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MINIMUM GUARANTEED PENSION UNDER REGULATION OF
COORDINATION ON SOCIAL SECURITY SYSTEMS –

THE CASE OF GREECE

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Introduction

- Across Member States, the public pension system often provides a minimum-guaranteed pension to those who do not qualify for the earnings-related scheme or have accrued only a small earnings-related pension → minimum guarantee pensions are usually means-tested and are provided either by a specific minimum pension scheme or through a general social assistance scheme (European Commission 2015)
- It is crucial if a pension benefit (the minimum guaranteed pension) is considered as a social security benefit to be distinguished from social assistance and special non-contributory benefits

Pension benefits in the Coordination Regulation

- A decisive criterion for the implementation of the Regulation is the affiliation to a social security system, even against a single risk → economically non-active persons may be entitled to a pension if national legislation provides for a retirement benefit for such persons, such as a Scandinavian system based on residence (Mavridis 2004, Fuchs, 2015)
- The Court has noted that the term “benefits” is to be understood as meaning, in the widest sense, all pensions, including increments, re-evaluation allowances, or supplementary allowances [Case 1/72, Frilli, para. 17]

Pension benefits as social security benefits

- According to settled case law, a benefit may be regarded as a social security benefit in so far as
 - it is granted to the recipients, without any individual and discretionary assessment of personal needs in the specific situation, based on a legally defined position and
 - relates to one of the risks expressly listed in Article (3) (1) of Regulation 883/2004 (exhaustive list)

[Case C 388/09 da Silva Martins, para. 38; Case 249/83, Hoeckx, paras. 12-14]

Social assistance

- The exclusion of social assistance includes the difficulties of distinguishing between social assistance and social security, taking also into account the fact that Community law also extends to those social benefits and services that do not fall within the scope of the Coordination Regulation (Sakslin 2000)
- The social benefit guaranteeing a minimum means of subsistence in a general manner such as that provided for by the Belgian Law of 7 August 1974 does not fall within the material scope of the Regulation
→ The Belgian minimum subsistence allowance constitutes a social assistance benefit (Case 249/83, Hoeckx, paras 13,15).

Social security benefits exhibiting characteristics of social assistance (1/2)

- One cannot exclude the possibility that because of the persons covered, its objectives, and its method of application, legislation can come close to both the categories of social security and assistance

[Case 24/74, BIASON, para 9; joined cases 379, 380, 381/85 and 93/86, GILETTI, para 9; C-356/89, NEWTON, para 12; Case 249/83, HOECKX, para 12]

- Legislation such as the one in question in the preliminary ruling in the Giletti/Newton/Frilli/Piscitello cases fulfills a dual function:
 - it guarantees a minimum means of subsistence to persons in need and,
 - it provides additional income for the recipients of social security benefits which are inadequate [Tsetoura 2017]

Social security benefits exhibiting characteristics of social assistance (2/2)

- Giletti → the fact that a single law may also provide for advantages that can be classified as assistance cannot alter, for the purposes of Community Law, the intrinsic social security character of a benefit linked to invalidity, old-age, or survivor's pension to which it is an automatic supplement [joined cases 379, 380, 381/85 and 93/86, para 11]
- Piscitello → the Court held that a benefit such as the social pension provided for in Article 26 of Italian Law No 153 of 30 April 1969 to elderly nationals to provide them with minimum means of subsistence must be assimilated to an old-age benefit [Case 139/82, Operative, part 2]
- Levatino → A benefit such as the one of minimum guaranteed income must be regarded as an “old-age benefit” within the meaning of the Regulation (Case C-65/92 para 21)

Special non-contributory cash benefits (1/2)

- Characteristics of both social security law [Article 4 (1) of Reg. 1408/71] and social assistance law [Article 70 (1) of Reg. 883/04]
- The concept of “social security benefit” and the concept of “special non-contributory benefit” are mutually exclusive [Case C-286/03, Hosse, para 36]
- Skalka → the Austrian compensatory supplement that tops up a retirement pension intended to ensure a minimum means of subsistence for its recipient where the pension is insufficient was considered a special non-contributory benefit [Case C-160/02, paras 26-27, 31]

Special non-contributory cash benefits (2/2)

- In some instances, the Court excludes the possibility of making a connection between special non-contributory benefits and the concept of social security benefits within the meaning of Article 4 (1) of Regulation 1408/71 and currently Article 3 (1) of Regulation 883/04 (Hosse, Case C-286/03, para 36)
 - In other instances, the Court, treating said benefits as social assistance, left the door open for them to be indirectly brought within the field of social security to which that Regulation applies, given that they are intended to provide a supplementary, substitute, or ancillary cover against the risks covered by the branches of social security referred to in the material scope of the Regulation (Jauch, Case C-215/99, para 18)
- It is not clear from the case law when a benefit may be considered as relating to both categories of s. s. and s. a. and be a social security benefit, and when a benefit is considered as a special non-contributory benefit (although once again a connection exists with both s.s. and s.a.) and is not a social security benefit

Special non-contributory benefits, residence and Directive 2004/38 (1/2)

- Case C-140/12, Brey: a non-contributory benefit was not granted due to insufficient means of subsistence as a necessary element for legal residence in Austria [Pennings 2016]
- The Court ruled that the concept of social assistance as used in Directive 2004/38 could not be limited to social security benefits which were excluded from the scope of Regulation 883/04
- The balance struck by this decision has been described as vague and inexplicit and is considered to have increased legal uncertainty as to the practical application of EU law [Verschueren 2014]
- The use of social assistance in Directive 2004/38, which has been instrumental in reducing solidarity with European citizens and re-establishing discrimination between working and inactive citizens, becomes a mechanism for verifying the legality of residence because whoever seeks social benefits is supposed to lack sufficient resources [Stergiou 2014]

Special non-contributory benefits, residence and Directive 2004/38 (2/2)

- In *Brey*, the Court considered the benefits in question to be benefits of social assistance for the purposes of Directive 2004/38, while at the same time classifying them as special non-contributory benefits → It is crucial, however, that the special non-contributory benefits bring together characteristics of the social security legislation as mentioned in article 3, par. 1 Reg. 883/04 and of social assistance (article 70, par. 1 Reg. 883/04)
- In Case C 333/13 *Dano* → the Court has confirmed that persons cannot claim a non-contributory benefit unless their residence complies with the requirements of Directive 2004/38 and in case C-67/14 *Alimanovic* → the Court considered the disputed special non-compensatory benefit as social assistance [Pennings 2016]

A pension as a social security benefit or as a special non-contributory benefit (1/2)

- On the one hand in Annex X of Regulation No 883/04 on special non-contributory cash benefits, many states have listed as special non-contributory benefits social pensions of non-contributory nature (Ireland, Spain, Cyprus, Poland, Portugal, Slovenia, Slovakia)
 - On the other hand, a national pension (which is not classified as contributory or non-contributory) also be found listed by Finland in Annex XI on special provisions for the application of the legislation of the Member States
- The question is, whether, for example, the social non-contributory pensions of the States listed in Annex X share characteristics with the national Finnish pension

A pension as a social security benefit or as a special non-contributory benefit (2/2)

- It is worth noting that the Italian social pension (supplementary allowance) of the Italian Law No 153 of 30 April 1969 was treated by the CJEU in the case *Piscitello* as a social security benefit associated with both categories of social security and social assistance and in particular as an old-age pension under Regulation No 883/04 is registered in Annex X on special non-contributory benefits
- Accordingly, France's supplementary allowances, which in the *Giletti* and *Zaoui* cases were considered as social security benefits, under the Regulation No 883/04 regime, are listed as special non-contributory benefits in Annex X of Regulation No 883/04

Granting of a supplement and the minimum pension (1/3)

- The application of Article 58 of Regulation No 883/04 (Article 50 of Reg. 1408/1971) requires that the retirement law of the State of residence provides a minimum pension
- Case 64/77 Torri → Article 50 of Regulation 1408/71 is applicable only in cases in which a provision is made in the legislation of the Member State in whose territory the worker resides for a minimum pension [para. 13]
- Case 22/81 Browning → Article 50 of Regulation 1408/71 is to be interpreted as meaning that a “minimum benefit” exists only where the legislation of the State of residence includes a specific guarantee, the object of which is to ensure for recipients of social security benefits a minimum income which is more than the amount of benefit which they may claim solely based on their period of insurance and their contributions [para 15]

Granting of a supplement and the minimum pension (2/3)

- In Levatino Case C-65/92 and Frilli Case 1/72 → the Court classified the minimum income supplement, i.e., the Belgian guaranteed income as an old-age pension, considering that the Regulation also included non-contributory schemes and thus affiliated it to the rules on pensions
- In Stinco and Panfilo Case C-132/96 → the Court classified the Italian supplement of minimum income as a non-contributory pension benefit affiliated with the special rules on pensions
- In Koschitzki Case C-30/04 → regarding the same as above Italian minimum pension income, the Court avoided its classification

Granting of a supplement and the minimum pension (3/3)

- The Belgian guaranteed income (Levatino) and the Italian basic pension supplement (Stinco and Panfilo, Koschitzki) are included in Annex X to Regulation No 883/04 on special non-contributory benefits
- It can thus be observed that gradually States started expressing reservations regarding non-contributory benefits, which the Court could classify as social security benefits related at the same time to both social security and social assistance categories, listing any non-contributory benefits as special non-contributory benefits

The case of Greece

- The special benefits for the elderly listed in Annex X of Regulation 883/04 as a special non-contributory benefit
- Pension supplement of Article 58 Regulation 883/04 and minimum pension before the unification of social security institutions under the reform of Greek Law 4387/2016
- Recent Greek case law on minimum pension under Coordination Regulation
- Income security of the elderly and European solidarity: what about a minimum pension currently in the context of Greek social security law?

The special benefits for the elderly listed in Annex X of Regulation 883/04 as special non-contributory benefit

- The special non-contributory benefit listed in Annex X of Regulation 883/2004 by Greece is the special benefits for the elderly of Law 1296/82
- Law 1296/82 concerned O.G.A (Agricultural Insurance Organization) and already O.P.E.K.A. (Organization of assistance allowances and social solidarity)
- The foregoing allowance of social solidarity for uninsured elderly constitutes a social assistance benefit [Stergiou 2022, Council of the State 1515/2021, 719/2018] → is granted without an individual assessment of personal needs to those having completed the 67th year of their age, the income of whom does not exceed a certain limit adjustable each time by the legislation and subject to judicial control and is means-tested

Pension supplement of Article 58 Regulation 883/04 and minimum pension (1/2)

- Greece seemed to award in any case the pension supplement (Article 58 Reg. 883/04) as a pension benefit to insured residents in Greece, taking into account the supplement at issue during the award of the Greek pension
- IKA (Idryma Koinonikon Asfaliseon/Social Security Fund) granted to an insured person with periods of insurance with IKA and the other Member States, a supplement up to the minimum limit/pension thresholds, increased by the Greek periods; the insured would receive the supplement until they reached the retirement age limit required by the law of another State in which they have completed periods of insurance
- Still, after the award of a pension by the foreign institution, it was possible to reconsider the right to a supplementary benefit based on the sum of the partial pensions

Pension supplement of Article 58 Regulation 883/04 and minimum pension (2/2)

- According to the IKA formalities, because it was found that based on the interpretation of the increment for the total of the days in combination with the application of art. 50 Reg.1408/71 or 58 Reg.883/04, IKA was obliged to pay additional amounts for insurance periods that have not taken place in Greece, the Administration suggested to the General Secretariat of Social Security the review of the interpretation of the relevant provisions
- The "minimum benefit" of article 58 Reg. 883/04 was finally disconnected from the case-by-case pension thresholds for pensioners who establish a right to a pension with aggregations of Community insurance periods and reside permanently in Greece under the provision of article 34, par. 1, paragraph 11 of Law 3996/2011

Greek case law on minimum pension under Coordination Regulation (1/3)

- Given previous Greek social security laws, the “minimum limits”/pension thresholds used to apply for pensioners to assure a minimum level of subsistence but then were abolished
- The Greek Law 3863/2010 established the basic/national pension which was treated by the Greek judge as the minimum pension of Article 58 Regulation 883/2004 applying the Law 3996/2011 which included a relevant provision
- Currently, Law 4386/2016 does not contain a distinct provision regarding a subsistence threshold for pensioners except for certain cases

Greek case law on minimum pension under Coordination Regulation (2/3)

- Judgment 5106/2019 of the Administrative Court of First Instance of Thessaloniki
 - the Coordination Regulation applied due to the applicant's movement within the EU by completing insurance periods in Greece and Germany
 - the national court held that the decoupling of the concept of the minimum benefit from the pension thresholds, which is attempted by the provision of article 34 of law 3996/2011 puts migrant workers at a disadvantage, about the persons who have completed their entire insurance life within the country,
 - This is because, on the one hand, the application of Article 58 of Regulation 883/2004 applies only to workers - insured persons who have moved within the Union, and on the other hand, the amount of the minimum benefit is less than the amount of the thresholds -which is still in force- to be granted, at least at the material time of the present case, to pensioners who have never been moved within the Union

Greek case law on minimum pension under Coordination Regulation (3/3)

- Judgement 2395/2020 Administrative Court of First Instance of Athens concerned the case of an insured citizen of an EU Member State, who has completed insurance periods in several Member States without qualifying for a pension independently in one of them
 - The Court stated the pension payable may not be less than the minimum benefit, as defined each time by the national legislation referred to in Article 34 par. 1 of Law 3996/2011 which contains a provision making an explicit reference to the minimum benefit of Article 58 of Regulation 883/2004
 - The Greek Court invoking amongst others *Stinco* and *Panfilo* pointed out that the relevant provisions of the Member States which provide for minimum benefits are intended, in various forms, to provide retirees with a minimum income threshold over the amount to which they would normally be entitled under insurance periods they have completed and the contributions they have paid

What about a minimum pension currently in the context of Greek social security law? (1/2)

- While in the past the state provided pension thresholds taking into account the minimum subsistence, especially for the pensioners, these pension thresholds were abolished, and the recent Law 4387/2016 does not provide for an autonomous concept of minimum pension (contrary to the previous Laws 3863/2010, 3996/2011) but some exceptional cases
- The Allowance of Social Solidarity for Pensioners (EKAS) established by Law 2434/1996 (article 20), which could be treated as a pension threshold, has been gradually abolished till 31.12.2019
- Instead of the latter, the legislator introduced compensatory measures of social assistance (Law 4411/2016), as well as the minimum guaranteed income [Stergiou 2022]

What about a minimum pension currently in the context of Greek social security law? (2/2)

- According to article 235 Law 4389/2016, the minimum guaranteed income is granted to households living under conditions of extreme poverty having a complementary role to the public policies tackling poverty and social exclusion, while its establishment has been verified by the Constitution's Revision of 2019
- Hence, Greece abandoned the measures of a specific nature targeted to the group of pensioners and instead of the elderly, adopted a universal measure addressed to the whole population
 - the allowance at issue is of a general nature of social assistance without a link to one of the social risks covered by a social security system
 - However, the CJEU requires an allowance to be linked to a specific social risk in order to consider a benefit exhibiting characteristics of social assistance as a social security benefit

Conclusion

- While a considerable body of non-contributory benefits has come into being to address the shortcomings of the social insurance system, this does not seem to have affected the continuation or the legitimacy of social insurance itself [Vonk 2020]
- The CJEU opted to provide for sufficient protection of the elderly by subsuming assistance allowances guaranteeing minimum income in old age under the social security benefits covered by the Coordination Regulation
- Gradually, it may become an undoubted perception between the member states that there is an actual need for social security benefits assuring minimum subsistence to the elderly taking into account the aging indicators in Europe [European Commission, Ageing report 2018 and OECD-European Observatory on Health Systems and Policies, 2019] and for their coherent coordination



Thank you!