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Title

Principle of assimilation of facts and events

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References:

- **Recital(s):** 10-12 of the Regulation 883/2004
- **BR :** Art. 5; 14 §4; 22; 40 §3, 51, 53 to 55
- **IR:** Art. 22(2)
- **AC Decision (s) :** ---
- **ECJ CASE Law:** Case C-290/00 (Duchon); Case 20/88 (Roviello); Case C-439/78 (Paraschi); Case 131/96 (Mora Romero); C-443/93 (Vougioukas); Case 373-02 (Öztürk); C-228/88 (Bronzino); Case 507/06 (Kloppel); Case 372/02 (Adanez-Vega); Case 278/94 (Commission/Belgium); Case 258/04 (Ioannidis); Case 28/00 (Kauer)

The principle of assimilation of incomes, benefits, events and facts, stated in Article 5 of the Regulation 883/2004, is not a new concept and has been expressed by the European Court of Justice on several occasions.

Article 5 of Regulation 883/2004 should be read in the context of this jurisprudence, which shed more light on how this principle should be understood.

Here are the guidelines on application of this principle, as identified after analysing the ECJ jurisprudence and taking into account the general interpretative frame, as defined by the recitals.

1. Definitions

- The facts and events, referred in Article 5(b) of the Regulation are to be understood as any circumstances or conditions of legal or factual character, such as e.g. relating to the character of work or employment contract, military service, studies or concerning the civil status, which are relevant for the purpose of the establishment of the right to the benefit or its calculation, or as regards the obligations of the person.
- For the assessment of the facts or events the Member State shall apply, *mutatis mutandis*, criteria settled by its own legislation.

2. Scope of the application of the principle

- The Principle of equal treatment of benefits, incomes, facts or events, stated in Article 5 of Regulation 883/2004, is of a general nature and applies to all situations covered by the Regulation, unless otherwise provided for by the Regulations, as for example Article 14(4) of the Regulation 883/2004 and Article 22(2) of the Regulation 987/2009.
- However, the application of Article 5 of the Regulation 883/2004 cannot lead to a change of the rules on the legislation applicable. In principle, only the Member State competent according to the Regulation is bound to apply the principle with regards to the benefits or incomes received, or the facts which had taken place, in another Member State.
- The application of Article 5 shall not lead to objectively unjustified results.
- The application of Article 5 shall not lead to the overlapping of benefits of the same kind for the same period, as stated by Articles 10, 40(3), 53 to 55 of the Regulation 883/2004.

General interpretation rules are quoted under these points, as stemming from recitals 11 and 12 of Regulation 883/2004.

3. Boundary between principle of assimilation of fact and aggregation of periods

- The principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.
- The application of Article 6 of Regulation 883/2004 does not preclude the application of the principle of assimilation of facts if, independently of the length of the periods to be taken into account, the certain fact about those periods needs to be taken into account, as for example provided for by Article 51 of the Regulation 883/2004, or if the national legislation states so. However, unless the Regulation states differently, periods of insurance, considered as such in the Member State where they were acquired, shall be taken as the same periods of insurance by the Member State in which the right is being established.

Under this point, the general interpretation rule of recital 10 of Regulation 883/2004 is repeated. The Commission's position is that the principle of assimilation of facts cannot lead to questioning the value of the insurance periods, communicated as such by the Member State where they were acquired.

4. Application of the principle

- In any case, the principle of assimilation of facts cannot be disassociated from the principles of non-discrimination and equal treatment and all dubious situations shall be considered in the light of these principles.

The analysis of the ECJ jurisprudence shows that the principle of assimilation of facts was derived from the principle of non-discrimination. The assimilation of facts and events was seen by the ECJ as preventing the indirect discrimination of the migrant worker. Therefore it is important to stress, that in any case application of this principle cannot lead to weakening of

the principle of non-discrimination which shall always prevail.

To go further: