

THE SOLIDARITY OF THE PENSION SYSTEM THROUGH THE PENSION MAXIMUM LIMIT¹

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ABSTRACT

The sustainability of the public pension system is one of the greatest challenges facing the Spanish society in the coming years. Social Security has serious problems because its estimated deficit in 2015 and 2016 will be equivalent to 1% of GDP. The legislation reforms in the last years have failed to address this deficit because were not enough to stop the unstoppable growth of expenditure involved in the aging and retirement in the decades of the baby boom. These reforms tried to act directly on the demographic factor of the pension system through the sustainability factor, with the ultimate goal of achieving containment spending allocated to public pensions through the implementation of the new pension revaluation index, the delay of the retirement age, and the increasing of the number of years considered in the calculation of the pension. One of the tools that can help make that pension expense controllable is the maximum pension with the imposition of a ceiling on pensions. This policy started in the eighties of the last century and its implementation was mainly justified as a temporary measure due to the complicated situation then crossed by the Social Security, a critical situation similar to the current but with a different demographic structure perspective. The limit imposed on maximum pensions, which initially was considered a temporary measure,

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was transformed over time into a structural and permanent decision, and remains nowadays as a limit in the actual maximum pension in the Spanish public pension system through the general state budget.

This article analyses this fundamental parameter which together with the minimum pension, are one of the essential elements of solidarity and redistribution of income principle of the framework of the model on which the public retirement pension is based, the other being the contributory principle.

KEYWORDS: Social Security, pension maximum limit, contribution quote sustainability of pensions, pension revaluation index, retirement age.

RESUMEN

La sostenibilidad del sistema de pensiones públicas es uno de los grandes retos a los que se enfrenta la sociedad española en los próximos años. La Seguridad Social atraviesa serios problemas ya que el déficit estimado en 2015 y 2016, será equivalente al 1% del PIB.

Y ello a pesar de que a lo largo de estos años hemos asistido a la legislación de un conjunto de reformas que se han dirigido principalmente a actuar sobre el factor demográfico por medio del factor de sostenibilidad, pero con el objetivo final de conseguir una contención del gasto destinado a las pensiones públicas a través de la aplicación del nuevo índice de revalorización de las pensiones, del retraso de la edad de jubilación y de la ampliación del número de años considerados en el cálculo de la pensión. Pero todas estas medidas no parecen ser suficientes para detener el imparable crecimiento del gasto derivado del envejecimiento de la población y de la jubilación en las próximas décadas de la generación del baby boom.

Una de las herramientas que puede ayudar a ese objetivo de hacer controlable el gasto es la pensión máxima. La imposición de un tope máximo a las pensiones data de los años ochenta del siglo pasado y su implantación se justificó principalmente como una decisión coyuntural debido a la complicada situación que entonces atravesaba la Seguridad Social, similar a la actual pero con otra estructura demográfica en perspectiva. El límite establecido sobre las pensiones máximas, que en principio se consideró como una medida coyuntural, se transformó con el tiempo en una decisión estructural y permanente, presente desde entonces en nuestro sistema de pensiones públicas a través de los presupuestos generales del Estado, como límite real de la prestación máxima

En este artículo se analiza ese parámetro fundamental, que junto a la pensión mínima, configuran los elementos esenciales de solidaridad y redistribución de rentas que, además del principio contributivo, son el armazón del modelo sobre los que se sustenta el sistema de pensiones de jubilación público.

PALABRAS CLAVE: Seguridad Social, tope de la pensión máxima, contribución a la sostenibilidad de las pensiones, índice de revalorización de las pensiones, edad de retiro.

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I. INTRODUCTION

The sustainability of the public pension system is one of the greatest challenges facing the Spanish society in the coming years. Social Security has serious problems because its estimated deficit in 2015 and 2016 will be equivalent to 1% of Gross Domestic Product (GDP). While contribution revenues are growing at a rate of 0.37%, expenditures increased by 3.4% in the case of pensions and contributory benefits. The legislation reforms in the last years have failed to address this deficit because were not enough to stop the unstoppable growth of expenditure involved in the aging and retirement in the decades of the baby boom. These reforms tried to act directly on the demographic factor of the pension system through the sustainability factor, with the ultimate goal of achieving containment spending allocated to public pensions through the implementation of the new pension revaluation index, the delay of the retirement age, and the increasing of the number of years considered in the calculation of the pension.

The existence of different maximum and minimum limits on contributions and benefits, supported by the old system of tariff basis, introduces sharing mechanisms, internal solidarity and redistribution in the pension system. The maximum pension is undoubtedly one of the key parameters on which the system of public retirement pension is based, and together with the minimum pension, constitute the essential elements of solidarity and redistribution of income principle of the framework of the model on which the public retirement pension is based, the other being the contributory principle. The establishment of the ceiling of the benefit has had an opposite effect to the expansion of spending, reducing the average generosity of the system and therefore helping the financial sustainability of pensions. Although more and more individuals receive the maximum pension, the generosity of the

system decreases in each period, as the maximum benefit has been losing purchasing power in real terms. Therefore, is going to be very difficult in the future to maintain the relation between the contribution and the perceived pension. In order to make the pension system sustainable, the maximum pension will probably be in the future a thousand euros below the current, from 2,560 euros nowadays to probably around 1,300-1,500 euros a month. This will mean drastically revising the ceiling of the pension but not the maximum contribution base, which will probably tend to converge with the real wage, looking for increased contributions similar to what happens to the tax deduction in the Income Tax (IRPF).

Recent reforms regulated since 2011 have failed to act directly on the maximum and minimum pensions and their contribution bases because these reforms have been perceived as secondary factors to the financial sustainability of the system. Nevertheless, the parametric measures adopted have affected the ceiling limit marginally because they have reinforced the contributory system with the expansion of the number of years of pension calculation from fifteen to twenty five, which has increased the relation between the contribution and the perceived pension.

On the other hand, the political and economic debate on the reforms of the Social Security system in the last years has also focused on the appreciation of the public pensions, revaluation affected by the amount of the maximum pension. Until now, there have been a slow but gradual modification of the maximum pension and the maximum contribution base, which has altered significantly the system design but has largely gone unnoticed by the general public and media communication. At the same time, the redistribution principle of the pension system has improved with generosity with the increase of the minimum pensions, especially in the period before the crisis. Between 2004 and 2011 minimum contributory pensions were revalued between 28% and 81.25%, which has reduced significantly the difference between the amount of the maximum and the minimum pensions to only 3.5 times, reinforcing the degree of equity of the Spanish pension system, one of the most equitable in the world.

This article analyses some of the most controversial issues of the maximum pension. One is the existence in our law of another limit on the amount of the retirement pension in the maximum amount of the contribution base, which differs from the amount of the ceiling, and also in recent years, it tends to clearly diverge; the non-coincidence of both limits, as one might think in terms of pure logic tax, is one of the most controversial aspects of the Spanish pension system. Besides, the article studies the little incentive that the law provides to long runs contributions and longer working life, despite the recent reform that increases the maximum amount of pension to receive to a second limit, the maximum contribution base.

II. REASONS FOR LIMITING PUBLIC PENSION

The introduction of a pension ceiling was mainly justified as a temporary decision due to the complicated situation then crossed the Social Security. In 1980 the system had entered into financial imbalance, with year in which there was a financial deficit of 71,000 million pesetas in that year (427 million euros). Between 1980 and 1982, the spending on pensions and health care increased each year an amount equivalent to 5.5 percent of the expenditure budget of the Social Security, mainly because of the growth in the number of pensioners. In addition, an estimation of the period(as long as contribution rates remained unchanged)predicted a permanent deficit which would rise to 1,000 million pesetas in 1985 (6 billion euros)³. This amount would force the Spanish Government to make an extraordinary provision to avoid that such deficit not come to fruition in the social security budget of that year⁴.

The average annual growth in the number of pensions during the eighties was 4%, mainly due to the "acceleration of the process of aging of the Spanish population (in 1980 the population aged 65 and over was the 11% of the total Spanish population); adjustments of hundreds of thousands of workers in the industry; early retirement of hundreds of thousands of farmers; the inclusion of groups that were out of the Social Security (TELEFONICA, ONCE), and the increase in early retirement before age 65"⁵.

These imbalances, which affected the Spanish system of Social Security in the mid-eighties, were the most important factor of influence in the set of measures of financial adjustment of public pension, mainly with the moderation of the pension spending in the long term. The limit imposed on maximum pensions, which initially was considered a temporary measure, was transformed over time into a structural and permanent decision. The limit is present since then in our public pension system via the state general budget as a real limit of the maximum benefit, as happened with the perceived incompatibility of simultaneously pension assets⁶.

Another underlying reason behind the application of the ceiling regulation was the reduction of the exorbitant pensions for certain groups of people, mainly persons with more than one

³ *Los problemas de la Seguridad Social: unavaloración de la Seguridad Social Española [The problems of Social Security: an assessment of the Spanish Social Security]*, January 1982, report by the working group headed by Barea, J. formed within the Tripartite Commission (Government, Trade Unions and Entrepreneurs), who studied ideas for the improvement and rationalization of the Social Security.

⁴ The financial deficit of the Social Security finally rose from 8.5 percent in 1980 to 21.4 percent in 1985, despite the increase in social security contributions in that period.

⁵ RODRÍGUEZ CABRERO, G.: *La reforma del sistema público de pensiones en España [The reform of the public pension system in Spain]*, Working Paper nº 13, Unidad de Políticas Comparadas (CSIC), Universidad de Alcalá / University of Kent (Canterbury), 2013, p. 3.

⁶ Law 35/2002, article 1 (July 12th), on Measures for the Establishment of a System of Gradual and Flexible Retirement. This article changed the article 165 of the Consolidated Text of the General Law on Social Security, approved by Royal Legislative Decree 1/1994 (June 20th), about the incompatibilities contributory retirement pension. The paragraph 1 of the article 165 TRLGSS (General Social Security Law) noted that the enjoyment of retirement pension under their contribution regime, was incompatible with the work of the pensioner, with the exceptions and under the terms determined in laws or regulations. The exception to the incompatibility was based on the fact that people who had access to retirement may reconcile the pension perceive with a part-time job in the terms established by regulation.

pension, in existing and arising situations "fruit of fragmented and unsystematic legislation"⁷. It was common "a civil servant with two or more jobs perceiving the corresponding wages, which affected later in his or her passive rights"⁸. Obviously, the impact of this regulation on the overall expenditure was not of great importance, but it was intended to send a message of solidarity justice to society, regulating once and for all the excesses that occurred in all public pensions, with a broad application over time.

Already since 1980, particularly through the Royal-Decree (RD) 47/1980 (January 11th), the pension concurrency situations in one beneficiary has significantly expanded to extend all pension social security system, for the purpose of improving and upgrading or guaranteed minimum, regardless of their nature, the subject deceased, or the concurrence of the pension with other state, province or municipality pensions. In fact, pensions that under the previous legislation were revalued or improved independently, and had guaranteed corresponding to its class minimum, because they are caused by different subject, acquired with the Royal-Decree the legal consideration of concurrent pensions. Therefore, these pension had the same treatment as the concurrent caused by the same subject, that is, for their revaluation and improvement both pensions were added as if they constituted a single one, with the corresponded increases applied to the sections of this unified pension, and the application only one of the minimum guaranteed (the one which corresponded to the pension that had pointed to a greater extent on a yearly basis), but only if the sum of both pensions, already revalued or improved, it is less than that minimum⁹.

But it was not until the end of 1984, through the Law of Incompatibilities of the Personnel to the Service of the Public Administrations¹⁰, when the principle of single pension was definitely regulated. Thereafter, it could be perceive only one remuneration paid by the budgets of public administrations and entities, organizations and companies or their dependents under the constitutional organs, unless in the cases provided for in the Law. The remuneration is any economic compensation right derived, directly or indirectly, from any benefit or personal service, outside their fixed or variable amount and accrued daily or occasionally, including pension rights, consolidated or in the process of consolidation, of any Security system Social. Moreover, such rights were conditioned, in case they were concerned, by the maximum levels of perception or update that may be established¹¹.

⁷ COMAS BARCELÓ, A.: *El tope máximo de las pensiones en el sistema de la Seguridad Social: una limitación injusta* [The ceiling of pensions in the Social Security system: an unfair limitation], Tirant lo Blanch, "Colección laboral", 2006, p. 20.

⁸ LÓPEZ LORENZO, A.: *La protección social de los funcionarios públicos* [The social protection of civil servants], Editorial de la Universidad de Granada, 2007, p. 554.

⁹ Official Bulletin of the Parliament, number 966-I, July 10th, 1980, the Government response to the question raised by Jose Alvarez de Paz, J. and Garrido Pedregosa, J. M., of the Socialist Group of the Congress, on the application increases and minimum pension of the persons with more than one pension.

¹⁰ Law 53/1984 (December 26th).

¹¹ The principle of single pension concerns pensions caused within the same regime. However, it can be generated more than one pension under different regimes, all compatible, either simultaneously or at successive times, and provided they meet the requirements of each scheme.

From that moment, the limitation of the public pension ceiling will be an important basis for further development of private pension systems in our country. This limit defines the ideological and institutional conditions to encourage private supplementary pensions which led, ultimately, to the formation of a new and important economic sector in our country. This implies the redistribution of responsibilities and action on social protection between the public and private sectors, just as was being done in other European countries.

The origin of this complement to retirement pension, based on the final savings managed by the private sector, was already provided since the signing of the Moncloa Agreements, which specifically raised the enactment of a law on private pensions. But it was not until 1987, with the enactment of the Law 8/1987 on Regulation of Plans and Pension Funds (valid until December 14th, 2002) when it becomes reality. Preceded by countless controversies, the law itself was described as interventionist, inconsistent and, especially, was surrounded by a large technical and terminological confusion. From the preamble, it was noted that there was in the Spanish legislation specific regulation on plans and pension funds, limiting our legislation to scattered rules which referred to social welfare institutions that looked, if anything, isolated aspects. It was intended, therefore, to correct this absence and also institutionalize a form of saving "of growing social demand regulation and control by the Administration. This is incorporated into our reality positively proven experience in most developed countries, especially in recent decades"¹².

By the end of 1988, the promoters of private pension funds estimated at around a billion pesetas (6,000 million euros) the total amount that would be placed by individuals in individual pension plans in the next five years. Finally, the figure was lower, rising to the 3,786 million euros, with a number of participants in number slightly over a million people¹³. In those first years of the private pension plans, there was a greater emphasis on commercial entities in the individual system, which is managed on the breeding ground for greater awareness of the population, probably the high income population, that was affected by the introduction of the public pension ceiling and further consolidated by repetitive messages of politicians and media in reference to the deficit in the Social Security system and the desirability of supplementing pensions through the new pension plans, as a result of retirement savings, to which undoubtedly the clearly favorable tax conditions thereof joined the rest of the products on the market¹⁴.

¹² Reasons of Law 8/1987 (June 8th), of Regulatory Plans and Pension Funds.

¹³ Data in 12/31/1993, from the fund assets of individual pensions of Inverco (www.inverco.es).

¹⁴ The fact that most contributed to the initially take up of pension plans in our country was the deductibility of the amounts paid, within a limit. Thus, in the period 1987-1991, the participants could deduct in the tax base the contributions made to a ceiling of 500,000 pesetas (3,000 euros) or 15% of its net income from work, professional or artistic. From the year 1989, when the separate marriages income was introduced, the limit was applied by taxpayer rather than by declaration statement. Excess up to 750,000 pesetas (4,500 euros) could be deducted by 15% of the amount of tax payable.

III. LOSS OF VALUE OF THE MAXIMUM PENSION IN THE PERIOD 2011-2014

Since the late nineties, the increase in public pension system, including the maximum pension, was carried out in line with inflation. The November Consumer Price Index (CPI) for the previous year was compared to the November CPI for the fiscal year, and if the real November CPI was higher than the expected, pensioners would receive the difference in a single payment the following year, that guaranteed not to lose purchasing power. These were years in which the continued growth of the Spanish economy and of the social contributions which financed the system, together with a controlled inflation rate (with a maximum of 4.1% in 2000 and 2007) helped to keep the amounts of the pension updated as the price increase¹⁵. The growth trend of the maximum contribution base for that period was similar, with increases of around 2-3%, so the monetary difference between the two magnitudes was maintained without major changes.

However, the year 2009 already showed the first signs of the impact of the economic crisis on the accounts of Social Security. In this year the income of the pension system was reduced prominently because of the fall in contribution due to the effects of unemployment. In addition, the sharp slowdown in the economy was reflected in the inflation, only 0.3% compared to 2% expected in the corresponding Law on State Budget, so that pensions earned the corresponding purchasing power. In 2010 the impact of the crisis on Social Security contributions that finance the system was higher, while system costs were still increasing by the raise in the number of pensioners, the replacement effect and the pension increases that reached 2.3% annual change in November¹⁶.

In that month of May 2010, the socialist government presented in the Congress the highest reduction of public spending package in the recent history of Spain, that included, among other measures, freezing pensions spending: the Royal-Decree-Law (RDL) 8/2010, May 20th of Extraordinary Measures to Reduce the Public Deficit¹⁷, which allowed the introduction of extraordinary measures to reduce the public deficit, and it was embodied in the Law 39/2010 of December 22th on the General State Budget for 2011. These regulations produced that the contributory pensions were not revaluated in 2011, with the exception of the minimum pensions, the non-contributory ones and the extinguished SOVI¹⁸. The amount of the maximum pension, like in the previous year 2010, was established at 2,497.91 euros, while

¹⁵ The maximum pension was 2,497.91 euros in 2010 compared to a maximum contribution base of 3,198 euros.

¹⁶ The government had tried to be prudent (having seen the evolution of the previous year) establishing a forecast inflation of 1%, so they had to pay a compensation payment of 1.3%.

¹⁷ Its article 4.1 suspended in the year 2011 the implementation of the provisions of the article 48.1.1 of the General Law on Social Security, that is, the adjustment of pensions of Social Security in its contributory modality.

¹⁸ This revaluation was initially 1%. Subsequently, an additional payment for those receiving minimum supplements received in one payment, before April 1st, 2012, an amount equal to the difference between the pension received in 2011 and that would have corresponded to be applied the increase of 2.9% to the minimum amounts of such pensions.

the maximum contribution base was increased by 1%. This meant that all contributory pensions in that year lost 2.9% purchasing power.

The suspension of the provisions of the article 48.1.1 of the Social Security Law for contributory pensions in 2012, confirmed the recess in practice of the model of public pension revaluation based on the CPI. On December 30th 2011 the Government approved the Royal Decree-Law 20/2011 of December 30th on Urgent Budgetary, Tax and Financial Measures to Correct the Deficit Decree-Law, which, among other things, stopped the update of the pension based on annual CPI, introducing an overall increase of 1%, which in principle was the CPI estimated in late 2011 for the following year. However, a new purchasing power loss occurs again, because the real the annual CPI of the period stood at 2.9%. With the rise of 1%, the maximum pension reached 2,522.89 euros in the year, coinciding with the increase approved for the maximum contribution bases. For its part, the Royal Decree-Law 28/2012 of November 30th, on Measures to Consolidate and Guarantee Social Security System, did not allow again the compensation of the revaluation applied in 2012, because it leaved without effect for that year the pensions update under the terms provided in paragraph 1.1 of the article 48 of the LGSS and the paragraph 1 of the article 27 of the TRLCPE (State Passive Classes Law).

That same RDL established a general increase of 1% in the amount of public pensions for 2013, and an additional 1% increase to all pensions that do not exceed 1,000 euros or 14,000 euros per month on a yearly basis. The maximum pension was set 2,548.12 euros and part of the purchasing power lost in previous years was recovered because the annual CPI in November 2013 was 0.2%. However, the maximum contribution base had an increase of 5% to reach 3,425.70 euros per month, which greatly enlarged the monetary difference between the maximum contribution limit and the public pension. The same pattern was repeated in the following year, in line with the search for additional resources from the government to try to keep the funding of the system¹⁹.

¹⁹ Given the complex economic situation of the Social Security system arising from the aging population, the increasing of system costs and severe drop in revenue, the 27/2011, of August 1st, was established. This Law is the resulting from the "Social and Economic Agreement" (ASE) of February 2nd, 2011, between the government and social partners, based on parliamentary approval in January 2011 of the renewal of the Toledo Agreement. The Law was "suitable and imposed from the European Union and supported by social consensus", and develops the lines drawn by the *Green Paper of the European Union July 7th, 2010, looking after European pension systems adequate and sustainable, within the 2020 Strategy*. See LOPEZ CUMBRE, L.: "La reforma de la Seguridad Social de 2011: exigida por los mercados, necesaria para el Estado" ["The 2011 reform of Social Security: required by the markets, necessary for the state"], *Revista General de Derecho de Trabajo y de la Seguridad Social*, Extraordinary monograph on the reform of the Social Security System by Law 27/2011, of August 1st, number 29-30, 2012. This Law has had undergone changes both before entering into force (by RDL 29/2012) and later (RDL 5/2013). The approved measures are, among others, the delay of the retirement age to 67 years, and the incentives to delay retirement age and raising the last 25 years of contributions to the determination of the base. In addition, a new figure, the Sustainability Factor, is introduced to adjust the amount of pensions to the evolution of life expectancy.

Given the worsening financial situation of the Social Security in recent years, which has to repeatedly resort to the Reserve Fund of Social Security in order to meet current pension payments, the legislator has introduced a new reform of the public pension system following the recent regulation of Law 27/2011, of August 1st, on Update, Adaptation and Modernization of the Social Security System. This Law advances the application of the Sustainability Factor in 2019. But also proposes a new mechanism to increase pensions, which definitively stop linking to the CPI. The arguing for this changes are again the demographic and economic problems outlined above. From January 1st 2014, there is a new index mainly linked to the evolution of revenues and expenses of the system.

This new regulation was embedded in the Law 23/2013 of December 23rd, regulating the Sustainability Factor Index and the Revaluation Index of the pension system of the Social Security²⁰. The regulation on the new system of pension increases is contained in Chapter II of the Law, in a single article (number 7), which makes a new wording of the Article 48 of the General Social Security Law. Furthermore, the application of the Revaluation Index in determining the amount of the pension scheme is extended to the State Passive Classes modified for this purpose its regulatory law (new wording of article 27, final disposition 3rd).

The new law introduces an adjustment mechanism that aims to be automatic and tries to prevent unsustainable budgetary imbalances. The new revaluation index, applied annually, ensures that in a deficit situation, like the deficit in the last years to nowadays, pension spending will grow at a slower rate than the system revenues, so that the pension budget deficit will decrease gradually to eventually reach a balanced budget. Untying the adjustment of pensions to the CPI implies a decline in the purchasing power of pensions in the current situation, whereas in times of economic boom could increase the pension above the CPI²¹. The revaluation index, as set out in the General Government Budget Law for each state fiscal year, is calculated using a complex mathematical formula that contains a number of endogenous variables of the system (expenses, income and number of contributory pensioners, etc.)²² to determine the annual increase, after estimating more than half of its variables, which adds some uncertainty and discretion to the final result. This annual increase cannot be less than 0.25% or greater than the variation CPI in the previous year period to December of the reference year plus 0.50%.

²⁰ This law has its origin in the report of the Committee of Independent Experts commissioned by the Rajoy's government in the Royal-Decree-Law 5/2013, of March 15th, of Measures to Promote the Continuity of the Working Lives of Older Workers and Promote Active Aging. This report, submitted in June 2013, introduces for the first time the Annual Revaluation Factor "with the primary objective of ensuring the budgetary balance and the financial sustainability of the Social Security system" (amendment to Article 18.3 of the Organic Law 2/2012 of Budgetary Stability and Financial Sustainability).

²¹ Other options were proposed in order to obtain an index other than the CPI revaluation, such as general economic developments, the behavior of the Social Security contributions, or wage growth. In the end, these options were not considered.

²² The formula includes a parameter that will "take a value between 0.25 and 0.33" and will be reviewed every five years. During the first five years after the introduction of the Law, the value of the parameter is 0.25.

Derived from the application of the lower limit of this new formula of pension increases, the Royal Decree 1045/2013 of December 27th on Pension Increases System of Social Security and Other Public Benefits for the year 2014²³, established a general adjustment of Social Security pensions of 0.25 percent, including the maximum perception of public pensions. The amount of the maximum pension, once revalued, was limited to the amount of 2,554.49 euros monthly or 35,762.86 euros annually. The same rise and maximum limit was applied to the Passive Classes' pensions²⁴. Once applied this rise of 0.25% for all benefits, the monthly payroll of all contributory pensions amounted in January 2014 to 7,918,000, 3.5% more than in 2013, which is the lowest increase of the statistical series of the Ministry of Employment (which starts in 1981). So it could be partially slowed the increased pension expense. As inflation has moved during 2014 in negative rates, there was no loss of purchasing power for pensioners, if not a small profit.

Government forecasts indicate that the new revaluation formula will takes effect for the first time during 2015, thus for the revaluation of 2016, because in 2014 the formula operated directly by the lower limit and, according to the draft State budget for that period, pensions will be revalued again to 0.25% in 2016²⁵. The law states that data values used by the Government to determine the rate revaluation of the applicable pensions will be forwarded to the Independent Fiscal Responsibility Authority²⁶ each year, in addition to be made public together with the documents of the Law Project on General State Budget that the Government presents annually.

IV. EGAL LIMIT AND SCOPE OF THE MAXIMUM LIMIT

It is imperative at this point to make an approach to the legal concept of pension ceiling and define its true dimensions and consistency within the system of public benefits. This legal limitation is traditional in our public pension system and, as discussed below, acts exclusively on the maximum amount. Traditional in the sense that it has been regulating annually since 1983 in successive Law on State Budget and was subsequently picked up by Article 47 of the TRLGSS (General Social Security Law) which provides that "the initial amount of contributory pension Social Security for each beneficiary shall not exceed the full monthly amount established annually by the relevant Law on State Budget". As for the system of Pensioners, the limitation is embodied in Article 27.3 of Legislative Decree 670/1987, dated 30 April which forwards the initial signaling growth and pension as determined each year by the corresponding Act State Budget .

²³ Law 22/2013 of December 23rd on the General State Budget for 2014, contained within Title IV, the criteria for adjustment of pensions of the Social Security system for that year, setting its revaluation in 0.25 percent.

²⁴ Royal Decree 1043/2013 of December 27th on Pension Revaluation and Supplements of the Passive Classes in 2014.

²⁵ It was already outlined in the Stability Programme sent to Brussels in May 2014 that the pension increases until 2017 will be 0.25%: "The introduction from 2014 of the revaluation factor in the pension system, will increase them by 0.25% during this period".

²⁶ <http://www.airef.es/>

This limitation refers to public pensions, concept provided by the Article 37 of Law 4/1990 of June 29, 1990 law of State Budget and amended by Law 62/2003 of 30 December on fiscal, administrative and social²⁷ order in the Tenth Additional Provision, modifying the concept of "public pensions". For this purpose provides in paragraph 2: "shall not be considered public pension those paid by pension plans employment or group insurance contracts including formalized by mutual welfare business, promoted by administrations, agencies, entities and enterprises, the second refers disposal of the Consolidated Act Regulating Pension Plans and Funds, approved by Royal Decree Legislative 1/2002, of November 29th, and on the terms herein specified". The limit does not affect other benefits, such as subsidies, allowances, lump sum amounts. Therefore it acts only on the annuity obligations of a public nature, not affecting those of transitory or all at once amounts, and nor does affect on private pensions (pension, insurance groups).

Also it refers to a numerical limit, no percentage, based on a raw amount, as tax deductions (withholding income tax) and others that are mandatory occurs once established the amount prescribed by law²⁸. The relevant law of State Budget sets the ceiling to receive monthly or yearly. Therefore, in cases of changes of the number of monthly payments in less or more compared to the current fourteen, it must be adapted and quantitatively identify the monthly ceiling, which may differ from the established. However it couldn't be overcome the annual ceiling.

The limit is of temporary nature coincident with the current Law of State Budget that sets it so that, in principle, the limit is revised upwards in the following years, releasing the amounts subject to limitation. And this arises because the limitation is established on the perception of pensions and not on the generated right, which is recognized but is not payable on the full amount. The excess of the pension is not perceived by the subject, but is waiting for further changes in the amount of the ceiling to enable it to emerge and be rehabilitated²⁹ so that it is fully or partially not limited. When there is more than one pension the ceilings also act, regardless of whether the contingency covered is common (retirement, permanent disability and survival arising from common illness or non-work accident) or due to professional contingencies (permanent disability and survival derived from accident at work / act of

²⁷ Published in BOE (Official State Bulletin), nº 313, December 31st 2003.

²⁸ This fact has been subject of several controversies, which has led to various court rulings, as will be seen later.

²⁹ It is called rehabilitation to the legal act that consist on raising the amount of pension that was suspended in whole or in part, as a result of the previous limit until the indication of the full pension and therefore does not exceed the new limit.

service or occupational disease³⁰). In addition, the limit reaches both contributory and non-contributory pensions³¹.

Regarding the type of pension received, the ceiling also makes no distinction between "self" pension, those in which the beneficiary is responsible (retirement and permanent disability), and pensions "derivative", those in which the beneficiary or subject causes are different people, but generally united by ties of family relationship or cohabitation (widows, orphans). As in self pensions, derivate pensions are limited with no priority over each other³². When the same beneficiary receives several simultaneously pensions caused, the ceiling becomes operational with the elimination or reduction of the amounts of all those public pensions, so they will be reduced proportionately. In the case of concurrent pensions but subsequently caused, the ceiling became operational from the time the sum of the full amount of all them exceeds the annual limits set by the relevant law of State Budget, so that it shall reduce or suppress the full amount of the latter pension caused³³. The general rule of thumb applies in any case of concurrency of pensions, seems to be the proportional deduction with no distinction between pensions, and the formula to realize such a possibility is not articulated in the respective Budget Laws.

Subsequent revaluations of public pensions are also affected by the ceiling, as it is derived from a temporary character limit and its continuous presence in the State Budget. It is the article 49 of the Social Security Law which requires a limit for the annual revaluation of pensions of Social Security, because the amount of annual revaluation cannot be for such pensions, once revalued, an annual value that exceed the amount established in the corresponding law of the State Budget. Similarly, if the same beneficiary receives several pensions, the amount of all of them revalued, shall not exceed the annual limit set by the relevant law of the State Budget. As for Passive Classes, pensions revaluations are articulated in Article 27.3 of Legislative, Decree 670/1987, April 30 April³⁴ and is annually endorsed by the Royal Decree of the correspondent year.

In that sense, the implementation of the ceiling when there is a revaluation, it appears clearly determined in those cases that one holder receives two or more public pensions. So each pension will be revalued by itself, according to the update rules appropriate in each case. If once you have added all the amounts the result exceeds the maximum annual perceptible, also updated, if that it is so, will be reduced proportionately all concurrent pensions. In the

³⁰ Remember that Social Security pensions can be accumulated, for example retirement pension and widow's pension, but the sum of all of them may also not exceed the maximum limits.

³¹ If the additional pension has its origin in the private sector this rule does not apply, receiving the additional pension entirely.

³² COMAS BARCELÓ, A.: *El tope máximo de las pensiones en el sistema de la Seguridad Social: una limitación injusta* [The ceiling of pensions in the Social Security system: an unfair limitation], ..., cit., p. 58.

³³ Only if it was exempt income (derived, for example, terrorist acts), and at the request of the holder, will proceed to deduct or suppress the pension that the person concerned would have caused earlier.

³⁴ Consolidated Law on State Pensioners.

event that there are public Social Security pensions, revaluated and not revaluated, whose sum exceeded the ceiling, shall be recalculated the revaluations of the pensions, with the objective that the ceiling is not exceeded.

Therefore, when the corresponding budget law provides, the limited pension will recover its amount fully or partially to the extent permitted by the Act State Budget, replacing the previous, as the suspension or reduction of the amount of the initial public pensions does not mean in any way decrease or loss of the attached rights to the recognition of pensions. It is therefore a limitation of the payment, not the pension and this applies to revaluations, which they are normally only measures to preserve long-term economic value of benefits (Article 48 of the General Social Security Act and section 11 of the Toledo Agreement). As discussed below, the original thesis defended by the Management Entity of the Social Security (INSS) estimate that the limit was permanent operating for both the initial signaling to the revaluation, so the initial ceiling that would have affected the pensioner should not be updated in any case, even when the validity of the Budget Law of the State had expired and set a new ceiling in subsequent Budget Law.

This maximum limit of perception of public pensions has several exceptions to its application, the most important, between them, the special pensions caused by acts of terrorism (article 51 LGSS), Originally established by the twenty-second additional provision of Law 44/1983, December 28th, and affecting both pensions of Passive Classes as those recognized by the Social Security caused by such acts. They are also not affected by the limit, as we saw in the previous section, pensions caused by Passive Classes before January 1st 1983³⁵, and to those relating to the Social Security system³⁶ (before January 1st 1984), that exceeded the first limit of 187,950 pesetas a month in both regimes, because Budget Laws of the State that established these ceilings are not retroactive³⁷.

In addition there is an exception that affects severe disability, because this pension is subject to the ceilings. The exception is referred to the increase of 50 per 100 in the event of severe disability in both its original determination and on revaluation, so this increase "is actually a benefit for welfare in order to "disabled person can compensate the carer"³⁸. The analyzed exclusion is the result of a judicial interpretation³⁹ which came to correct the administrative practice of computing together the amount of the pension and that involved an increase of 50

³⁵ Law 9/1983, 13th July.

³⁶ Law 44/1983 of 28th December.

³⁷ This not retroactive involvement was confirmed by the judgments of the Supreme Court of 10/12/ and 2/15/1988 and the Constitutional Court of 07/21/1987.

³⁸ This exception evidence its welfare nature, legally admitting their possible replacement by direct attention to the great invalid, by its placement in an appropriate care institution and by the Social Security, in accordance with Article 139.4 LGSS.

³⁹ By RD 1584/1988 December 29th on pension revaluation system of Social Security for 1989 (art. 2^o.4).

per 100 (welfare nature) to apply the absolute limit of what is perceptible by the beneficiary⁴⁰.

It is also an exception which is beyond the maximum limit, the one that referred to the case of surcharge of benefits arising from business violations of the rules of safety and occupational health. This charge, in the amount to be set by the INSS⁴¹, reviewable before the social jurisdiction, has not a provision nature but punitive by the businessmen that violates rules, being responsible of paying the surcharge (Article 123.2 LGSS). The fact that the surcharge represents an improvement in the benefits provided to the beneficiary (30-50 per 100), does not change the nature of compensation and accompanying sanction, so it should not conceptualize itself as a benefit, and it would be unacceptable the reduction in the amount by the limiting effects of the ceiling.

The last exception refers to those affected by Law 52/2003 of December 10th on specific provisions concerning Social Security (Official State Bulletin (BOE), December 11th 2003), which it stipulates incompatible to receive the orphan's pension for orphans aged 18 and older and disabled for all work, alongside the perception of the economic allocation for each dependent child older than 18 and disabled to a degree of disability equal to or greater than 65 percent. Due to the public outcry by reduced economic resources for many disabled people and trying to mitigate such inconsistency, the Government was corrected by Royal Decree 364/2004, of 5 March, of improving orphans' pensions for disabled (BOE, March 6th 2004), by increasing the orphan's pension in the amount of the household allowance for dependent children that corresponded to the degree of disability⁴², that was in effect until such Royal Decree was revoked the Law 8/2005, of June 6th, from whose validity, July 1st 2005, the previously referred inconsistency is removed, so the perception of both aggregate benefits is no longer subject to the ceiling.

4.1. Extending working life: effects on the maximum limit

Ordinary pensions of the general scheme of Social Security may also exceed the upper limit of the pension set at the general state budget each year. The objective is to encourage the general extension of the effective retirement beyond age 65. This objective started in the 2002's reform through Law 35/2002, where the possibility of increasing the retirement pension was introduced, over 100% of the base pension, allowing adding a percentage of 2% additional to the base, per year traded above 65, provided that accredit 35 years of contributions. The problem was that a long career of contributions is required, and sometimes

⁴⁰ The INSS, in its circular no. 4/1984, of February 9th, Section 3.3, indicates that way.

⁴¹ Criteria 1992-1928: to be computed as a surcharge and not as pension, does not apply the pension ceiling set in the laws of the State budget.

⁴² The measure was also applicable to orphans' pensions of Passive Classes, as established by the sole additional provision of Royal Decree.

the benefit pensioner had no impact on the worker, due to the existence of the maximum state pension, which could not be overcome.

From January 1st, 2008, as a result of the amendment introduced by Article 3.4 of Law 40/2007 of 4 December 4th, on Social Security Reform on Article 163.2 of the General Social Security Act, it was established that when one worker older than 65 acceded to the retirement pension, and provided to met the minimum contribution period required when he or she was 65, it would recognize the person concerned an additional percentage for each full year quoted (or legally quoted) between the date on which he or she fulfilled that age and the triggering event of the pension (retirement date). The increase of 2% additional per year traded was maintained above 65th birthday, but without requiring the minimum of 35 years of contributions and, in addition, the percentage increased to 3%, in cases of 40 years of contributions at the time of their 65th birthday by the pensioner. The real highlight of this reform was that, for the first time, it could be exceeded the limit, being replaced in such cases by the maximum contribution limit that coincides besides with the maximum contribution base. Therefore it recognizes the existence in our law of another limit on the amount of the retirement pension in the maximum amount of the contribution base. The existence of an initial limit on the amount of pension to receive results from Article 120.2 of the General Social Security Law currently in force and included in Title II and referred to the General Regime, which specifies: "In any case, the base of each regulatory provision may not exceed the ceiling which, for the purposes of contribution base, is provided for in Article 110"⁴³.

The additional percentage obtained will be added to that generally corresponded to the pensioner, applying it the resulting percentage to the respective regulatory base in order to determine the amount of the pension, which may not in any case exceed the limit laid down in Article 47. In the event that the amount of the recognized pension reaches the maximum limit without applying the additional percentage or only partially applying it, the applicant will have, in addition, the right to receive annually an amount derived to apply each additional percentage point not used to determine the pension amount to the amount of the current limit, rounded to the nearest whole excess. This amount shall accrue monthly in arrears and will be paid in 14 payments. However, the sum of the amount and the pension or pensions that have been recognized to the pensioner, calculated annually, may not exceed the amount of the ceiling on the basis of quote force at the time, also calculated annually. Since this amount is additional to the pension, but it has no the nature of a retirement pension, is not subject to automatic revaluation, as the retirement pension.

After the law 27/2011, the previous regulation keeps, regarding the additional percentage is added to that generally corresponds to the pensioner for purposes of determining the amount of the pension, which may not in any case exceed the limit set in Article 47. Indeed, in order to make the necessary reforms in the structure of the security system that would ensure

⁴³ This limit was set for the first time in Article 89.2 of the General Social Security Law of 1974.

financial sustainability, the extensive Law 27/2011 was published, on August 1st, on Update, Adaptation and Modernization of Security Social (made from the agreement of Government and Unions on February 2011). One of the main objectives of the Law was again extending working life by means of delaying the age for retirement, discouraging early retirement, and promoting the continued employment of those who lose their jobs in the last stages and those who wish to remain active beyond the legal age. Article 4 deals with the most known change when modifying the legal regime of the pension issue, since it provides the age of 67 years for access to retirement, while maintaining the same at 65 for those who have contributed for 38 years and six months.

Thus, Article 4.5 of this Law, amended the abovementioned regulation, changing the article 163 of the Social Security Law as follows:

"When you go to a retirement pension at a higher age than the result of the application in each case of subparagraph a) of paragraph 1 of article 161 (from 2013, later retirement will no longer be the one to which is reached after 65 years of age, but the one to which is accessed after the legal standard retirement age of each employee, be it age 67 or age 65 with 38.5 years quotation, or an intermediate age between them under the Social Security Law transitory provision 20^a), provided to meet this age would have met the minimum contribution period established in point b) of that paragraph, the person concerned shall be recognized an additional percentage for each full year quoted from the date on which fulfilled that age and the triggering event of the pension, the amount of which will depend on the years of credited on the first of the dates indicated price, according to the following scale:

Up to 25 years of contributions, 2%

Between 25 and 37 years of contributions, 2.75%

After 37 years of contributions, 4%".

It should be noted that although in the above situation increases were 2% or 3%, and now become 2%, 2.75% and 4%, in fact, as stated by Monereo Perez and Maldonado, only workers with a full career will be provided with real incentives, that is, for those who have traded 38 years⁴⁴. Moreover, the benefit established in this section does not apply in cases of partial or flexible retirement provided in the second subparagraph of paragraph 1 of Article 165. The early retired cannot achieve maximum pension in any case. Section 3 provides that if a worker accepts a voluntary early retirement (because he was at least 63 years of age and has 33 years of contributions), after applying the reduction coefficients established (the 1.875% per quarter or part if he or she has less than 38 years and six months traded, or 1.625% per quarter or part, if he or she has traded more than 38 years and six months), the result is a pension higher than the maximum pension, but he or she will not receive this

⁴⁴ MONEREO PÉREZ, J.L. and MALDONADO MOLINA, J.A.: "La reforma de jubilación" ["The pension reform"], *Revista General de Derecho de Trabajo y de la Seguridad Social*, Special Issue monograph on the reform of the Social Security System Law 27/2011, August 1st, nº: 29-30, 2012, p. 84.

maximum pension. In this case the pension will be reduced at least 0.25% of the maximum pension for each quarter or fraction ahead retirement.

In the case of partial retirement and according to STS March 21st, 2011 (Rec. 2396/2010) should not increase the rate provided for in Article 163.2 LGSS for the pensioner who retired with 68 years old, from simultaneous situation with 65 years old, of partial retirement and part-time work, because he or she does not met in this case the requirement of full years of contributions which can be increased to 100% of the regulatory basis after 65 years and with more than 40 years of pension contribution. However, those "full years" can be integrated crediting the contribution of at least one year, calculated in the manner permitted by Article 3 of RD 1131/2002 for part-time workers⁴⁵.

⁴⁵ According to Monereo and Maldonado, it is not possible to consider that the worker continues to work part-time and receiving partial retirement as a contributor for each full year when he or she really is not but because of the time worked, since this would mean a fictitious elevation, unsupported with the real quote, of the percentage of increase to be applied to the calculation basis without normative justification. MONEREO PÉREZ, J.L. and MALDONADO MOLINA, J.A.: "La reforma de jubilación" ["The pension reform"], *Revista General de Derecho de Trabajo y de la Seguridad Social*,... ,*cit.*