the Social Security administration itself, in just over a year, has had to establish ten management criteria on various aspects related to the supplement.

A second consideration refers to the requirements of man to be able to benefit from such a supplement. It is based on a presumption in favour of the woman, since she will only have to prove that she has had children or adopted them and from here on access to the supplement is guaranteed. The woman does not have to prove that there was an impact on the access or maintenance of her insurance career. This presumption will only be disturbed if the other parent is also a woman who has been deprived of parental authority or convicted of violence against children. It is not even affected by the fact that the other parent, if he is a man, had been granted a permanent disability or retirement pension before her. On the other hand, a series of requirements are required of men in view of the pension to be completed. If the widow's or widower's pension is not available, there must be beneficiaries of an orphan's pension, which means that if the children have reached the maximum age of receipt and were not or were not incapable of working, it is impossible to supplement, regardless of whether the man's insurance career may have been affected. If the pension to be supplemented is not for permanent disability or retirement, then you are required to prove that your insurance career has been interrupted or affected by the birth or adoption under unusual conditions in view of the date of birth before 31 December 1994 or since 1 January 1995. In the first case, it is required to prove contribution gaps for more than 120 days and in the other it refers to an incidence in the contribution bases in a certain percentage. The requirement of complete contribution gaps is clearly detrimental to men in this respect, and it seems that they continue to contain some form of discrimination, as evidenced by the question referred to the CJEU for a preliminary ruling by order of 21 September 2023. However, in this regard, it is necessary to remember that article 60 of the TRLGSS contains a positive action in favour of women, and as such, this must respond to an objective and reasonable justification. Along these lines, it is true that there is a gender gap in pensions that is essentially caused by the

fact that women who are simultaneously workers and mothers of one or more children suffer disadvantages in the field of labour relations, the consequence of which is reflected in the relevant gender gap in the Social Security relationship.

The design of the new article 60 is based on the fact that the birth and care of children has an impact on a woman's insurance career, either on her incorporation into the world of work or during it, which may have other repercussions for women. Therefore, women without children will not be entitled to the supplement and this despite its name and the fact that it may contribute to the reduction of the gender gap.

Positive aspects of the 2021 reform should also be recognized, such as its extension to early retirement to a wider range of beneficiaries by incorporating people with only one child; a partial extension of the supplement to the civil service system, an evaluation and monitoring of the new supplement is foreseen, its financing via transfers from the State to the Social Security budget and the temporary maintenance of the previous maternity supplement.

The maternity supplement and demographic contribution are a measure implemented in some Social Security systems with the aim of recognising the impact that motherhood has on women's professional careers and, therefore, on their pensions. This supplement seeks to compensate for the gender gap in pensions that occurs, in part, due to career interruptions or the reduction in working hours that many women face when taking on family responsibilities.

The new pension supplement for the reduction of the gender gap is an evolution of this measure. This is a financial supplement that is added to the pension of people who have had children and whose careers have been affected by it. The aim is twofold: on the one hand, to recognise the value of the demographic contribution to society and, on the other hand, to reduce the gap between men's and women's pensions, which is often unfavourable to women. This pension supplement is structured in such a way that an increase in the pension is granted for each child, up to a set maximum. The amount and specific requirements may vary depending on the legislation of each country. In addition, the aim is to ensure that this supplement is compatible with other equality and non-discrimination measures, and that it contributes to a fairer and more equitable pension system for all.

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