



MINIMUM INCOME IN OLD AGE:
COMPARATIVE ASPECTS AND EUROPEAN LAW QUESTIONS

THE SPANISH CASE

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Pensions beneficiaries at 31st December (online data code: SPR_PNS_BEN)
Source of data: Eurostat

Settings: Default presentation

Table Line Bar Map

	TIME	2015	2016	2017	2018	2019
GEO						
Belgium		2 807 193	2 862 251	2 984 147	3 003 452	3 057 234
Bulgaria		2 179 937	2 183 465	2 171 457	2 160 248	2 137 991
Czechia		2 931 615	2 950 043	2 953 294	2 953 701	2 995 288
Denmark		1 539 560 (e)	1 539 000 (e)	1 540 517 (e)	1 541 553 (e)	1 525 544 (e)
Germany (united Kingdom, 1990 former territory of the F...		23 238 873 (e)	23 311 138 (e)	23 315 814 (e)	23 359 576 (e)	23 548 332 (e)
Estonia		416 841	422 034	417 562	420 195	425 240
Ireland		909 646	938 980	971 781	1 003 243	1 035 520
Greece		2 686 578	2 617 056 (p)	2 569 221 (p)	2 547 461 (p)	2 506 608 (p)
Spain		9 448 336	9 558 626	9 664 977	9 782 544	9 885 991
France		18 946 000	19 138 000	19 214 805	20 036 318 (e)	20 428 505 (e)
Croatia		1 228 020	1 233 375	1 232 651	1 236 258	1 241 111
Italy		15 864 407	15 730 028	15 692 603	15 633 707	15 645 340
Cyprus		157 454	159 548	161 000	163 388	166 950
Latvia		593 689	589 310	585 805	583 804	581 685
Lithuania		936 264	934 923	934 196	936 007	933 828
Luxembourg		174 857	180 673	185 761	191 566	198 122
Hungary		2 169 780	2 191 120	2 163 065	2 156 622	2 170 383
Malta		86 165	88 479	91 127	91 945	93 832
Netherlands		4 170 900	4 193 300	4 209 500	4 246 119	4 257 600
Austria		2 413 205	2 427 612	2 439 937	2 458 491	2 488 183
Poland		9 575 376	9 627 199	9 684 063	10 079 935	10 237 684
Portugal		3 014 507	3 007 164	2 981 541	2 905 666	2 915 182
Romania		5 289 793	5 247 379	5 230 406	5 192 880	5 140 756
Slovenia		636 857	639 962	639 918	644 136	640 876
Slovakia		1 415 171	1 436 589	1 449 756	1 475 667	1 450 159
Finland		1 540 972	1 558 900	1 585 582	1 600 225	1 612 473
Sweden		2 662 142	2 694 383	2 705 595	2 715 940	2 743 014
Iceland		66 395	68 595	70 954	74 174	77 001
Norway		1 333 906	1 373 121	1 415 238	1 461 175	1 505 610
Switzerland		2 915 200 (e)	2 975 100 (e)	3 013 600 (e)	3 049 600 (e)	3 077 602 (e)
United Kingdom		15 640 063 (p)	15 543 660 (p)	15 641 610 (p)	15 724 604 (p)	:
Montenegro		125 252	120 727	127 286	129 033	129 062
North Macedonia		310 784	317 165	322 767	:	:
Serbia		1 711 249 (e)	1 697 111 (e)	1 692 117 (e)	1 684 330 (e)	1 673 455 (e)
Turkey		12 536 442 (e)	12 898 245 (e)	13 260 744 (e)	13 766 090 (e)	14 089 094 (e)
Bosnia and Herzegovina		646 549	658 401	663 826	670 792	680 758

Special value:
(-) not available

Available flags:
(b) break in time series
(p) provisional

(e) estimated

Disclaimer

Some figures about the Spanish case

• Eurostat, April 2022:

- Spain: 6700000 persons receive a retirement pension, of whom 500000 are foreign citizens –EU and non-EU citizens-.
- Portugal and Greece: 2 million each country.
- Italy, France and Germany: 15, 17 and 19 million pensioners by age reason each country.

Actions for contributory pensions: the minimum supplement and other measures

- **Old-age pensions** are regulated in art. 204 et seq. LGSS. Requirements: 67 years old and have covered a minimum contribution period of 15 years, two of them must be immediately before the moment of causing the right. It is also possible to go to pension with 65 years but with a contribution of 38 years and 6 months. Justification: need to observe and preserve the economic viability of the entire system.
- **Calculation of the amount of the pension received by part-time workers.** Recently modified by CJEU Ruling C-161/18 (Villar Láiz) echoed by RD 950/2018. How these pensions were calculated generated discrimination because of gender. What happens with temporary workers having into account that a huge number are women?
- **Early retirement because of age.** Two types
 - a) **Involuntary** (art. 207 LGSS): ETOP causes, death, retirement or incapacity of the employer. The retirement age is advanced by 4 years and a minimum of 33 years must be contributed.
 - b) **Volunteer** (art. 208.1.c) LGSS): the age difference -concerning the two provided for ordinary retirement- must be only two years, the minimum contribution period must be equal to 35 years, and the amount of the pension to be received must be greater than the amount of the minimum pension that would correspond if the applicant had reached 65 or 67 years of age. CJEU C-398/18 remembers to the Spanish Administration that to calculate the early retirement pension –volunteer or not-, must be taken into account as equivalent benefits all the pensions earned by workers in different Member states.

Actions for contributory pensions: the minimum supplement and other measures

- **Minimum supplement** (art. 58 Regulation 883/2004, art. 50 CE and art. 59 LGSS). Lately modified through Law 11/2020. Legally is defined as a complement of pensions whose objective is to alleviate a situation on need –not to replace an income-. Consequently, the access requirements must be accredited yearly. Requirements:
 - a) **Residence**: It must be habitual. This juridical concept means “when the stays abroad do not exceed ninety calendar days throughout each calendar year, or when the absence from the territory is justified due to illness”. Illness as a cause of justified absence from the territory comes from CJEU C-255/13. The idea of territory must be interpreted extensively: stays in the territory of the countries that make up the Union, which means also the European Economic Area and Switzerland. So stays in these territories do not have to be counted as carried out in foreign areas.
 - b) **Proof of poverty**: the fact of being in need must be proved annually and the incomes received are inferior to the annual threshold. For this year 2022, the amount of income must be equal to or less than 7939 euros. If there is a dependent spouse of the holder, the amount arises to 9260 euros.
 - c) **Type of income taken into consideration to calculate whether or not the poverty threshold is exceeded**: income from work, capital, economic activities or other capital gains and contributory pensions of the Social Security system. So, foreign public pensions that are in charge of any of the public social security schemes around the world must be included.

Personal reflection: It could be **exported to the other Member states** because it has not been included in Annex X and because having a complementary nature allows sharing the same contributory nature of the pension it accompanies.

Actions for contributory pensions: the minimum supplement and other measures

- **Complement aimed at reducing the gender gap** (art. 60 LGSS): to compensate for the difficulties that, in general, it is presented by the female group to access a sufficient pension to survive when there have been interruptions in professional life as a result of caring for minors.
- However, after the CJEU Ruling 450/18 and the subsequent regulatory reform materialized by RD 3/2021, **both men and women who see the amounts of their contributory retirement pension reduced** -in addition to those for permanent disability or widowhood- will be entitled to a supplement for each child, provided that there is no request or recognition of that same supplement in favour of the other parent.
- This supplement is intended for contributory pensions recognized from February 2021. It is incompatible with any other supplement -therefore the minimum one-, part of a fixed amount of 378 euros /year and child -although it is planned to be updated based on the revaluation of pensions- up to a maximum of 4 children.
- **Personal reflection:** It could be **exported to the other Member states** because it has not been included in Annex X and because having a complementary nature allows it to share the same contributory nature of the pension it accompanies.

Actions for contributory pensions: the minimum supplement and other measures

- **Law 39/2006 on Dependency**: despite referring to actions expressly excluded from those that can be exported by Annex X of Regulation 883, orders a series of measures aimed at guaranteeing the promotion of the autonomy of people older people and their social inclusion. Indeed, it is not a prevention of economic poverty, but **it is aimed at combating it in another way, with specialized and technical aids that allow users to enjoy a decent existence and be able to participate in social and cultural life**, as indicated in article 25 of the Charter of Fundamental Rights of the Union.
- Requirements:
 - a) Being in a **situation of dependency**. An indeterminate concept. It refers to the difficulties to develop a normal standard of living.
 - b) **Residence**: In the Spanish territory –interpreted in extensively- for five years immediately before the date of the application.
 - c) **Economic situation**: It must be calculated based on four factors: income, assets of the applicant, age and the type of service that is demanded -which will always be offered by professionals-.

Actions for non-contributory pensions

- Non-contributory retirement pensions are regulated in the arts. 369-372 LGSS and consist of economic benefit, free medical-pharmaceutical assistance and complimentary social service
- Its export to other Member states is excluded according to Annexe X.
- Requirements:
 - a) **Proof of poverty**: Not being beneficiaries of another pension at the contributory level and having income inferior to the thresholds yearly foreseen (For 2022 it is settled in 5899,60 euros per person and year).
 - b) **Age** of the applicant: 65 years old or more.
 - c) **Legal residence** (not habitual residence): One of the requirements is related to having resided in Spanish territory - or in the territories of States in which EU regulations are applied- for 10 years between the applicant's 16 years of age and the age he/she has at the time of the application-, two of which must be immediately before and consecutive to this last date. The other refers to how compliance is demonstrated. In this sense and given the plurality of meanings used by the Spanish legislator when it comes to the idea of residence, there is some jurisprudential discussion to the extent that the registration certificate is not considered sufficient for third-country nationals, although it is for the citizen of Spanish nationality and, by extension, for the community citizens.

Actions developed by Autonomous Communities

- Spain communicated to the European Community the **non-exportation of those actions carried out at the regional level** that may belong to the healthcare sphere and/or have as objective to complement or guarantee minimum income subsidies.

1) Regions with **basic income mechanisms**: Extremadura, Madrid, Murcia, Navarra and País Vasco.

Characteristics of these instruments:

- a) Its nature is expressly recognized as subsidiary and non-contributory.
- b) It is required to reside in the autonomous territory of reference, although a specific amount of time is not established. This requirement of residence can be demonstrable in the most varied ways.
- c) The applicant must be over 65 years of age and not be the holder of a contributory pension or similar benefits.

Actions developed by Autonomous Communities

2) Regions with mechanisms that **grant subsidies aimed at compensating the expenses related to healthcare**: Islas Canarias.

Requirements:

- a) Beneficiaries are those who hold the status of insured as Social Security pensioners who are holders of an individual health card issued by the Canary Islands Health Service and whose income is less than 18,000 euros/year.
- b) The expenses subject to compensation are related to the pharmacological treatments prescribed by the medical personnel of the Public Health System and acquired in pharmacy offices or services located in the Canary Islands.

3) Regions that offer **home help to prevent older people from having to leave their families and social environment to materialize the help provided by social services**, such as carrying out actions of a domestic nature, psychological support and rehabilitation that facilitate the autonomy of the user: Islas Canarias, Asturias, Islas Baleares and Murcia.

- The criteria for the concession revolve around the degree of personal autonomy of the user, their family situation, the options offered by their own home or the environment of the place where they reside and their economic situation, being used -by some Autonomies as it happens with Murcia- for its concession the amount of the Minimum Interprofessional Salary or a percentage of this as a maximum amount.
- These personal assistance benefits have recently been the subject of doctrinal reflection, especially about their export to the other Member States. **Long-term care may be incorporated into Regulation 883/2004** as pointed out by the different reports of the European Commission referred to long-term care as one of the essential parameters to determine whether pensions by age are **adequate**.

Conclusions

1. Some important steps have been taken by the national legislator to deal with the problem of poverty in the collective of retired elderly people and specifically for the relocated ones, however, these actions could be defined as **incomplete** rather than inadequate.
2. Consequently we must highlight **the importance of coordinating the mechanisms adopted by the implied actors** -the European Union, national social security systems, and small jurisdictions on social security- so it is possible to join efforts and offer an integrated perspective of poverty at this stage.
3. In the Spanish case we have observed that a **great impulse** –regarding avoiding or preventing poverty in retired elderly people- comes from the EU under the sign of **community regulations** –Regulation 883/2004- and **the interpretation given by the European jurisprudence**. Being examples of this not only the **new formulation of the calculation of pensions for part-time workers** –Villar Láiz Ruling and RD 950/2018- but also **the new regulation of the minimum complement** –art. 59 LGSS- and **the new formulation of the supplement for pensions to reduce de gender gap** –C-450/18 and article 60 LGSS-. For both institutes, **the proof of poverty** –consequently a definition of an adequate level of richness- and the **residence** are essential requirements and in both cases, **they have been defined by the Spanish legislator**.

Conclusions

4. On the other hand must be acknowledged that the Spanish legal system is **informed by principles close to them foreseen in the Chart of Fundamental Rights of the European Union**. Therefore guaranteeing a dignified life for retired elderly people must be observed by Public Powers at the national and regional levels.

5. Regarding the **national level** should be mentioned also **the Dependency Law** –Law 39/2006- **and non-contributory retirement pensions**. Both of them contribute to guaranteeing a dignified life for elderly people however nowadays cannot be exported to the other Member States.

6. It has been taken into account the **mechanisms adopted by Autonomous Communities**. Although they belong to the **non-contributory level** –consequently cannot be exported- they must be presented at least because can be claimed by relocated retirees **while residing in the territory of an Autonomous Community**. These actions belong to the sphere of healthcare and/or look for complementing minimum income subsidies.



THANKS FOR YOUR ATTENTION

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