PENSIONABLE SERVICE AND SIMILAR LEGAL INSTITUTES IN THE RECOGNITION OF CERTAIN TYPES OF SOCIAL SECURITY BENEFITS

Assoc. Prof. Galina Yolova, PhD

The introduction and establishment of the institute of pensionable service as an underlying fact in social security law is a legal hypothesis that bears significance for the legal theory and legislation in several major aspects, namely:

1) its separate legal construction made in distinction from the institute of length of service used in the former legislation constitutes the basis for establishing derivative legal institutes. As it has been pointed out before¹ the concept of length of service which takes into account only the work experience under employment contracts and in this sense refers solely to workers and employees is quite unsuited for use in the field of social security law. It does not account for the specifics of the social security relations and the related and therefore relevant periods of payment of social security contributions under the social security scheme²;

2) it reflects the periods of existence of the social security relations and in this sense gives certain categories of persons the status of being socially secured;

3) it is an absolute prerequisite for obtaining short-term social security benefits requiring a minimum length of pensionable service,

4) it determines the amount of the contributory pensions cumulatively with the pensionable income criterion, and last but not least,

5) it is relevant to the provision of certain non-contributory benefits at the level of the minimum pensionable service required.

In that sense, the subject of this study is to analyze a number of specific cases of digression from the general social security law concept in terms of its interpretation in connection with the disbursement of certain social security benefits.

In the framework of the concept clarified herein, the purpose of this paper is to put forward specific suggestions for improvement of the social security laws and regulations, given the legislative imperfections as regards some special cases of application of the institute of pensionable service due to the specifics of the legal technique used.

² The Supreme Administrative Court has also had occasion to deal with the comparison between length of service and pensionable service in Judgment No. 5875-04-IV/2004.
1. Characteristics and elements of the pensionable service

In the most common sense, and with a view to the attempted legal definition contained in Art. 37, Para. 1 of the Ordinance on Pensions and Pensionable Service (OPPS), the term pensionable service is defined as the period of time during which the person secured has worked under employment relationship or other equated relationship and has paid simultaneously or has had the obligation to pay social security contributions. In the case of the self-secured persons this is the period in which social security contributions have been paid as per periods and risk categories.

Regardless of which of the two main types it refers to: pensionable service of employees (having the widest scope and including all types of social security contributions and benefits) or pensionable service of self-secured persons (providing for a limited amount of the pensions received in proportion to the limited range of social risks), it is important to clarify that the pensionable service requires the cumulative existence of two components, namely: **work experience under employment contract or administrative act for appointment, and paid or payable social security contributions**.

In this sense, the following time periods are recognized as pensionable service: 1. the time period during which the persons have worked full-time, according to the statutory working hours. When the person has worked part-time, the pensionable service is recognized proportionally to the statutory working hours, if social security contributions have been paid or were payable on the respective proportion of the minimum wage; 2. the time period during which social security contributions were paid or were payable on received, accrued but unpaid, and non-accrued remuneration, where this remuneration must not be less than the minimum pensionable income for the respective job, as well as the time period for which the due contributions from self-employed individuals have been paid. As regards persons for whom no minimum pensionable income is stipulated and who have worked full time as per the statutory working hours, the pensionable service is recognized if social security contributions have been paid or were payable on the remuneration received in the amount of the minimum wage at least. If the person has worked part-time, the pensionable service is recognized in proportion to the statutory working hours, if social security contributions have been paid or were payable on the respective proportion of the minimum wage.

With respect to this second component of the concept, however, two legislative exceptions have been provided:

---

1) contributions were due, but were not regularly paid by the social security contributor, although the person secured has paid their due share. In this case, the respective time period is recognized as pensionable service despite the irregular payments made by the social security contributor.

2) the contributions due were paid at a later time. In this case, the period for which those were paid is recognized as pensionable service, however only at the time of granting the pension.

Furthermore, by employing the technique of the legal fiction, the legislator specifies explicitly and exhaustively the time periods which are recognized as pensionable service, despite the absence of any of the two elements of the legal institute, i.e. either lack of actual service rendered (work performed) by the person secured, or lack of payment, respectively lack of obligation to pay contributions. These periods are: 1. the period of paid and unpaid maternity/paternity leave; 2. the period of paid and unpaid leave for temporary working incapacity; maternity leave for pregnancy and childbirth and adoption of a child aged 2 to 5 years; unpaid leave up to 30 working days in one calendar year; 3. the period during which the person has received unemployment benefits; 4. the period during which persons who are self-employed and secured against disability due to general illness, old age and death and against general illness and maternity, received monetary benefits for temporary working incapacity, pregnancy, childbirth and care for infants and adoption of a child aged 2 to 5 years, as well as the periods of temporary working incapacity, pregnancy, childbirth and care for infants and adoption of a child aged 2 to 5 years, during which the person was not entitled to monetary benefits; 5. the period during which the person has not worked due to illegal exclusion from work or dismissal, or was dismissed and subsequently reinstated in accordance with the relevant special laws, or was unemployed due to dismissal, which dismissal was subsequently overthrown as illegal by the competent authorities: from the date of dismissal to the date of reinstatement, but no later than 14 days from the entry into force of the decision of the competent authority establishing the illegality of the dismissal; the time during which the person remained unemployed as a result of his/her dismissal due to detention by the authorities, but was not indicted, or was acquitted, or the criminal proceedings were terminated, or the custodial sentence was declared wrongfully passed because the person in question did not commit the act or the act did not constitute a crime; 6. the period during which the person under occupational rehabilitation scheme did not work because he/she was not given an appropriate job by the social security contributor according to the prescriptions of the health authorities; for this period the social security contributions on the due remuneration are paid by the social security contributor; 7. the period during which the person received benefits for the time he/she was unemployed under the Labour Code, the Civil Servants Act and the Higher Education Act.
2. Similar legal institutes in social security law concerning some cases of social security benefits

A special case is the so-called actual service, required for payment of certain contributory or non-contributory pensions, in particular:

1) pension for pensionable service and old age in reduced amount, payable upon existence of 15 years of actual service (Art. 68, Para 3 SSC), and

2) the category of personal pensions in the form of pension for mothers of large families and pension for care of a disabled person.

It is evident that this relatively new concept is set as a requirement for receiving personal pensions, while the contributory pensions, with the exception of the reduced pension, are governed by the requirement for pensionable service in general, including the recognized pensionable periods without actual employment.

The concept of actual service is legally defined in paragraph 2 of OPPS, am. SG issue 84 of 2009, as "the time actually served under employment contract or act for appointment; the time during which the person worked without being party to an employment contract, and the time during which the person was fully self-secured."

Thus, the above-mentioned statutory provision lays out three possible cases:

1) the actual time worked under employment contract, act of appointment or equivalent legal relationship, without the fiction of recognizing additional periods. It is clear that this case takes into account only the actual time worked, resp. the amount of labour, and does not concern the fact of being socially secured or other relevant social security status of the individual at the time of receipt of the benefit.

2) the periods of work without employment relationship, where the person hired should have received remuneration at least in the amount of the minimum monthly wage prescribed for the respective calendar period, but not exceeding the duration of the contract. The said category of persons is governed by the legal technique for calculating the length of service (Art. 38, Paras. 5 and 6 OPPS) whereby the time during which the persons work without employment contract and receive a monthly remuneration equal to or greater than one minimum monthly wage for Bulgaria after deduction of the operating expenses, and during which social security contributions have been paid or were payable, is recognized as pensionable service, however not longer than the duration of the contract. Here it is further clarified that a for person working without an employment relationship who is subject to social security, the pensionable service for the period of work without an employment relationship is
determined by dividing the remuneration received (after deducting the operating expenses) by the average daily minimum wage for the country.

3) the period of own social security contribution covering the months and years in which the self-secured person has paid social security contributions by periods and risk categories.

The introduction of the concept and its recognition in terms of the various aspects mentioned above raises several specific issues concerning the set of facts required for granting contributory and non-contributory benefits, respectively. This is particularly pronounced in the case of the pension for old age and pensionable service. Introduced as a classic case of contributory pension, this pension is in essence a potestative right exercisable upon occurrence of specifically defined events, mainly concerning the persons subject to compulsory social security, and constituting the basic and emblematic form of social security. It is stipulated in Articles 68 – 70a and § 5-8 SSC, as well as Articles 15 – 21a OPPS, and has the following main characteristics:

• the occasion for its application is permanent incapacity for work, in respect of which there are two basic presumptions: first, that recovery is not expected, and second, the legal presumption of old age, which may be a function or the cause of incapacity.
• its payment takes place over a long, indefinite period of time, within the time frame defined by the occurrence of the secured event and the secured person's death.
• it uses specific differentiating criteria that are not taken into account in the determination of other pensions, namely age and gender of the person secured.

There are three prerequisites for the existence of the right to pension for pensionable service and age:

1) the status of being socially secured – in that sense, the persons entitled to pension are all compulsorily secured persons, incl. regular military personnel, officers, sergeants and civilians under the Ministry of Interior Act and the Execution of Penalties Act; 2) a certain age – according to this criterion, the right to pension for pensionable service and age is acquired at the age of 63 for men and 60 for women. It is prescribed that the said age will increase from December 31, 2011 by 4 months for both women and men until reaching 63 years for women and 65 for men; 3/ a minimum length of pensionable service which is 34 years for women and 37 for men. From December 31, 2011 this required length of pensionable service will increase at the first day of each calendar year by 4 months for women and men until it reaches 37 years for women and 40 years for men.

The absence of the abovementioned conditions is grounds for receiving a pension in the so-called minimum amount. This pension is granted in case the length of
the pensionable service and the age of the person secured are less than required, but
the person secured has at least 15 years of actual service and has reached the age of
65 (valid for both men and women). From December 31, 2011 the required age will
increase by 4 months at the first day of each subsequent calendar year until reaching
67 years.

In deviation from the general rules, the regular military personnel, the civil serv-
ants under the Ministry of Interior Act and the Execution of Penalties Act, the civil
servants under the Postal Services Act, the civil servants providing security of the
judiciary under the Judiciary Act, and investigators and junior investigators acquire
the right to receive pension upon termination of their employment, regardless of their
age, provided that they have at least 27 years of pensionable service, of which two
thirds are actual military service, respectively service as civil servants under the
above Acts.

In that sense, the introduction of the actual service requirement in the absence of
the prerequisites for obtaining a full pension, and in particular the absence of ade-
quate social security status, seems like serious digression from the principle of auton-
omy of the institutes of social security law. This legal solution takes into account only
the circumstance of the work experience characteristic of labour law, and constitutes a
mechanism for receiving a contributory benefits in the absence of contribution and
prior involvement of the person concerned in the payment of social security contrib-
utions, which otherwise are requirements that are touted as being of the highest priority
for obtaining social security benefits.

On the other hand, a minimum actual service is required for receiving non-
contributory pensions (by mothers with many children and care of a disabled person),
where these pensions are in essence non-contributory payments with regard to which
it is important to emphasize the following points, namely: in principle, such payments
do not require existence of employment relationship under employment contract or
act for appointment, i.e. legal relationship with a social security contributor and the
resulting status of being socially secured, given the absence of parameters typical of
work-related pensions (pensionable service, age, labour categories), and that the
amounts of these non-contributory benefits are defined as a percentage of the old-age
pension and paid from the republican budget: the Non-Work Related Pensions fund.

Pension for mothers of large families is granted if the following conditions are
met:

1) at least 65 years of age
2) annual income per family member less than the sum of the guaranteed mini-
  mum income established for Bulgaria for the past 12 months
3) at least 3 years of actual pensionable service
On the other hand, personal pension for care of a disabled person is granted if the following conditions are met:

1) the sick family member cared for has been disabled for the entire 10-year period, with work capacity reduced by over 90 percent, and has been in need of assistance – this is established through a decision of the Territorial or National Expert Medical Committee, certifying that the sick person has for the entire 10-year period been permanently disabled with type and degree of disability over 90 percent, and has been constantly in need of assistance;

2) the beneficiary has annual income less than the sum of the guaranteed minimum income established for Bulgaria for the past 12 months, and

3) 3 years of actual pensionable service.

It is obvious that for both types of personal pensions the introduction of the requirement for actual service is flawed in at least two aspects:

1) it is a digression from the principle of non-contribution and discriminatory in terms of stricter requirements for receiving these pensions in distinction from, say, the social pension for old age.

2) on the other hand, given the social importance of the functions of the beneficiaries, it is unjustified to require actual instead of pensionable service, reduced as per the legal fiction by the relevant periods, incl. periods for child-raising, pregnancy and childbirth.

Another concept used by the legislator and relevant to the grant of pension is the concept of "service as teacher". It was introduced through Article 19 OPPS and defined as the pensionable service obtained by working as teacher or supervisor in schools and other educational institutions. It is further stipulated that the term “service as teacher” includes the pensionable service of principals and assistant principals of schools and other educational institutions if they have achieved the compulsory length of service as teachers.

The pensionable service of persons with jobs as per the list approved by the Minister of Education and Science in coordination with the Director of the National Social Security Institute is also recognized as "service as teacher", if such persons meet the requirements for holding the position of teacher or supervisor in terms of acquired education, vocational training and qualifications, and have achieved the compulsory length of service as teachers. Furthermore, the legislator recognizes as "service as teacher" also the pensionable service performed after January 1, 2007 as "supervisor" in homes for children deprived of parental care, and the pensionable service performed after 1 January 2008 as "supervisor" in other specialized institutions for social services for children, or in other institutions for social services in the community, as well as the pensionable service performed after January 1, 2009 as "peda-
The concept is a special case of the pension for pensionable service and old age which introduces additional specific criteria, namely the position occupied, participation in the contribution scheme and work load corresponding to the mandatory teaching load. By correlation, this impacts the mechanism of calculating the length of service, insofar as the pensionable service of lecturers who have worked under employment contracts in one or more schools, community educational centers or other organizations accrued until December 31, 2008, is determined by equating one month of pensionable service with one calendar month in which they have worked at least 75 hours (50 hours in the case of higher education institutions) and the social security contributions have been paid or were payable on no less than the minimum pensionable income for the relevant profession as per the main economic activity of the social security contributor. When such persons have worked less than 75, respectively 50 hours, the total number of hours worked is divided by 3, respectively 2, and the pensionable service is recognized as the resulting number of days, provided that the social security contributions have been paid or were payable on no less than the minimum pensionable income for the relevant profession as per the main economic activity of the social security contributor. After January 1, 2009 the pensionable service is recognized as prescribed in Art. 9 SSC: in accordance with the relevant contract.

We consider this case to be relatively justified, as it modifies the general preconditions for pensionable service according to the specifics of the activity carried out, and supplements the benefits provided under the supplementary social security schemes. In that sense it is expressly stipulated that the persons entitled to pensions under the specified conditions will be granted a fixed-term pension for early retirement in reduced amount from the Teachers Pension Fund until reaching the age under Art. 68, Para. 1 SSC, and after that age their pension for old age and pensionable service will be paid in the full amount from the Pensions Fund. It is evident that the said case is an additional cumulating concept concerning benefits under supplementary pension schemes, thus expanding the social security of the retired person.

3. Conclusion

Based on the analysis of the mechanism for implementation of the pensionable service within the framework of this study, we can draw the following logical conclusions:

1) there is a serious digression from the concept of the length of specialized service in the case of the classical contributory pension, which apparently is granted for actual work experience, without regard to the social security status of the person and his/her prior participation in the social security contribution,
2) there is an unjustified requirement for contribution for the purpose of receiving otherwise non-contributory benefits, and this in situations where it is in purely practical terms obviously impossible to work;

3) there is a specification of the length of service of a particular category of employed persons resulting in increased amounts of social security benefits in particular situations of recognition and payability.

The above conclusions as to the nature of the controversial in theory and in practice legal framework allow us to make the following suggestions de lege ferenda:

1) as regards the pension for service and age, the previous wording of the provisions should be restored, i.e. the required existence of actual service, but as part of the total pensionable service;

2) as regards the non-contributory pensions mentioned above, the requirement for a minimum of three years of pensionable service should be stipulated, within the field of application of the legal fiction that makes relevant also the equated periods.

This would help satisfy the legal requirement for equality among the categories of persons receiving benefits, and, in general, it would be in line with the widely proclaimed principles of solidarity, mutual assistance and social protection underlying the social security legislation.

References


SOCIAL SECURITY LENGTH OF SERVICE AND RELATED INSTITUTES IN RECOGNIZING CERTAIN KINDS OF SECURITY

Assoc. Prof. Galina Yolova, PhD

Abstract

The article analyzes the specifics of determining and recognizing social security length of service in accordance with the principles of the general and the special legal system. In the aspect of its difference from the length of employment there are drawn basic aspects of definition and its specific features with regard to its nature, recognition by period and significance in view of principal security considerations. Specifically, there is an emphasis on the recognition of the length of service with regard to certain special hypotheses on the provision of the long-term pension payments, and also in view of specific categories of non-contributory pension schemes. With regard to the latest changes in the legal framework there is made a parallel between the general institute of social security length of service and the introduction of the requirement for the so-called real length of service, concerning particular kinds of non-
contributory consideration, and the concept of teacher's length of service, connected with the pension for length of service and age, in view of which there are drawn specific conclusions and recommendations on improving the texts and principles connected with it.

**Keywords:** social security length of service, real length of service, teacher's length of service, pensions.