



Press Office of the Constitutional Court

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PERSONS AFFECTED BY TOTAL INVALIDITY: INCREASED INVALIDITY PENSIONS ACCRUE FROM AGE 18, NOT 60

The monthly amount of invalidity pension payments for persons suffering from total invalidity, established by Article 12(1) of Law No. 118 of 1971 and currently equal to 286.81 euros, “is undeniably and manifestly insufficient” to ensure that its recipients’ “minimum subsistence” needs are met, but adjusting the amount falls under the legislator’s discretion. However, invalid persons affected by total incapacity for work are entitled to the so-called “increase to 1 million” [Italian *lire*] of their invalidity pensions (a figure currently equivalent to 651.51 euros) starting from their 18th, and no longer 60th, birthday. The law’s age requirement to date is unreasonable, because “psycho-physical impairments such as to lead to total invalidity are no different in the age range between 18 (when the right to receive an invalidity pension accrues) and 59 than after 60, because the limitation derives from a prior reason, an inherent pathological condition, and not from the ordinary aging process occurring in the meantime”.

This is part of the reasons supporting [Judgment No. 152](#), filed today (Judge Rapporteur: Vice President of the Court Mario Rosario Morelli), in which the Constitutional Court declared Article 38(4) of Law No. 448 of 2001 unconstitutional insofar as it provides that increased benefits due to persons affected by total invalidity are granted to those who are 60 years of age and older, and not to individuals older than 18 (as indicated in the [press release of 24 June 2020](#)). In the case giving rise to these constitutional proceedings, the person in question is affected by neonatal spastic quadriplegia, and is unable not only to perform the most basic actions of daily life (such as bathing, dressing or feeding), but also to communicate with the outside world. This condition is due to the previous impairment, and not because a certain age threshold had been reached.

The judgment notes that the greater costs for the State deriving from the extension of the increased amounts to all invalid persons – in accordance with the income thresholds established by Law No. 448/2001 – does not violate Article 81 of the Constitution because inviolable human rights are involved. Therefore, budgetary constraints cannot prevail. “This means,” the Court held, “that the legislator must promptly make provision for covering the expenditure deriving from the judgment, in line with the constitutional obligation to maintain a balanced budget, in a dynamic sense (Judgments Nos. 6 of 2019, 10 of 2015, 40 of 2014, 266 of 2013, 250 of 2013 and 213 of 2008)”.

Within the perspective of “reconciling constitutional values”, the Court considered it appropriate to stagger the temporal effects of its judgment, establishing that they begin to run (only) from the day after it is published in the Official Journal.

The Court had already pursued a similar path, starting with Judgment No. 10 of 2015 (in the same vein, see also Judgments Nos. 246 of 2019, and 74 and 71 of 2018). In that case, it was specified that “precisely the requirements laid down by a reasonable balancing between the rights and principles involved” lead to the choice of this decision-making technique. This is constitutionally “necessary in order to ensure the balancing of the interests in play [...] guaranteeing compliance with the principles of equality and solidarity which, due to their foundational character, occupy a privileged position within balancing operations with other constitutional values” (see Judgment No. 264 of 2012).”

The Court concluded that in any event, this is without prejudice to the legislator’s power to adjust the current law on social benefits, provided that the constitutional rights of persons affected by total invalidity are guaranteed.

Rome, 20 July 2020