The European Union and Social Security Law

Jaan Paju

• HART •
PUBLISHING
OXFORD AND PORTLAND, OREGON
2017

Hart Publishing
An imprint of Bloomsbury Publishing Plc

Hart Publishing Ltd
Kemp House
Chawley Park
Cumnor Hill
Oxford OX2 9PH
UK

Bloomsbury Publishing Plc
50 Bedford Square
London
WC1B 3DP
UK

www.hartpub.co.uk
www.bloomsbury.com

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA

www.isbs.com

First published 2017

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

ISBN: HB: 978-1-50991-157-8
ePDF: 978-1-50991-155-4
ePub: 978-1-50991-156-1

Library of Congress Cataloging-in-Publication Data

Names: Paju, Jaan, author.

Title: The European Union and social security law / Jaan Paju.

Description: Portland, Oregon : Hart Publishing, 2017. | Series: Modern studies in European law ; volume 77 | Includes bibliographical references and index.

Identifiers: LCCN 2017018589 (print) | LCCN 2017022675 (ebook) | ISBN 9781509911561 (Epub) | ISBN 9781509911578 (hardback : alk. paper)

Subjects: LCSH: Social security—Law and legislation—European Union countries.

Classification: LCC KJE3387 (ebook) | LCC KJE3387 .P35 2017 (print) | DDC 344.2403—dc23

LC record available at https://lccn.loc.gov/2017018589

Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by TJ International Ltd, Padstow, Cornwall

To find out more about our authors and books visit www.hartpublishing.co.uk. Here you will find extracts, author information, details of forthcoming events and the option to sign up for our newsletters.

1

Introduction: Starting Points, Purpose and Methodology

1.1. PURPOSE AND QUESTIONS

THE PURPOSE OF this monograph is to analyse how EU law relates to and impacts on the national social security systems of Member States. The monograph contributes to a deeper understanding of the transformation of national social security models brought about as an inevitable result of EU law.

When the first regulation in the field of social security within the European Economic Community, Regulation 3/58,[1] was passed, the question of harmonisation of the social security systems of Member States was subject to discussion and analysis. Harmonisation was, however, not considered to be necessary, since it was assumed that the economic development within the European Economic Community would lead to a natural convergence of the national social security systems.[2] For this reason, the Regulation was limited to coordination of Member States' social security systems, while the Member States' legislative competence remained unrestricted:

> In the absence of harmonisation at Community level, it is for the legislation of each Member State to determine both the conditions concerning the right or duty to be insured with a social security scheme … and the conditions for entitlement to benefits.[3]

However, with the development of the Economic Community into a Union, coordination of EU Member States' social security systems has increasingly evolved

[1] Regulation 3/58 of 25 September 1958, OJ No 30, 16 December 1958.

[2] See the Ohlin Report; 'Social aspects of European economic co-operation: Report by a group of experts', Studies and Reports, New Series No 46, ILO, Genève, 1956; chs IV and V and the report's conclusions p 115 ff.

[3] Case C-158/96 *Raymond Kohll v Union des caisses de maladie* [1998] ECR I-1931, 18. Cf Case 266/78 *Bruno Brunori v Landesversicherungsanstalt Rheinprovinz* [1979] ECR 2705; Case C-275/96 *Anne Kuusijärvi v Riksförsäkringsverket* [1998] ECR I-3419, 29; Case C-227/03 *AJ van Pommeren-Bourgondiën v Raad van bestuur van de Sociale verzekeringsbank* [2005] ECR I-6101, 33; Case C-388/09 *Joao Filipe da Silva Martins v Bank Betriebskrankenkasse-Pflegekasse* [2011] ECR I-5737, 71; Joined Cases C-611/10 and C-612/10 *Waldemar Hudzinski v Agentur für Arbeit Wesel—Familienkasse* (C-611/10) and *Jaroslaw Wawrzyniak v Agentur für Arbeit Mönchengladbach—Familienkasse* (C-612/10) EU:C:2012:339, 42.

into a legal framework in which Member States' legislative competence 'must be exercised in compliance with Community law'.[4]

This context constitutes the core of this monograph: how EU law has influenced and continues to influence national social security models, regardless of the fact that, on paper, the EU competence has been limited to coordination.

For the purpose of the monograph, three questions are addressed.

The first question is how the internal market and its development through the years has had an impact on national social security models, even though the EU competence has been limited to coordination. The legal situation in 2017 is very different from what it was in 1958. The EU aims to implement the Lisbon Treaty leading to a social market economy and rights-based union. There are currently three parallel frameworks that can influence the national social security systems in the Member States when EU law is brought to the fore. These frameworks can have a parallel as well as joint influence. They can strengthen the EU law, but are also capable of pushing it to new directions. Therefore, the second and third questions, respectively, are how Union citizenship and the EU Charter of Fundamental Rights have influenced the coordination of national social security systems.

This monograph addresses these three questions, both from the perspective of the Member States and from the perspective of the individual, since these are integrated in such a way that greater individual freedom usually leads to a Member State's competence being limited, and vice versa.

1.2. THE THEORETICAL FRAMEWORK

The purpose of this monograph gives rise to the question of whether there is a possible erosion of sovereignty of national competence with respect to social security systems.[5]

The starting point for sovereignty erosion is that Member States are the 'masters of the Treaties' and the situation is observed from a purely national standpoint.[6]

[4] Case C-158/96 *Raymond Kohll v Union des caisses de maladie* [1998] ECR I-1931, 19. See also Case 275/81 *GF Koks v Raad van Arbeid* [1982] ECR 3013, 10 and Case C-137/11 *Partena ASBL v Les Tartes de Chaumont-Gistoux SA*, EU:C:2012:593, 59.

[5] I assume the Westphalian concept of sovereignty with an absolute internal authority without the possibility of external actors intervening; Brown talks about 'establishing a State centered system that was based on principles of equal State sovereignty and the absolute right to internal self-determination without external interference', G Brown, 'State Sovereignty, Federation and Kantian Cosmopolitanism' [2005] *European Journal of International Relations* 495, 498. Cf M Isenbaert, *EC Law and the Sovereignty of the Member States in Direct Taxation* (Amsterdam, IBFD Publications, 2010) ch 2.

[6] This approach does not take into account the fact that, early on with Case 6/64 *Costa v ENEL* [1964] ECR 585 the CJEU created a Community law, 'a special legal system', with its own legal framework and principles. For a review of the concept of sovereignty in the EU legal context see M Isenbaert, *EC Law and the Sovereignty of the Member States in Direct Taxation* (Amsterdam, IBFD Publications, 2010) ch 2 and T Schilling, 'The Autonomy of the Community Legal Order: An Analysis of Possible Foundations' [1996] *Harvard International Law Journal* 389. See also K Lenaerts, 'Constitutionalism and the Many Faces of Federalism' [1990] *American Journal of Comparative Law* 205; GF Mancini, 'The Making of a Constitution for Europe' [1989] *CMLR* 595; J Weiler, 'The Transformation of Europe'

Therefore, a transfer of legislative competence under EU cooperation is based on active actions on the part of a Member State. For example, the Danish constitutional law mentions abandonment of sovereignty, while in the Swedish case it is a matter of transfer of authority.[7]

Sovereignty erosion is characterised by a situation where EU law substantially influences national legislations without the Member States having agreed to a formal transfer of competence.[8]

There are cases where, seemingly exclusive, national legislative competence are in conflict with the EU law and the latter takes precedence.[9] Ferrera observes:

> 'It is clear that the principles of direct effect and of EC law supremacy as well as the transformation of the preliminary ruling system significantly eroded the Member States' Westphalian sovereignty, that is, their ability to exclude external authority structures from their jurisdictional space.'[10]

Sovereignty erosion is not a new phenomenon within EU law and this is not surprising; as a general principle, EU law takes precedence in case of a conflict.[11] Leibfried and Pierson discuss a situation in which EU law has led to significant sovereignty erosion with regard to national legislative competences when the welfare systems of the Member States conflicted with the market theories of the EU law.[12]

With regard to social security, it is a case of EU coordination, as mentioned above in section 1.1; a coordination where EU law respects Member States' legislative

[1990–91] *The Yale Law Journal* 2403. For a critical assessment, H Rasmussen, *On Law and Policy in the European Court of Justice. A Comparative Study in Judicial Policymaking* (Dordrecht, Martinus Nijhoff Publishers, 1986). Cf MP Maduro, *We, the Court, the European Court of Justice & the European Economic Constitution* (Oxford, Hart, 1998).

[7] Hartig Danielsen talks about a possibility of abandonment of sovereignty: J Hartig Danielsen, *Suverænitetsafgivelse* (Copenhagen, Jurist- og Økonomforbundets Forlag, 1999). The Danish Constitution § 20, The Swedish Constitution, Regeringsformen 10:6.

[8] Walker talks about a 'late sovereignty', a developed sovereignty in a new multi-dimensional order that is characterised by openness to the idea that the concept of sovereignty has developed beyond the Westphalian concept of sovereignty, and that there is no return. N Walker, 'Late Sovereignty in the European Union', in N Walker (ed) *Sovereignty in Transition* (Oxford, Hart, 2003) 19 ff.

[9] Leanerts finds that 'There simply is no nucleus of sovereignty that the Member States can invoke, as such, against the Community.' K Lenaerts, 'Constitutionalism and the Many Faces of Federalism' [1990] *American Journal of Comparative Law* 205, 220.

[10] M Ferrera, *The Boundaries of Welfare, European Integration and the New Spatial Politics of Social Protection* (Oxford, Oxford University Press, 2005) 99.

[11] In the preliminary rulings in *Costa v ENEL*, *Internationale Handelsgesellschaft* and *Simmenthal II*, the CJEU determined that the EU law has precedence where there is a conflict of norms, regardless of the form of national legislation or if it was adopted at a later date. See Case 6/64 *Costa v ENEL* [1964] ECR 585; Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125 and Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* [1978] ECR 629. Cf. M Isenbaert, *EC Law and the Sovereignty of the Member States in Direct Taxation*, which is based on similar ideas about sovereignty erosion to those expressed in this monograph, but takes into account Member States' competence when it comes to income taxation.

[12] P Leibfried and P Pierson, 'Semisovereign Welfare States: Social Policy in a Multitiered Europe', in P Leibfried and P Pierson, (eds), *European Social Policy: Between Fragmentation and Integration* (Washington DC, Brookings Inst Press, 1995) 44.

competence. According to the doctrine, there is, however, also an erosion of sovereignty in the field of social security. Watson mentions how 'the sovereignty of the Member States has been subject to a degree of erosion'.[13] Knorpel observes, in connection with the Court's decision in Patteri,[14] that 'the Court has now firmly rejected the long held but increasingly eroded notion that the Community law of social security has not gone beyond the stage of co-ordination of autonomous national legislations'.[15] Also see Dougan, who describes how the CJEU reduces the sovereignty of political bodies when it does not base its rulings on the Regulation.[16]

It can also be considered an erosion of sovereignty with regard to national welfare systems when Member States preclude the erosion by changing or refraining from legislation. When Sweden became an EU member in 1995, there was awareness that, in the EU legal environment, residence-based benefits were vulnerable to a greater degree than work-based benefits. The social security legislation then in force was therefore divided into work-based benefits, with reimbursement rates calculated on the basis of income, and residence-based benefits for everyone residing in Sweden. Furthermore, a basic pension was introduced, that was conditional, depending on the qualification period, to replace the state pension which had been based on residence. A Member State can also decide not to go through with certain legislation. For example, Germany decided in the 1990s, in order to avoid future potential export of the social security benefit, to bury a legislative initiative (the Fink model) for an additional state pension for low-income people, regardless of the fact that there was a political consensus about the need for such a benefit.[17]

However, in order to be able to speak about sovereignty erosion, first there has to be sovereignty. Wrange had posed the question 20 years earlier, whether the term sovereignty could in the future properly be used to describe reality.[18] MacCormick describes in his famous work *Questioning Sovereignty*[19] how understanding of sovereignty has changed through the centuries: in ancient times there were city-states like Athens and Sparta, followed by the Roman Empire that was certainly a controlled area but where groups of the population retained a degree of independence; in Scotland, the clan system had been prevalent well into the Middle Ages, and in Germany small feudal states thrived, where a person received

[13] P Watson, *EU Social and Employment Law*, 2nd edn (Oxford, Oxford University Press, 2014) 71.

[14] Case 242/83 *Caisse de compensation pour allocations familiales du bâtiment, de l'industrie et du commerce du Hainaut v Salvatore Patteri* [1984] ECR 3171.

[15] H Knorpel, 'Social Security Cases in the Court of Justice of the European Communities' [1986] *CMLR* 359, 380.

[16] M Dougan, 'Expanding the Frontiers of EU Citizenship by Dismantling the Territorial Boundaries of the National Welfare States', in C Barnard and O Odudu (eds), *The Outer Limits of European Union Law* (Oxford, Hart, 2009) 149 ff.

[17] For the latter situation see L Conant, *Justice Contained, Law and Politics in the European Union* (Ithaca NY, Cornell University Press, 2002) 194.

[18] P Wrange, 'The Concept of Sovereignty—Alive and Kickin" [1994–95] *Juridisk Tidskrift* 350.

[19] N MacCormick, *Questioning Sovereignty—Law, State, and Practical Reason* (Oxford, Oxford University Press, 1999).

patronage in exchange for services. Only later did these societies develop into the states that we know today.[20]

The national state is generally considered a sovereign state that encompasses all political functions and fields. As a sovereign state, it is based on a legal system, with a constitution and defined separation of powers between national political authorities.[21]

For states that are members of the EU, there is an additional legal dimension.[22] An EU Member State must rely not only on its national constitution, but also on EU Treaties and secondary EU law. This is a constitutional pluralism, with two parallel constitutional systems functioning side by side.[23]

However, it is difficult to imagine a harmonious constitutional pluralism in cases where the EU legal system takes precedence over national legislation. Rossa Phelan proposes instead a constitutional situation resembling revolution or revolt for Member States: a revolution at home when EU law takes precedence, and a revolt on the basis of the idea that the national law or the constitution should take precedence over EU law.[24]

Areas of constitutional conflict have emerged mainly within the internal market, but later on have also appeared in the field of Union citizenship and the Charter of Fundamental Rights. The institution that makes these conflict areas visible is the CJEU, which can only tear them apart. In other words, the Court rules—it does not legislate.[25]

MacCormick determines two ways of resolving these conflict areas that are left open. Either the situation can be resolved by radical pluralism, where there is awareness that the two constitutional systems are not always easy to reconcile, that the EU law does not always take precedence,[26] or it can be resolved by a legal balancing act, which is usually subject to a political solution. Where legal systems

[20] ibid, 17.

[21] G Poggi, *The State—Its Nature, Development and Prospects* (Cambridge, Polity Press, 1990).

[22] N MacCormick, *Questioning Sovereignty—Law, State, and Practical Reason* (Oxford, Oxford University Press, 1999) 97 ff. See also Wrange, 'The Concept of Sovereignty—Alive and Kickin", 362.

[23] The preliminary ruling in Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1 introduced a new constitutional situation by stating: 'The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independent of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them the rights which become a part of their legal heritage.'

[24] D Rossa Phelan, *Revolt or Revolution: The Constitutional Boundaries of the European Community* (London, Round Hall/Sweet & Maxwell, 1997) 413 ff.

[25] However, the Court's case law can lead to a positive integration in the long run, if its judicial function makes the Member States consolidate their applicable laws. Cf the Patient Directive which consolidates the case law on the cross-border health care; Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, [2011] OJ L88/45.

[26] cf RD Kelemen, 'On the Unsustainability of Constitutional Pluralism: European Supremacy and the Survival of the Eurozone' [2016] *Maastricht Journal of European and Comparative Law* 136.

interact in a common legal environment, MacCormick foresees general principles and rules of international law providing an outer framework.[27]

As long as we cannot free ourselves from the prevailing concept of sovereignty, the issue of sovereignty erosion—where one side gains sovereignty at the expense of another—will continue.[28] It is within this prevailing constitutional context that the three questions of this monograph are based.

1.3. MATERIALS AND METHOD

For the purpose of the monograph, it can be observed that the EU legal doctrine in the field of social security is relatively limited, despite the importance of social security systems in the national context.[29] The basis of the monograph consists therefore mainly of approximately 600 cases that the CJEU has dealt with over the years.

The monograph analyses the influence of the internal market in a more substantial way in comparison to the Union citizenship and the Charter of Fundamental Rights. This can be explained by the initial need for coordination of Member States' social security systems as a result of cross-border movements of the labour force. Therefore, free movement of workers constitutes a foundation for the Regulation. In addition, the internal market generates the majority of the preliminary rulings.

Abstraction and generalisation of the extensive case law in the field can reveal structural patterns, which in turn can clarify the legal structures.[30] The approach making a division into three acting legislative powers—the internal market, Union citizenship and the Charter of Fundamental Rights—provides an explanation for the phenomenon of sovereignty erosion, and why one Member State's welfare model is exposed while another may not be influenced at all.

1.4. CONCEPTS

A welfare state and its social security system is built on solidarity among those who reside (and/or are citizens) within a territorially limited area (a state). Four concepts—state, citizenship, solidarity and social security—therefore are central to the subject of this monograph.

[27] N MacCormick, *Questioning Sovereignty—Law, State, and Practical Reason* (Oxford, Oxford University Press, 1999) 116 ff.

[28] Wrange: 'Until we learn to think about the European Union as something completely different from everything we know today,' sovereignty' seems to be a necessary part of our vocabulary.' Wrange, 'The Concept of Sovereignty—Alive and Kickin" 364.

[29] In the case of Sweden, more than one billion SEK a day is paid in benefits, not counting unemployment benefits.

[30] cf K Tuori, *Critical Legal Positivism* (Aldershot, Ashgate, 2002) 154 ff.

The first concept of a state can be traced back to the Greek city-states.[31] However, it is only towards the close of the nineteenth century that we see a more structured national state as it is understood today.[32] The monograph relies on Tilly's definition of a state: 'State building provided for the emergence of specialized personnel, control over consolidated territory, loyalty, and durability, permanent institutions with a centralized and autonomous state that held the monopoly of violence over a given population'.[33]

The concepts of citizenship and solidarity are closely intertwined and indeed interdependent. Citizenship can also be traced back to the Greek city-states.[34] Citizenship is normally given to natural persons by a sovereign state and provides them with various rights and obligations towards the state. The conditions for the acquisition and loss of citizenship are in a state's competence, and their contents are ultimately defined by the respective state.[35] Citizenship has usually been a precondition for solidarity. In *Rottmann*, the CJEU defined 'the special relationship of solidarity and good faith between it and its nationals'.[36] This definition has traces of Habermas' theory that describes citizenship as 'an abstract, legally mediated solidarity between strangers'. Citizenship therefore leads to solidarity.[37]

The third concept, solidarity, according to Derpmann, can best be described as an obligation or a feeling of obligation to act for another person's (citizen's) well-being, even in situations where one may thereby deny oneself of material position or one's own well-being.[38] This solidarity can arise as a result of free will, or through laws that form the basis for social security.[39]

[31] FH Hinsley, *Sovereignty*, 2nd edn (Cambridge, Cambridge University Press, 1986) 28 ff.

[32] C Tilly, 'Reflections on the history of European state-making', in C Tilly (ed), *The formation of national states in Western Europe* (Princeton NJ, Princeton University Press, 1975) esp 608 ff.

[33] ibid, 70 ff.

[34] D Heater, *Citizenship: The Civic Ideal in World History, Politics and Education*, 3rd edn (Manchester, Manchester University Press, 2004) 3 ff.

[35] See for instance Case C-200/02 *Kunqian Catherine Zhu, Man Lavette Chen and Secretary of State for the Home Department* [2004] ECR I-9925, 37.

[36] Case C-135/08 *Janko Rottmann v Freistaat Bayern* [2010] ECR I-1449, 51.

[37] J Habermas, 'Why Europe Needs a Constitution' [2001] *New Left Review* 16.

[38] P Derpmann, 'Solidarity and Cosmopolitanism' [2009] *Ethical Theory and Moral Practice* 303,304. Cf K Tuori, 'European Social Constitution: Between Solidarity and Access Justice', in K Purnhagen and P Rott (eds), *Varieties of European Economic Law and Regulation, Liber Amicorum for Hans Micklitz* (Cham, Springer, 2014) 374 ff, where Tuori creates an image of solidarity that is built on common history, values and identity. Pieters talks about 'circles of solidarity' which are not necessarily territorially limited: D Pieters, *Social Security: An Introduction to the Basic Principles*, 2nd edn (Haag, Kluwer, 2006) 21.

[39] cf D Schiek, 'Perspectives on social citizenship in the EU—from status positivus to status socialis activus via two forms of transnational solidarity', in D Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge, Cambridge University Press, 2016); N Nic Shuibhne, 'Limits Rising, Duties Ascending: the Changing Legal Shape of Union Citizenship' [2015] *CMLR* 889. Ross describes 'we and they' as a set that characterises citizenship and solidarity and that both include and exclude groups of people. M Ross, 'The Struggle for EU Citizenship: Why Solidarity Matters', in A Arnull, C Barnard, M Dougan and E Spaventa (eds), *A Constitutional Order of States? Essays in EU Law in Honour of Alan Dashwood* (Oxford, Hart, 2011) 284.

The fourth concept, social security, depends on one's understanding of what that term implies, so the definition can differ depending on whom one asks. Most national definitions of social security provide a list of what it includes, but not what is really meant by social security. Since there is no generally accepted definition, and no possibility of formulating one, social security is defined by the respective state and therefore differs from one state to another.[40]

Furthermore, there is no international definition of what is meant by social security.[41] The ILO defines the concept, in *Into the 21st Century: The Development of Social Security*,[42] as follows:

> social security has wider aims than the prevention or relief of poverty. It is the response to an aspiration for security in its widest sense. Its fundamental purpose is to give individuals and families the confidence that their level of living and quality of life will not, in so far as is possible, be greatly eroded by any social or economic eventuality. This involves not just meeting needs as and when they arise but also preventing risks from arising in the first place.[43]

According to the above, Regulation 883/2004 does not include a definition of the concept of social security; instead it lists the areas that are encompassed by the Regulation. Hence there is an outer framework. The limits of this framework have been developed by the CJEU in its judicial capacity, so that an independent EU judicial area has emerged.

1.5. DISPOSITION

This monograph consists of eight chapters, including this introductory method chapter and concluding with Chapter 8.

Chapter 2 provides both background and context. It notes that national security systems differ, but that they have one thing in common: territorial limitation. This limitation makes cross-border movement more difficult, in that a person can lose earned rights by moving or not having these rights acknowledged in the other

[40] cf P Watson, *EU Social and Employment Law*, 2nd edn (Oxford, Oxford University Press, 2014) 71.

[41] UN Universal Declaration of Human Rights describes in Art 22 how everyone has the right to social security, without explaining in detail what social security includes. The explanatory Art 25 clarifies the term to a certain extent by naming a list of benefits that should be included: Art 25 para 1: 'Everyone has the right to … security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control.' Art 25, para 2: 'Motherhood and childhood are entitled to special care and assistance.' UN Universal Declaration of Human Rights, resolution 217A(III) of 10 December 1948. ILO Convention Concerning Minimum Standards of Social Security also does not offer a legal definition of the term. The Social Security (Minimum Standards) Convention, 1952 (No.102), UN Doc, www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312247:NO.

[42] ILO Publications, *Into the Twenty-First Century: The Development of Social Security* (Genève, ILO, 1984).

[43] ibid, 19.

state, giving rise to the need of coordinating the social security systems, thereby introducing Regulation 883/2004.

The analytical approach of this monograph is introduced in Chapter 3, which explores how the CJEU's methods of legal interpretation have led to the expansion of both material and personal scope. In turn, a larger material and personal scope has meant more cases and therefore more preliminary rulings that have strengthened the impact of EU law.

Chapter 4 describes the evolution of non-discrimination in the field of social security from direct discrimination to market access. This chapter analyses how the CJEU has developed the principle of non-discrimination, where the assimilation of facts forms an important part. Assimilation of facts from previously earned qualification periods from different Member States may seem obvious from the internal market perspective, but not for national social security systems.

Chapter 5 analyses how the CJEU has made use of primary law in cases where the Regulation is not applicable. The analysis focuses on the preliminary rulings in *Öberg*[44] and *Rockler*,[45] as well as the case law in the field of cross-border healthcare, starting with the preliminary ruling in *Kohll*.[46]

Chapter 6 looks into how the Union Citizenship and Directive 2004/38[47] influence and affect the national social security systems. The chapter focuses mainly on the question of whether EU citizenship can lead to access to national social security systems' residence-based benefits.

The EU's Charter of Fundamental Rights (Charter of Rights)[48] is a new basis for Union law that has developed on grounds other than the purely economic ones upon which EU cooperation was previously established. Chapter 7 analyses how the Charter of Rights can influence the social security systems of Member States within the EU legal context. In this regard, the chapter studies the directly applicable Article 34 as well as adjacent basic rights.

Chapter 8 summarises the monograph's analysis and conclusions and draws a closing comprehensive conclusion. The chapter also discusses the existing legal position from a sovereignty perspective and possible de lege ferenda solutions.

[44] Case C-185/04 *Ulf Öberg v Försäkringskassan* [2006] ECR I-1453.

[45] Case C-137/04 *Amy Rockler v Försäkringskassan* [2006] ECR I-1441.

[46] Case C-158/96 *Raymond Kohll v Union des caisses de maladie* [1998] ECR I-1931.

[47] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, [2004] OJ L158.

[48] Charter of Fundamental Rights of the European Union, [2010] OJ C83/389.