



Københavns Universitet

European Institutionalisation of Social Security Rights: A Two-layered Process of Integration

Martinsen, Dorte Sindbjerg

Publication date:
2004

Document Version
Early version, also known as pre-print

Citation for published version (APA):
Martinsen, D. S. (2004). European Institutionalisation of Social Security Rights: A Two-layered Process of Integration: PhD dissertation . Dep. of Political and Social Science, European University Institute.

Contents

List of Figures, Tables, and Graphs	vii
Chapter I: Introduction	1
1.1: Transnational Social Security in the European Union	2
1.2: Research Puzzle	3
1.3: Research Motivation	7
1.4: Research Approach	11
1.5: Research Strategy	14
1.6: Research Material	18
1.7: Thesis Structure	22
Chapter II: Theoretical Explanations on European Institutionalisation of Social Security Rights	25
1.0: A Model to Analyse Institutionalisation as a Two-layered Process	28
2.0: An Institutional Study of European Integration	28
2.1: European Integration Viewed from a Historical Institutional Perspective	31
2.2: Defining Institutions	32
2.3: Institutions, their Function and Impact	34
2.4: Path Dependency and Institutional Premises for Change	36
2.5: The Missing Link; What Develops the Institution?	37
3.0: The Dynamics of Institutionalisation	38
3.1: Understanding Institutional Evolution	39
3.2: The Role of Supranational Organisations	41
3.3: On Institutionalisation	43
3.4: The Possibility of De-institutionalisation?	46

4.0: Institutionalisation through the Interaction of Law and Politics	47
4.1: The Position of the European Court of Justice	48
4.2: Transforming Europe	50
4.3: Judicial Activism Beyond Politics?	52
4.4: Politics Overturning Law?	54
4.5: Institutionalisation and its Limits	56
5.0: What Is the National Impact of Supranational Institutionalisation?	58
5.1: Implementation Formally Regarded	58
5.2: Institutionalisation Equal to Change? Implementing EU Policies	60
5.3: Case-law Enacted as Policies? Implementing Case-law	62
5.4: Monitoring Implementation	65
5.5: Monitoring Implementation of Regulation 1408	71
5.6: National Implementation – the Second Layer of Institutionalisation	76
6.0: Concluding Remarks	77
Chapter III: On Institutional Creation	81
1.0: Introduction to European Social Security Coordination	82
1.1: Why is Co-ordination of Social Security Necessary	83
1.2: Treaty Basis and Geographical Scope of 1408	84
1.3: What Does Co-ordination Mean?	85
1.4: The Co-ordinated Personal and Material Scope	86
1.5: The Main Principles of Regulation 1408	88
1.6: Institutional Characteristics	90
2.0: Free Movement of Workers/Persons	90
2.1: The Era of “Bilaterally Organised Interdependence”	91
2.2: The Initial Supranational Steps	92
2.3: ... And the Subsequent Ones	94
2.4: From Restricted Labour Circulation to the Free Movement of Persons	96
3.0: De Facto Intra-European Migration	97
3.1: Migratory Pattern in Post War Europe	98
3.2: The Figures of EC-6 Migration 1960-1984	98
3.3: The Statistics of EU-15 Migration 1985-1998	101
3.4: The Characteristics of Free Movement Institutionalisation	103
4.0: The Historical Institutionalisation of European Social Security Rights	105
4.1: Bilateral Predecessors	105
4.2: The Social Security Co-ordination of the ECSC	106
4.3: Early Co-ordination in the European Community	107
4.4: Criticism, Negotiations and the Adoption of Regulation 1408/71	108
4.5: The Institutional Origins of Regulation 1408	109

5.0: Concluding Remarks - Two Unique Community Systems	109
Case-notes	112
Chapter IV: Extendable Rights - From Market Citizens to European Citizens and Beyond	114
1.0: The Principle of Equal Treatment	115
1.1: The Broad Spectrum of Equal Treatment	116
1.2: Beyond a Workers-Only Privilege	120
1.3: From Inherited Provision to Objective in its Own Right	123
2.0: The Historical Setting of a Personal Scope	125
2.1: Who Has a Right to Cross-Border Welfare?	126
2.2: The Historical Definition of 'Employed Person'	128
2.3: Inherited Definition and Beyond	131
2.4: Anticipated Extension to the Self-Employed	131
2.5: Council Codification and Further Interpretation	133
2.6: In the Light of the Treaty Spirit - Dynamic Aims and Means	135
3.0: Proposing a Generalised Personal Scope	136
3.1: Proposing New Value to European Citizenship	137
3.2: Proposals, Recommendations and a Partial Adoption	139
3.3: Beyond European Citizenship	140
3.4: The First Separate Proposal on Third Country Nationals	142
3.5: The Reach of Community Competence?	143
3.6: Proposing New Borders of a Personal Scope	145
4.0: Negotiating a Generalised Personal Scope	146
4.1: Modernisation and Simplification Proposed and Negotiated	147
4.2: Negotiating the Treaty Base	150
4.3: Searching for a Legal Base	152
4.4: The Case-Law Solution of a Political Problem	155
4.5: Proposal Split in Two	156
4.6: Negotiating the Borders of a Personal Scope	160
5.0: Concluding Remarks – Extending Equal Treatment for an Ever Wider Personal Scope	163
Case-notes	166

Chapter V: Social Benefits Beyond National Borders? Institutionalising the Principle of Exportability	172
1.0: The Material Scope	173
1.1: Defining Social Security	175
1.2: First Institutional Update – Special Schemes for Civil Servants	176
1.3: Second Institutional Update – Family Benefits	178
1.4: Third Institutional Update - Long Term Care Benefits	183
1.5: Proposing the Updating of the Material Scope	185
1.6: Incremental Generation of Exportable Social Security Rights	186
2.0: De-territorialized Social Benefits?	188
2.1: Stage 1 - Legal Innovation	191
2.2: Stage 2 - Non-Compliance	193
2.3: Stage 3 - Political Overrule	196
2.4: Beyond Stage 3 - Rule-discovery and Further Clarification	198
2.5: Institutionalisation and its Limits	200
3.0: Health Care Beyond National Borders	201
3.1: Authorisation – Conditioned Access to European Health C	203
3.2: Discretion Limited	205
3.3: Collective Political Response	206
3.4: Authorisation Policies Before the Internal Market	207
3.5: Authorisation Policies Justified, but Compromised	211
3.6: The Evolving Internal Non-Hospital Health Care Market	216
3.7: Institutionalising Free Movement for Patients in the European Union	218
4.0: Concluding Remarks - Expanding Exportable Social Security Rights	221
Case-notes	224
Chapter VI: Adaptive Pressure on National Social Security Schemes	231
1.0: Hypothesis on Domestic Impacts and the Choice of Comparative Cases	233
1.1: Three General Hypothesis	234
1.2: The Choice of Comparative Cases and a Fourth Hypothesis	235
2.0: Two Welfare Models in a Historical, Institutional Light	237
2.1: Welfare as Means of National Integration	238
2.2: The Organising Principles of Two Welfare States	242
2.3: Boundaries for Welfare; the Principles of Territoriality and Social Citizenship	245
3.0: Four Contemporary Welfare Institutions	248
3.1: Statutory Pension	249
3.2: Public Health Care	251
3.3: Long Term Care	253

3.4: Family Benefits	256
3.5: Adaptive Pressures on Contemporary Schemes	257
4.0: Adaptive Pressure Expressed as Actual Migration	259
5.0: Concluding Remarks	262
Chapter VII: Response to and Domestic Impacts of Intra-European Social Security Rights	264
1.0: Perceptions of Impact	266
1.1: EU-Citizens Entitled to Danish Welfare	267
1.2: Danish National Response	269
1.3: In Defence of Status Quo	271
1.4: The Perception of Financial Impact	273
1.5: National Impact of an Enlarged Principle of Equal Treatment	274
1.6: A Danish Dilemma – Negotiating the Treaty Base	277
1.7: New Perceptions of Impacts and Recent Negotiations	278
1.8: Changed Perceptions and Preferences	280
2.0: Domestic Impacts on the Residence-based Welfare State	281
2.1: Implementing the Acquis Communautaire – Statutory Pension	282
2.2: Implementing Judicial Decision-Making – Statutory Pension	283
2.3: Non-Compliance and Subsequent Application – Family Benefits	287
2.4: Exportable Social Services?	288
2.5: Medical Treatment Beyond National Borders	289
2.6: First Step Towards an Internal Health Market	292
2.7: The Impact of Judicial Decision-Making	296
2.8: An Internal Health Market for Non-Hospital Care	301
2.9: Domestic Impact Readdressed	302
3.0: Domestic Impacts on the Insurance Based Welfare State	303
3.1: Cross Border German Welfare	303
3.2: Judicial Requests by German Courts	305
3.3: Impact on Domestic Policy Reforms – a German Supplementary Pension?	309
3.4: Judicial Injunction – the Issue of Family Benefits	310
3.5: Exportability Imposed – Long Term Care Benefits	313
3.6: Towards an Internal Health Market?	315
3.7: Variations in Domestic Impacts	317
4.0: Concluding Remarks	318

Chapter VIII: Conclusion	322
1.1: The Analytical Findings of the Study	323
1.2: Analytical Findings in Theoretical Perspective	328
Bibliography	336
Appendix 1: Preliminary References and Infringements Procedures on the Basis of Regulation 1408/71 between 1971-2003	359
Appendix 2: German Preliminary References and Infringements Procedures on the Basis of Regulation 1408/71 between 1971-2003	373
Appendix 3: Tables A1-A3	379
Appendix 4: Amendments of regulation 1408/71 in the period 1971 to 2002	381
Appendix 5: Adding to Annex IIa Over the Years	386

List of Figures, Graphs, and Tables

Figures

Figure 1: Research Puzzle and Approach	13
Figure 2: Institutionalisation as a Two-layered Process	29
Figure 3: Institutionalisation through the Interaction of Law and Politics	30

Graphs

Graph 1: Article 226 & 234 cases between 1960 – 1999	49
Graph 2: References pr. 1. million people in 11 member states (Luxemburg excluded)	70
Graph 3: Preliminary References and Infringements Procedures between 1971-2002 regarding Regulation 1408/71	72
Graph 4: Preliminary References made 1972-2002 concerning Regulation 1408/71 pr. 1. million people in 13 member states	75
Graph 5: Intra EC-6 Migration 1960-1984 in Absolute Figures	100
Graph 6: Intra EU-15 Migration 1985-1998 in Absolute Figures	102
Graph 7: EU-immigration as a % of the total population to Denmark and Germany 1985-2000	261
Graph 8: German References and Procedures regarding 1408/71	307

Tables

Table 1: Infringement Procedures Initiated and Referred 1998-2000	66
Table 2: Reference Patterns in 12 Member States 1961-97	68

Table 3: Preliminary References and Infringement Procedures on the basis of Regulation 1408/71 regarding Individual Member States	73
Table 4: A Two-layered Process of Integration	78
Table 5: Intra EU-15 Migration 1985-1998	101
Table 6: Organising Principles of and Boundaries for Welfare	248
Table 7: Organising Principle for Statutory Pension	251
Table 8: Organising Principles for Public Health Care	253
Table 9: Organising Principles for Long Term Care	256
Table 10: Organising Principles for Family Benefits	257
Table 11: EU-Immigrants and Third Country Nationals Residing in Denmark and Germany	260
Table 12: Health Care Supply in EU-15	290
Table A1: Preliminary References made 1961-1998 pr. 1. million people in 11 member states	379
Table A2: Preliminary References made 1972-2002 concerning regulation 1408/71 pr. 1. million people in 13 member states	380
Table A3: Innovation of Core Social Security Institution in Western Europe	380