Transnational European Social Rights

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As everyone knows, the first legal act of general importance issued by the EEC and established by regulations nrs.3/4 of 1958 dealt with social security coordination. It symbolizes that the EU started under EEC law as a legal order with an emphasis on social security and its coordination.

Was this the hallmark of an emerging European social policy? Most observers might disagree, but truly this was an overwhelming starting point – and not only a more symbolic initiative or even more a social decoration for a new common or single market. The first EEC legislation represents a piece of legislation, which did not only establish European social security coordination, but by doing this European social legislation in substance.

For legal scholars EU coordination law fascinates, not only due to its very obvious social benefits, which it brings about towards their addressees: migrants, frontier workers, tourists, ERASMUS students - which are all supported and protected on this very basis. Apart from its advantageous and social benevolent side, coordination symbolizes a category of social rights, which is unknown and not yet explored by the conventional legal thinking. This is, however, a very deplorable short-coming, as it unveils an intellectual backwardness of the conventional legal doctrines on EU social security coordination law!

EU-coordination creates genuine European social security rights by combining EU-law with Member States' provisions on social security. Our seminar was about the aggregation of periods of coverage and transnational help in work accident and health insurance. The protection of frontier workers in unemployment insurance is the further issue of EU-Social security coordination Law.

Whenever we talk about these provisions, we reflect upon entitlements in social security emerging from the law of the competent state in relation with EU-law and social security law of other Member States.

Aggregation of periods of coverage deal with coverage under the law of the competent state and the EU-law commitment to aggregate periods covered under the law of another Member State. When doing this, two calculations are provided for – one the national history of the calculating state and the other on the international career. The payable amounts are to be identified and the higher is to be paid – a preferential treatment in substance takes place!

When we reflect on transnational help in kind, an entitlement to care under the law of the competent state with an EU-law provision becomes relevant in respect of services provided of health care or work accident care schemes of other Member States and the rules – established in EU law to compensate the service providers for their service rendered to the beneficiaries under EU law. When unemployment insurance protection has to be determined for frontier workers, the EU law provides for protection under the law of the workers' residence for work done in another Member State of employment. The state of residence protects, the state of former employments profited from the contributions, and is, hence, liable to compensate the resident's state system for the expenditures in favour of the unemployed former frontier worker.

These creations are made by EU-law and would not bring about any entitlement without EU-law. Insofar, these transnational social security rights are genuine creations of EU-law, because they cannot be substituted by national law.

These examples do not only proof the very existence of genuine substantive EU-law social rights, but they help us also to understand the underlying constructive plan of forming genuine EU social rights by EU social security coordination law on the basis of the social security legislation of the Member States.

These rights are not only enshrined in EU law, but due to EU social security law of different Member States are interrelated with one another. All these rights on aggregation, help in kind or protection for frontier workers are embedded in the legislation of the competent state. But due to EU-law the competent state gives entitlements it would not provide for without EU-law: aggregating of periods of coverage, mutual transnational help and protection in the case of unemployment without a previous coverage under the unemployment insurance law of the competent state. Under EU- law entitlements mature under the law of the competent state, the latter does not provide for.

The EU-law requirement to aggregate periods of coverage gives rise to pensions, the competent state does not foresee, i. e. benefits based partially on coverage under the law of another Member State. The right to health – enshrined in the law of the competent state - is limited to treatments of their service providers. The EU-Law widens the service providers' spectrum to those of other member States. If EU-law protects frontier workers under the law of their residents for work done in other Member States, it entitles the frontier worker to rights, which are only given by EU-law and not by the law of the residing state.

EU-Coordination law is not only about the determination of the applicable law. This is one of its components, but the emphasis lies on the substantive law side. Choice of law rules (Article 12- 16 of the reg.883/2004) are only one component of coordination law, much more important is the second component – what I tried to describe as the making of national law entitlements becoming internationally effective.

This second task is the decisive one for coordination. It creates transnational substantive entitlements by transforming national entitlements into transnational European ones.The conventional saying, that EU coordinates the social security systems of the Member States is, hence, a misrepresentation – with far reaching intellectual consequences, as it, neglects fundamentally, that the EU creates by coordination law out of social security law provisions of the Member States new substantive social security provisions – embedded in both the EU- and the Member States' laws!