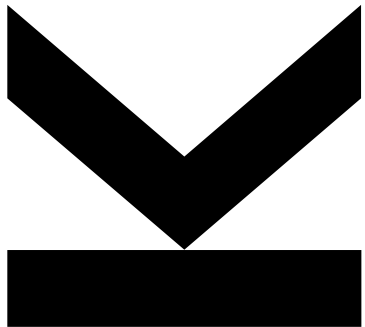


Minimum income in old age The example of AUSTRIA



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Agenda

- 1.) The **COMPENSATORY SUPPLEMENT** (“*Ausgleichszulage*”): brief insight into Austrian legislation
- 2.) The **problem of classification** of the compensatory supplement under EU Law
- 3.) Three **specific problems**
 - 3.1.) The concept of **residence**
 - 3.2.) The **export** obligation
 - 3.3.) The **compatibility with other benefits** (long-term care benefits)
- 4.) Conclusions

Compensatory Supplement

1) National legislation

- *Ausgleichszulage* = **Compensatory Supplement** (Section 292 General Social Insurance Act/*Allgemeines Sozialversicherungsgesetz*)
- **Benefit for pensioners**
 - **habitually and legally residing** in Austria
 - whose pension together with other income **does not exceed a certain threshold**
 - i.e. Euro 1.030,49 for a single person for the year 2022
- Difference between the pension and the threshold = amount of compensatory supplement
- Personal scope is limited to pensioners (old age and invalidity)
- **No minimum pension *stricto sensu***, but “**topping up**” of an existing pension that is insufficient
- Threshold for a compensatory supplement (*Ausgleichszulagenrichtsatz*) **guarantees a minimum level of subsistence** (cf also social assistance)
- **Solely “income-tested”, not means-tested** (vs. social assistance)

Compensatory Supplement

1) National legislation

- **Classification under national legislation is not clear**
- **Elements of social assistance:** social need, income-tested
- **Elements of social insurance:** linked to pension benefits, not means-tested
- Austrian Constitutional Court (*Verfassungsgerichtshof*):
 - compensatory supplement **builds an integrative part of the mandatory pension insurance system**
 - must be considered a **social insurance benefit**
 - **qualification is not opposed** to the legal requirement that solely pensioners who are **residing in Austria** are entitled to compensatory supplement

Compensatory Supplement

2) Classification under EU Law

- Differentiation between social security benefits and social assistance is also decisive for the application of Reg 883/2004
- Third category: **special non-contributory benefits (SNCB)**
- **Compensatory supplement** was considered from the very beginning a **SNCB** (Annex IIa, now Annex X)
- Classification has been approved by the ECJ in the **Skalka case** (C-160/02)
 - compensatory supplement must be classified as a '**special benefit**' (tops up a pension, but intends to ensure a minimum level of means at the same time)
 - and '**non-contributory**'
- The classification as SNCB has the consequence that the compensatory supplement **does not underlie the export obligation** (Art 7 Reg 888/2004)

Compensatory Supplement

3.1.) The problem of residence

- Entitlement to compensatory supplement is **contingent upon residence in Austria**
- **Since 2010**: claimants must prove that they are **habitually and lawfully residing** in Austria
- In addition: the requirements to achieve the **right of residence** were tightened
 - Persons who are not pursuing employment are only entitled to reside in Austria for periods longer than three months if they can **prove sufficient resources** so that they are **not dependent on** social assistance benefits or **compensatory supplements** during their stay
- Contrary to the **concept of residence according to Reg 883/2004?**
- **ECJ Brey case** (C-140/12)
 - SNCB may be classified as **social assistance in the sense of Dir 2004/38**
 - Application of economically inactive for SNCB might result in an **unreasonable burden** on the social assistance system of the host Member State
 - authorities must carry out an **overall assessment of the specific burden**

Compensatory Supplement

3.1.) The problem of residence

- How should such an overall assessment be operated in practice?
- ECJ in the *Dano case* (C-333/13) and later on in the *Alimanovic case* (C-67/14) abstained from such an overall assessment
- **Change in the jurisdiction?**
- Austrian Supreme Court draws the conclusion that neither the Residence Directive nor the Coordination Regulation requires such an overall assessment
- Therefore the requirement to perform an **overall assessment is not applied** about the compensatory supplement **in practice**
- **Is the situation** of Mrs. *Dano* and Mrs. *Alimanovic* in fact **comparable** to the situation of Mr. *Brey*?

Compensatory Supplement

3.2.) The problem of export

- Since 2020 **new benefit: premium** on compensatory supplement = “*Ausgleichszulagenbonus*”
- Recipients of compensatory supplement with a **long history of insurance periods** are entitled to a premium (approx. Euro 150) as long as they are habitually and lawfully residing in Austria
- The **premium itself is**
 - not directly **dependent** on a specific need for means of subsistence
 - but primarily **on the amount of insurance periods**
- Premium follows the **logic of social insurance benefits** and not of social assistance benefits
- The concept of the premium is opposed to the classification as a SNCB
- Premium is **subject to the export obligation** according to Art 7 Reg 883/2004

Compensatory Supplement

3.3.) The problem of compatibility

- Hybrid character of the compensatory supplement creates problems concerning the entitlement to **long-term care cash benefits** (*Bundespflegegeld*)
- Entitlement to *Bundespflegegeld* (long-term care benefit) primarily requires an entitlement to a so-called “basic benefit” (“*Grundleistung*”), that is a **pension benefit**
- Mere **residence** in Austria can constitute an entitlement to *Bundespflegegeld* as well, provided that – since 2015 – Austria is also the **competent State** according to Regulation 883/2004
- In this situation Austria as the state of residence is not the competent state for health care cash benefits, but the MS paying out the pension (SNCB ≠ pension)
- Austrian Supreme Court: in the light of the **rulings of *Hudzinski* and *Wawryzniak*** (C-611/10) a person who fulfills all requirements according to national law must not be denied a benefit just because Austria is not the competent state according to the European Union law
- **Reference** to the legislation applicable according to Reg 883/2004 **shall prevent this outcome**

Conclusions

- Compensatory supplement raises several **different and complex legal issues** which are all ultimately **linked to the problem of classification**
- **Legal consequences** of the classification as a SNCB are **insufficiently determined**
- Mere clarification that the export obligation does not apply is **not enough to tackle the challenges** this category of benefits is creating **in practice**
- That is **highly problematic** because recipients of SNCB are among those who are in need and most dependent of our society

**Thank you very much for
your interest!**

