

**DRV-Booklet**

**DRV-Number: 2/2013**

## **The Significance of the Principle of Equivalence ("Äquivalenzprinzip") in Pension Law**

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When nothing unexpected occurs, the last four years will turn out to be lost time for pension policy. The last two years, the discussion focused on the question whether a basic pension should be implemented in the statutory pension system for long-term insured who are only entitled to a statutory pension below the minimum level required to live on. One counter-argument was that the statutory pension scheme is characterized by the principle of equivalence ("Äquivalenzprinzip"). The implementation of savings allowances for pensioners in the basic income support scheme for the elderly and disabled ("Grundsicherung im Alter und bei Erwerbsminderung") was proposed as an alternative strategy. The outcome of the debate is still open, but presumably, due to constraints of time and new majorities in Federal Council ("Bundesrat"), a law will not be enacted in the current legislative period. Because of the discussion about a basic pension, other important issues of pension-policy have been neglected.

However, the discussion made clear how important the principle of equivalence between contributions and benefits is. Inconsistent with the Minister, the heads of the coalition parties underlined that a basic pension, should it be implemented, must be financed by taxes and not by social security contributions. Those supporting the idea of an implementation of a basic pension do not deny the importance of the principle of equivalence. They regard a basic pension as a

manifestation of the principle of social equity – a principle which has always been an essential characteristic of the statutory pension scheme. Whenever the principle of equivalence is addressed, the principle of social equity must be considered, too.

### **The GDR Pensions - Unsolved Questions**

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The pension system of the GDR showed striking weaknesses from its beginning. The structural deficiencies comprised the “frozen” contribution system, as well as the lack of regular pension adjustment. Despite several attempts, the fundamental principles of the GDR pension scheme, operating under the roof of the national social insurance, remained virtually unchanged until the collapse of the regime of the Socialist Unity Party of Germany (Sozialistische Einheitspartei Deutschland, SED) in autumn 1989. The attention of the GDR social policy focused on the working population. This implied that the economic and social situation of the pensioners on the border of the GDR working society remained unsatisfactory. The irregular pension adjustments could decelerate the decrease in the pension level only temporarily. The gap between the development of wages and salaries on the one hand and pensions on the other hand could not be reduced. A further aspect was the – politically intended – privileged status of certain occupational groups in the GDR pension system. Following the order of the SED, special pension benefit systems and supplementary schemes (“Sonder- und Zusatzversorgungssysteme”) were established to achieve political loyalty to the SED regime. Due to the lack of economization in the field of social policy, public debt increased. In the 1980s, the SED could not hope to obtain the assent of large

sections of the GDR-population on account of its contradictory pension policy.

**Basic Income Support in Case of Old-age or Reduced Earning Capacity (“Grundsicherung im Alter und bei Erwerbsminderung”): Since 2003 the Lowest Safety Net for Elderly Persons and in Case of Invalidity**

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Since the date of entry of the Social Assistance Act (“Bundessozialhilfegesetz, BSHG”) on June 1<sup>st</sup>, 1962, the means tested minimum benefit system was, to a large extent, uniformly regulated for approximately four decades. Initially, with the implementation of the basic income support in case of old-age or reduced earning capacity (“Grundsicherung im Alter und bei Erwerbsminderung”) in January 2003, the universal system of public assistance was separated into subsystems – with the exception of the asylum seekers benefits act (“Asylbewerberleistungsgesetz”). The primary reason for this reform measure was that many elderly people with a low pension refrained from applying for social assistance because they felt ashamed, or because they feared that their children might be held responsible. It was the intention of the law on basic income support in case of old-age or reduced earning capacity (“Gesetz über eine bedarfsorientierte Grundsicherung im Alter und bei Erwerbsminderung, GSiG“) to reduce the so-called “bashful old-age poverty” (“verschämte Altersarmut”) with two measures: First of all, maintenance claims against children and parents (the latter is relevant for persons with a full and permanent incapacity to work) principally remain unconsidered. Secondly, the pension insurance

institutions became obliged to inform persons with low pensions about a potential claim on basic income support. However, the benefit level of the basic income support in case of old-age or reduced earning capacity and the provisions regarding the consideration of income and property are equivalent to subsistence allowance granted as according to the Social Assistance Act (until 2005), and Social Code XII (since 2005), respectively. The legal link between basic income support in case of old-age or reduced earning capacity and subsistence allowance entails some substantial differences between basic income support in case of old-age or reduced earning capacity and basic income support for job-seekers (“Grundsicherung für Arbeitsuchende”) according to Social Code II. These differences are incomprehensible in consideration of the aspect of social justice.

As compared to other groups in society, the quota of elderly persons receiving social welfare benefits is very low. This finding is inconsistent with other results of poverty research, pursuant to which the (income) poverty risk of the population 65 and older in 2009 and 2010 corresponded approximately to the respective quota in the total population. This discrepancy can be attributed to the property available among some sections of the elderly population, the systematic differences between both poverty lines, and the prevalent non-utilization of social welfare – regard to the latter, the law on basic income support in case of old-age or reduced earning capacity has fallen short of achieving its underlying objective.

Future reforms of the basic income support in case of old-age or reduced earning capacity should address the normative restrictions as compared to basic income support for job-seekers according to Social Code II, the reduction of non-utilization of social welfare, and the mitigation of problems in terms of acceptance of the statutory pension system due to the declining pension level. Due to the fact that public pensions – just like other retirement incomes – are fully

offset against social welfare benefits, some insured expecting only a low public pension do not find it “worthwhile” to pay pension scheme contributions. This could be counteracted by the implementation of a proportional and degressive allowance for public pensions and other contribution-based retirement incomes.

**From the “Pension Dialogue” to Drafting a Law on Strengthening Old-Age Security (“Entwurf eines Alterssicherungsstärkungsgesetzes”)**

**- The Reform Diskussion 2001 to 2013 -**

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Location: Berlin

In February 2013, the Federal President announced the date of the election of the 18<sup>th</sup> German Bundestag. The election will take place on September 22, 2013. In view of the brief period of time given, it is foreseeable that, during the current legislative term, the Federal Government will not bring about new comprehensive legislative procedures. This is probably even more since the opposition enjoys a majority of 36 votes in the Federal Council of Germany (“Bundesrat”) since the election of the state parliament of Lower-Saxony on January 20, 2013. In the current legislative term, a pension reform will not be implemented.

However, the current legislative term was marked by a controversial and heated debate about adjustment requirements in the pension system, which was omnipresent in the print and electronic media during the last months. At first sight, this was a surprise because, at the beginning of the legislative term, the view prevailed that, with the latest reforms, the statutory pension system had “done its homework properly” and successfully adapted to the social and demographic development. In the resolutions passed by the political

parties in the run-up to the forthcoming election, pensions are an important issue. Therefore, it can be expected that the discussion about adjustment requirements in the pension system will continue in the next legislative term.

The article outlines the course of the discussion in the current legislative term and comments on the presented reform models from a professional perspective.

### **The Conjunction between German and European Social Law on the Example of the Statutory Pension Scheme**

Author: Dr. Arno Bokeloh

Location: Bonn

Social law is traditionally a field falling within the competence of the Member States. They decide autonomously about the design and development of their social security systems, in accordance with their tradition and priorities. Notwithstanding, the national social law is in many respects conjoined with European law. The European Union is originally responsible for the coordination of the social security systems to ensure the freedom of movement among the Member States. Further competences of the European Union affecting the social security systems of the Member States result from principle of non-discrimination on grounds of nationality and gender. Furthermore, the rules of the European domestic market influence the social security systems of the Member States in many respects. This development is anything but completed. Thereby, the case-law of the European Court of Justice (“Europäischer Gerichtshof”) plays a decisive role.