

Federal Regional Court of the 1st Region
Office 05 - Federal Judge ANGELA CATÃO
PROCESS: 1011155-68.2017.4.01.3800
REFERENCE PROCESS: 1011155-68.2017.4.01.3800
CLASS: CIVIL APPEAL (198)
ACTIVE PARTY: WILLY FONSECA TEMPEL
ACTIVE PARTY REPRESENTATIVE(S): JOAO RODOLPHO DE ARAUJO MATTOS
- SC33026-A
PASSIVE PARTY: NATIONAL INSTITUTE OF SOCIAL SECURITY
DECISION

This is an extraordinary appeal filed by the plaintiff against a judgment of this Regional Federal Court, which denied her request for readjustment of the value of the social security benefit to the new ceilings established by constitutional amendments 20/98 and 41/03. The appellant alleges violation of articles 14, of EC 20/1998, and 5, of EC 41/2003, as well as the understanding established under the systematic repetition of resources in the judgment of RE No. 564.354/SE; since the plaintiff would have had her RMI limited to the lowest social security ceiling established at the time of the granting of her retirement, prior to the 1988 Federal Constitution.

In short, this is the report.

I decide.

The Supreme Federal Court, in the judgment of RE No. 564.354/SE (Theme 76), established the understanding that "The perfect legal act is not offended by the immediate application of art. 14 of Constitutional Amendment 20/1998 and art. 5 of Constitutional Amendment 41/2003 to social security benefits limited to the ceiling of the general social security regime established before the entry into force of these norms, so that they come to observe the new constitutional ceiling".

In this case, the appealed judgment did not apply the revision resulting from the change in the ceilings established in Constitutional Amendments 20/1998 and 41/2003, on the grounds that the plaintiff's benefit did not suffer a ceiling limitation at the time it was granted.

The appellant argues that her social security benefit, granted before the 1988 Federal Constitution, was limited by the lowest ceiling value in force on the grant date. She alleges that, at the time, there were two social security ceilings used in the calculation criteria and that, although the higher ceiling did not limit the benefit in question, there was a reduction in the RMI value because the lower ceiling was exceeded, which is why the readjustments resulting from the changes promoted by Constitutional Amendments 20 and 41 would be due.

Therefore, it is verified that the case under analysis does not deal with the simple application of the understanding consolidated in RE No. 564.354/SE, but whether the changes in the ceiling values promoted by EC's 20 and 41 would have a reflection in the calculation of the RMI that suffered a reduction due to the lower ceiling value established at the time of the granting of the benefit.

In addition, in the jurisprudence of the STF, "no time limits related to the date of commencement of the benefit were set, which is why the understanding extends to benefits granted before the 1988 Federal Constitution, provided that they have suffered a ceiling limitation". (RE 1100152 ED-AgR, Reporter: Min. ALEXANDRE DE MORAES, First Panel, decided on 11/12/2018, ELECTRONIC PROCESS DJe-247 DIVULG 20-11-2018 PUBLIC 21-11-2018 REPUBLICATION: DJeNum. 234529037 - Page 1 Signed electronically by: ANGELA MARIA CATAO ALVES - 06/29/2022 09:42:09 <https://portal.trf6.jus.br/consulta-processual/> Document number: 22062715300637900000229094477 (e-STJ Fl.287) Electronic document attached to the process on 06/06/2023 at 10:43:16 by