

Minimum Income in a Decentralised State: The Complex Articulation between the Regional and State Level in Spain

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I. Introduction

The need to guarantee a minimum income so that people can live in dignity is not at all a new idea: one of the aims of social security, already described by Beveridge¹, was to provide a guaranteed minimum income to any person, an objective now assumed to be among the socio-political values that permeate both the policies of the European Union² and those of the Member States, including Spain. In fact, the attainment of “providing for existence” of citizens while maintaining the capitalist production system will be the most outstanding target that modulates the concept of the social state (which Spain adheres to) that intends to guarantee individuals minimum levels of protection.

As the Council of the European Union recognises, “all Member States have social safety nets in place but the design varies across Member States, reflecting different national traditions and the overall architecture of social protection systems”³. Due to the heterogeneity in this field, it should be anticipated that when we refer to minimum income schemes in Spain, we always refer to cash benefits provided by the social security or the social assistance system, not addressing other rights related to people’s welfare such as the right to free public health care, free public pre-university education or local services that can provide temporary shelter to vulnerable persons.

Minimum income schemes arrived in Spain three decades ago with Law 26/1990 establishing social security non-contributory disability and retirement pensions, as well as non-contributory family benefits. According to the Preamble to Law 26/1990, its aim was to establish and regulate a non-contributory level of economic benefits of the social security system, as a development of the guiding principle contained in Article 41 of the Constitution, which entrusts the public authorities with the maintenance of a “public social security system for all citizens”. The unbreakable link between non-contributory benefits and solidarity was already present in that law, which states that the new benefits are “an expression of the general

1 In the Spanish translation: Lord Beveridge, *Seguro Social y Servicios Afines* (Ministerio de Trabajo y Seguridad Social, 1989), p. 15.

2 “With a view to ensure a life in dignity at all stages of life, this Recommendation aims at combatting poverty and social exclusion and at pursuing high levels of employment by promoting adequate income support, in particular by means of minimum income” says the first recital of the Council Recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion.

3 Recital 20 of the Council Recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion.

solidarity with people with fewer resources”. There was no reference to dignity in this law.

Since 1990 to the present day, the list of (social security and social assistance) non-contributory and means-tested benefits has been expanding.

Social security⁴ minimum incomes regulated by the state coexist with social assistance minimum incomes regulated by the 17 Autonomous Communities and the two Autonomous Cities (Ceuta and Melilla). This follows from the fact that Spain is a decentralised country and that the Autonomous Communities may assume competences over social assistance. With regard to minimum income schemes, it must be taken into account that all Autonomous Communities and Cities have passed relevant laws in this respect.

Moreover, the Spanish National Strategy to Prevent and Combat Poverty and Social Exclusion 2019-2023, approved in March 2019, announced the introduction, by 2023 at the latest, of a Minimum Vital Income (MVI).⁵ However, the economic crisis resulting from the pandemic accelerated its implementation: Royal Decree-Law 20/2020 established the Minimum Vital Income, aimed at preventing the risk of poverty and social exclusion of persons living alone or integrated into a cohabitation unit when they are in a situation of vulnerability due to lack of sufficient economic resources to cover their basic needs. The MVI is a non-contributory means-tested social security benefit, not a basic income guaranteed to all citizens regardless of their economic resources. Since its implementation in 2020, the social security system has spent EUR 10 billion on the payment of MVI benefits⁶.

The improvisation in approving the MVI and the lack of a prior reform of the pre-existing non-contributory benefits explains why the regulation was born with many deficiencies and gaps and has been subject to continuous reforms since its approval.⁷ Nowadays, the MVI is regulated by Law

4 On the definitions of social assistance and social security in Spain see below, sec. II.2.a).

5 Minister of Social Rights and 2030 Agenda, ‘National Strategy for Preventing and Fighting Poverty and Social Exclusion 2019-2023’ (2019) <https://www.mdsocialesa2030.gob.es/derechos-sociales/inclusion/contenido-actual-web/estrategia_en.pdf> accessed 13.10.2024.

6 La Moncloa, ‘La nómina del Ingreso Mínimo Vital llega a 575.000 hogares en marzo, 125.000 prestaciones más que hace un año (3 April 2024) <<https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/Paginas/2024/030424-nomina-ingreso-minimo-vital-marzo.aspx>> accessed 03.04.2024.

7 M. García Macías, ‘El Ingreso Mínimo Vital y los Vaivenes del legislador’ *Revista de Estudios Jurídico Laborales y de Seguridad Social* 5 (2022), pp. 205 ff.

19/2021 but reforms to the text have continued. There are few benefits that have seen so many changes in such a short period of time. Despite all this, the combined action of different minimum income schemes did not prevent high percentages of poverty in Spain.⁸ In 2023, 26.5% of the Spanish population, i.e., around 12.7 million people, lived at risk of poverty and/or social exclusion.⁹

This latest failure cannot be blamed on the coronavirus pandemic, since already in February 2020 – a month before the Spanish government decreed a “state of alarm” (*estado de alarma*) – the European Commission had confirmed that the poverty rate in the country was 4.4 percentage points above the EU average and inequalities in disposable income remained among the highest in the EU.¹⁰ Particularly worrying was the fact that among the Spanish working population the proportion of employed people at risk of poverty was 3.4 percentage points above the EU average. Just as in other EU countries, in Spain the threat of poverty is proportionally linked to the educational level of the head of household and his/her socio-professional status. Nationality is another factor to be taken into account as in cases where the head of household does not have the nationality of an EU Member State the risk of poverty is higher than average.¹¹

In Spain, the national debate on minimum income has never been linked to the concept of human dignity. The topics addressed by the doctrine and the courts are basically computable and non-computable incomes, and European coordination under Regulation 1408/71 and 883/2004. Another recurring theme in the national debate is whether minimum incomes may discourage job search or encourage work in the underground economy.

8 Although this is not an exclusively Spanish problem: according to the European Commission, in 2017 around 25% of the population in the European Union were at risk of poverty and social exclusion. In 2021, over 95.4 million people still remained at risk of poverty or social exclusion in the European Union according to recital 11 of the Council Recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion. The Union and the Member States are a long way from achieving the Europe 2020 target, which Spain has also failed to meet.

9 EAPN-ES, ‘El Estado de la Pobreza. Seguimiento de los indicadores de la Agenda UE 2030’ (June 2024) <https://www.eapn.es/estadodepobreza/ARCHIVO/documentos/Informe_AROPE_2024_completo.pdf> accessed 13.10.2024.

10 Eurostat, ‘At Risk of Poverty or Social Exclusion in the EU-27’ (2019) <ec.europa.eu/eurostat/cache/infographs/PovertyDay/PovertyDay_2019/index.html> accessed 13.10.2024.

11 C. Sánchez-Rodas Navarro, ‘El Ingreso Mínimo Vital a la luz del derecho de la Unión Europea y de los Convenios Internacionales de Seguridad Social vigentes en España’ Cuadernos de Derecho Transnacional 1 (2023), p. 631.

II. Overview

1. Normative Background

a) Dignity in the Spanish Constitution

One of the purposes included in the Preamble of the currently valid 1978 Constitution is to promote the well-being of all members of the Spanish Nation.¹² The “welfare of the individuals that compose it” was already mentioned as a goal for the government in Article 13 of the first Spanish Constitution of 1812. But such an ambitious goal did not spawn a minimum income regulation at the time.

With regard to the expression “human dignity”, this has only recently appeared in Spanish constitutional texts. Of the seven constitutions that have been promulgated in Spain to date, only the current Constitution of 1978 includes the expression “human dignity” once, when proclaiming in Article 10.1: “The human dignity, the inviolable and inherent rights, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace”¹³.

Dignity is considered by the Spanish Constitutional Court “a fundamental legal value and the germ or core of certain rights that are inherent to it”.¹⁴ Although a database search would list more than three hundred rulings of the Spanish Constitutional Court that contain the expression “(human) dignity” in their texts, none are related to minimum income or social security or social assistance. All these judgments are related to a wide range of different issues, for instance privacy and personal freedom, fundamental right to an ordinary judge predetermined by law, permanent reviewable prison, right to freedom of expression, right to equality before the law, among others.

In Judgment 113/1989, the State Attorney – not the Constitutional Court – held that “human dignity must include, as inherent to its meaning, not only certain immaterial rights, but also economic rights which make it possible to ensure a dignified existence. In this sense, these economic rights must be considered within the category of inviolable rights which

12 The official English translation of the Constitution by the Congress of Deputies is available at <https://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf> accessed 13.10.2024.

13 In the official English translation, human dignity is the term used.

14 Judgment 53/1985, related to partial decriminalisation of voluntary abortion.

are explicitly mentioned as inherent to human dignity in Article 10.1 of the Constitution”. However, the issue under discussion was merely whether or not the rule that social security benefits were unseizable was in conformity with the Constitution.

b) The Constitutional Basis for the Right to Sufficient Benefits in Case of Need

As follows from the above considerations, the obligation to guarantee sufficient resources in case of need is not based on the concept of human dignity but is a consequence of the fact that Spain is constitutionally configured as a social and democratic state (Article 1.1).

From a political point of view, a democratic state will inevitably turn into a social state insofar as it has to attend to and respond to the demands of all sectors of society and not exclusively to those of one part of it.¹⁵ In other words, in a democratic state, the right to vote guaranteed to all citizens makes that they have the capacity to guide, modulate and modify the policies of the leaders who come out of the ballot box and who represent them. And, conversely, in order to attract and keep the electorate’s vote the political programmes will pay special attention to social rights. It is no coincidence that the introduction of a non-contributory level of social security was on the Socialist Party’s election manifesto in the 1980s, while the introduction of the Minimum Vital Income was the flagship of an extreme left-wing party in the 2019 elections.

The aim of the social state is to “rectify and order directly, within the framework of a democratic system, situations of marked injustice resulting from a competitive society left to the free play of its own forces”¹⁶. Characteristic of the social state established after the Second World War is the inclusion of social and economic rights in order to provide citizens with areas of welfare and security. One of the basic pillars of the social state proclaimed by Article 1.1 of the Spanish 1978 Constitution is the public social security system. The formal scope of the “social security system” in Spain is not limited to insurance-based social protection, but also encompasses social assistance benefits. According to the Constitutional Court, “the purpose of social security is to reduce, remedy or eliminate situations

15 J.P. Royo, *Curso de Derecho Constitucional* (2nd ed. Marcial Pons 1995), p. 199.

16 S. Martín-Retortillo Baquer, *Derecho Administrativo Económico* (La Ley, 2nd ed. 1977), p. 32.

of need, situations which will undoubtedly have to be determined and assessed in the light of the general context in which they occur, and in connection with economic circumstances, current availabilities and the needs of the various social groups” (Judgment of the Constitutional Court 65/1987). More concretely, Article 41 of the Constitution proclaims that “public authorities shall maintain a public social security system for all citizens which will guarantee adequate social assistance and benefits in situations of hardship, especially in cases of unemployment. Supplementary assistance and benefits shall be optional”. According to the Judgment of the Constitutional Court 65/1987, “Article 41 clearly configures social security as state function to meet situations of need that may go beyond the contributory coverage from which the system itself started and that is assigned to the public authorities”.

However, Article 41 is not included among the constitutional fundamental rights and public liberties but in Part I, Chapter 3, which is entitled “Principles Governing Economic and Social Policy”. This specific location – purposely intended by the drafters of the Spanish Constitution – has a legal consequence, insofar as “recognition, respect and protection of the principles recognised in Chapter 3 shall guide legislation, judicial practice and actions by the public authorities. They may only be invoked before the ordinary courts in accordance with the legal provisions implementing them”¹⁷. Thus, for the Constitutional Court, Article 41 lacks direct normative efficacy. Indeed, the content of Article 41 “is oriented towards the public authorities as a duty, but without creating individualised subjective rights” (Judgment of the Constitutional Court 68/1982). In other words, Article 41 is not directly applicable and needs to be developed by the legislator, who must enact laws to ensure its compliance.

As noted by the Spanish Constitutional Court, “[i]t is therefore up to the legislator to determine the degree of protection that the different social needs must deserve and to technically articulate the protection systems aimed at covering them” (Judgment of the Constitutional Court 128/2009). Therefore, “the right that citizens may have in the field of social security strictly derived by ordinary legislation and the legislator is free to modulate the protective action of the system in response to economic and social circumstances that are imperative for the very viability and effectiveness of the system” (Judgments of the Constitutional Court 44/2004 and 213/2005).

17 See Article 53.3 of the Spanish Constitution.

We can conclude that there are no direct subjective rights to benefits in situations of hardship other than those that have been expressly regulated by the legislator. However, there are two constitutional limits, that of equality and that of sufficiency.¹⁸ Moreover, the fact that the Constitution specifically dedicates an article to social security has the legal consequence of blocking and limiting changes within the existing social security system.

In particular, Article 41 prohibits the legislator from abolishing the social security system without prior constitutional reform (Judgments of the Constitutional Court 65/1987 and 51/2006). It also implies that the legislator is bound to maintain a social security system respectful to the main principles that arise from Article 41 in the Spanish Constitution: social security, as a public task and a basic pillar of the social state, must be financed by public resources.¹⁹ Therefore, the state is not only obliged to maintain a public social security system but also to finance it. The fact that in Spain social benefits are financed in an important percentile through social contributions²⁰ does not contravene this obligation, as contributions themselves have a tributary nature.²¹

Moreover, the social security system must be unique and unitary for all citizens and at the same time ensure the equality of all Spaniards in the exercise of their social security rights and duties.²² This universal personal scope arises from the state's responsibility to maintain a public social security system "for all citizens".²³

It is the state's responsibility to guarantee adequate social assistance and benefits in situations of hardship through the social security system. The legislator is obliged to regulate social benefits in case of need and not only against specific contingencies. Furthermore, the social benefits guaranteed

18 A. Ojeda Avilés, 'La Garantía de un Régimen Público de Seguridad Social', in: J. Cruz Villalón (ed.), *Las Transformaciones del Derecho del Trabajo en el marco de la Constitución Española* (La Ley 2006), p. 954.

19 M. Alarcón Caracuel, *La Seguridad Social en España* (Aranzadi 2010), p. 66.

20 People prefer to pay social contributions rather than taxes. That is so because they have the feeling that by paying social contributions they are going to be entitled to some kind of benefit in the future. This conclusion, nevertheless, is false because the fact of paying social contributions does not necessarily imply entitlement to social benefits.

21 E. Borrajo Dacruz, *Estudios de Previsión Social* (Aguilar 1962), p. 425.

22 Judgment of the Constitutional Court 124/1989, 7 July 1989.

23 According to the Organic Law on Foreigners, foreigners legally residing in Spain are equal to Spaniards in terms of the contributory and non-contributory levels of social security.

by the state must be adequate, otherwise the constitutional order cannot be achieved.

In sum, there is a constitutional basis for the right to adequate benefits in case of need that is not Article 10.1 of the Constitution (human dignity) but Article 41. In fact, all social security non-contributory benefits, including the Minimum Vital Income²⁴, have been enacted under Article 41 of the Constitution. And all of them are configured (by the laws that respectively regulate them) as perfect subjective rights.

2. Social Benefits

a) General Structure of the Social Benefits System and Competences

Article 148.1.20 of the 1978 Constitution says that the Autonomous Communities may assume competences over social assistance, while Article 149.1.17 attributes to the state the exclusive competence over the basic legislation and financial system of social security.

When the current 1978 Constitution was enacted, the state social security system established during the Franco era was based on the coverage of contributory risks only.²⁵ However, the existence since 1974 of a regulation on minimum supplements for beneficiaries of contributory pensions²⁶ constitutes the express recognition that the mere contributory level of social security can generate pensions that do not cover the basic needs of people who are in a situation of poverty despite having worked and paid contributions.²⁷ Until 1990, the central social security system was of the Bismarckian type, but with the approval of Law 26/1990 regulating non-contributory pensions, family and disability benefits, it became a mixed system. The

24 Article 2.2 Law 19/2021: “pursuant to Article 41 of the Spanish Constitution, and without prejudice to the aid that may be established by the Autonomous Communities in the exercise of their powers, the Minimum Vital Income forms part of the protective action of the social security system as a non-contributory economic benefit”.

25 Judgment of the Constitutional Court 103/1983.

26 Its origin dates back to the Ministerial Order of 26 April 1974. See J. Rivera Sánchez, ‘Los Suplementos de las Pensiones Inferiores a la Mínima en el Sistema de la Seguridad Social’ *Revista Laborum* 4 (2015), p. 79.

27 This non-contributory and means-tested supplement is now regulated by the General Social Security system. For the year 2024, the income limits for the recognition of the minimum income supplement are as follows: without a dependent spouse: EUR 8,614 per year; and with a dependent spouse: EUR 10,048 per year. The maximum that can be received as a minimum benefit is EUR 6,402.20 per year.

Socialist Party was in power in Spain at the time. The design of these non-contributory benefits responded to the government's choice of the principle of redistribution, rather than the principle of universalisation.²⁸ Moreover, a minimum income scheme at the central level was introduced by Royal Decree-Law 20/2020, which incorporated the MVI as a new non-contributory benefit in the social security system.

At the regional level, through their statutes of autonomy, all the Autonomous Communities and the two Autonomous Cities assumed exclusive competences for social assistance outside the state social security system, as well as for social services. Each of them has their own social services laws²⁹ and there has been no joint plan for the development of them but rather the spontaneous organisation of each one in accordance with the interests and priorities of the autonomous governments. Social services can be benefits in kind or in cash: day care centres for the elderly, day care centres for drug addicts, shelters for transient, homeless or women victims of domestic violence, thermal social vouchers and others. The concept of "entitlement" in social services has a flaw and is not always a perfect subjective right. From 1989 onwards, the Autonomous Communities began to enact a series of programmes to combat socio-labour exclusion and fight poverty. In particular, they regulated social assistance minimum incomes. The models are very different from each other, with substantial variations in their design and especially in their degrees of coverage and level of protection.

In practice, this results in a parallel coexistence between the state public social security system, including the MVI, the social assistance and social services of the Autonomous Communities and those of the two Autonomous Cities.

As a result, the delimitation of competences between the state and the Autonomous Communities in the field of social protection remains formally simple. If the state legislates, the measures fall within the field of social security, if the Autonomous Communities legislate, it is considered to be social assistance. Following this division of competences, the MVI is formally defined as a social security benefit, while the regional minimum incomes are classified as social assistance benefits. However, at least two emblematic

28 R. Mota, 'La Política Socialista de Pensiones de Jubilación (1982-1996): entre Gradualismo y Redistribución' *Panorama Social* 4 (2006), p. 39.

29 EAPN España, 'Análisis de los Servicios Sociales. Las Personas Atendidas y la Perspectiva Autonómica' (2021), p. II, available at <<https://www.eapn.es/publicaciones/487/analisis-de-los-servicios-sociales-las-personas-atendidas-y-la-perspectiva-autonomica>> accessed 13.10.2024.

cases show frictions between the Autonomous Communities and the state due to alleged encroachments on the competences of each one regarding non-contributory minimum incomes.

In Judgment 239/2002, the conflict was initiated by the Government of Spain against the Autonomous Community of Andalucía because the latter established the payment of a supplementary economic aid to non-contributory social security old-age and disability pensions in favour of beneficiaries of such pensions who have their habitual residence in Andalucía. The Constitutional Court dismissed the appeal arguing that one feature of the minimum insertion incomes financed by the Autonomous Communities was their compatibility with any other type of income, including pensions, provided that they do not reach the poverty line regulated in each case. Thus, this social assistance minimum income could be received by persons who actually receive non-contributory social security pensions. The Constitutional Court considers “that it is a requirement of the social state that those whose minimum needs are not covered by the non-contributory modality of the social security system should be able to access other benefits or aid of a different nature. This confluence cannot prevent the Autonomous Communities from acting in this common area when they have sufficient competence, especially if it is considered that, in certain economic circumstances, the scope of social security protection could entail limitations in terms of assistance and benefits which, therefore, require complementation with other sources to ensure the principle of sufficiency referred to in Article 41 of the Constitution”.³⁰

In another case, an Autonomous Community (Cataluña) sued the state before the Constitutional Court when the Minimum Vital Income came into force in 2020 alleging that the state had incorporated into the social security system a social assistance benefit, encroaching on the competences of the Autonomous Communities.

This appeal was dismissed by Judgment 158/2021 because an interpretation of Article 41 of the Constitution permits, together with the “social assistance”, provided at the autonomous level, the provision of benefits of a social assistance nature within the realm of the social security system. Through benefits of a non-contributory nature – among which is the MVI

30 Andalucía has continued to pay this supplement which in 2024 amounts to EUR 178.42 to be paid in a single payment. Other Autonomous Communities also pay it, but there is no uniformity in its amount, for example in Galicia it is EUR 218 annually.

– the state fulfils the mandate entrusted to it by Article 41 of guaranteeing sufficient social assistance and benefits in situations of need. In other words, Art. 148 cannot entail an autonomous reservation of all matters of social assistance, since Article 41 allows the state to include an assistance level in the social security system. In short, although Cataluña has statutorily assumed social assistance as its exclusive competence and, in the exercise of its functions, guarantees a minimum income in its territorial scope, this cannot affect the exercise of the competences of the state when these concur with the competences of the Autonomous Community with a view to the same physical space or the same legal object.

b) Social Assistance: Coexistence of Nineteen Social Assistance Minimum Incomes with One State Social Security Minimum Income

aa) Regional Minimum Income Schemes

Nowadays, each Autonomous Community and Autonomous City has its own specific legislation about minimum incomes to combat poverty and exclusion. Between 2022 and 2023, 11 of the 17 Autonomous Communities have introduced changes to their minimum income regulations to adapt them to the MVI and it has been observed that there is a general tendency for regional minimum incomes to be subsidiary to the MVI.³¹

Regional minimum incomes share few common elements: they are non-contributory means-tested social assistance benefits. The calculation of the amount is differential. All of them require that the income of the family unit does not exceed the amount that would correspond to it based on the number of members and characteristics of the family unit.³²

To live in the territory of the Autonomous Community or Autonomous City that finances the minimum income is a requirement shared by all regional legislations, although they vary as to the time period. Not all legislations require legal residency. No Autonomous Community presupposes

31 Autoridad Independiente de Responsabilidad Fiscal, 'Opinión 2/2023 Ingreso mínimo vital' (June 2023) <https://www.airef.es/wp-content/uploads/2023/06/IMV/230615.-Opinio%CC%81n.-Segunda-Opinio%CC%81n-IMV_AIREF.pdf> accessed 17.04.2024.

32 J. Lázaro, 'Renta Mínima Adecuada. A propósito de la Recomendación 2023/C 41/01, sobre una Renta Mínima que Procure la Inclusión Activa' *Temas Laborales* 168 (2023), p. 485.

a nationality requirement. Regarding the nationality of the recipients in those Communities that have provided data, 71% of the beneficiaries of minimum income are Spanish, compared to 29% foreign recipients.³³ It is generally not possible to continue receiving the autonomous minimum income when there is a change of residence between Autonomous Communities. Only Asturias, Cataluña, Galicia, Madrid, Murcia and Navarre contemplate the possibility of geographical mobility.³⁴

In order to receive regional minimum income, the general rule is that an applicant must be registered as a job seeker. But there are also Autonomous Communities where registration as a job seeker is not mandatory, as in Aragon, Asturias, Extremadura, Madrid and Murcia. With respect to mandatory participation in social and labour insertion programmes this requirement is demanded by most of the Autonomous Communities, although it is not requested in Aragon, Baleares and Navarre.

There is also no uniformity regarding a minimum age requirement for the receipt of a minimum income: it is 26 years in Melilla, 25 years in Andalucía, Canarias and Castilla La Mancha, 23 years in Cataluña and La Rioja, 18 years in Aragon and Asturias, and 16 years in Valencia.³⁵ Nevertheless, all Autonomous Communities provide for exceptions to access their benefits at lower ages than those established in general.³⁶ Some Autonomous Communities do not establish an age limit (as Asturias and Cantabria), others do. In the latter case, most of the Autonomous Communities set the limit at 65 years of age (e.g. Aragon and Asturias), although others set it at 64 years of age (e.g. Andalucía and Castilla La Mancha).

With regard to the duration of the benefit receipt, 13 Autonomous Communities have no specific time limit, so the general rule is that the regional minimum income can be collected for as long as the requirements that gave rise to its concession subsist.³⁷

The regional schemes have different parameters for calculating the poverty line, to the point that there is not even coincidence between the

33 Ministerio de Derechos Sociales, *Informe Rentas Mínima de Insercion en España* (2022), p. 27.

34 Ibid, p. 13.

35 Exceptional situations are usually foreseen by all Autonomous Communities to allow for access to the benefit at a lower age.

36 P. Burriel Rodríguez-Diosdado, 'El Desencuentro entre las Rentas Mínimas de las Comunidades Autónomas y el Ingreso Mínimo Vital: Decreciente Protección y Regulación Confusa' *Revista de Trabajo y Seguridad Social* 468 (2022), p. 72.

37 Ministerio de Derechos Sociales, *Informe Rentas Mínima de Insercion en España* (2022), p. 11.

computable or excluded resources, which are different depending on where the applicant resides. To give some examples: as a general rule, the value of the habitual residence does not compute in most of the Autonomous Communities, but it does in Cataluña. Scholarships do not count in most of the Autonomous Communities, but they do in Cataluña and Madrid. Ownership of motor vehicles counts in some Communities (as Cataluña and Galicia) and not in others (as Andalucía and Baleares). Only Aragon applies the same poverty line as the MVI.

With respect to the amount of these regional minimum incomes there is also no coordination: in Andalucía, the amount of the “Renta Mínima de Inserción Social” coincides now with the amount of the non-contributory old-age social security pension paid in 12 payments: EUR 604.21 monthly increased by 30% for each member of the family unit up to a maximum equivalent to 220% of such benefit, i.e., EUR 1,329.26 monthly. In the case of a single-parent or single-parent family units and family units with disabled persons, it is increased by 22%.³⁸ In Madrid, the minimum income is called “Renta Mínima de Inserción”. One person living alone, with no other income, would receive EUR 469.93 per month, two people EUR 587.41, and three people EUR 662.52, up to EUR 965, which is the maximum amount to be received. In País Vasco, the minimum income is called “Renta de Garantía de Ingresos” and a recipient living alone would be entitled to EUR 840.29. A cohabitation unit of one adult with a dependent minor would be entitled to EUR 1,148. A couple with one child could receive EUR 1,288 and, if there were two children, EUR 1,456. One adult and four minors receive EUR 1,652.57. It is paid monthly.

As for the reference index used to calculate the regional benefit, some Autonomous Communities use the MVI (e.g. Andalucía); others use the Minimum Interprofessional Wage (e.g. Valencia), others the Public Multiple Effect Income Indicator³⁹ (e.g. Galicia) and only Cataluña uses an

38 The coexistence of the MVI and the Andalusian minimum income led to the adoption of legal reforms of the latter by Decree-Law 14/2022. Taking the amount of non-contributory social security pensions as a reference was one of the novelties.

39 The “*Indicador Público de Renta de Efectos Múltiples*” is an index used in Spain as a reference for the granting of aid, subsidies or unemployment benefits. It was created in 2004 to replace the Minimum Interprofessional Wage as a reference for these benefits. Monthly amount: EUR 600.

indicator specific to its Autonomous Community: the Sufficiency Income Indicator of Cataluña.⁴⁰

It must be outlined that in all Autonomous Communities and Autonomous Cities, without exception, the percentage of women beneficiaries of the autonomous minimum income is much higher than that of men.⁴¹

bb) Compatibility between Regional Minimum Incomes and MVI

In 2022, the expenditure on regional minimum incomes was 5% less than the previous year, as practically all Autonomous Communities and Cities have decreased their spending. Of note is the decrease in Aragon, which has disbursed 67.38% less than the previous year, as well as in the Autonomous City of Melilla (-62.26%) and in the Community of Madrid (-56%).⁴² This decrease does not mean that the number of people in need has decreased, but rather that the expense has been assumed by the state by paying the MVI.

The compatibility or incompatibility between each of the regional minimum incomes and the MVI depends on what the regional legislation establishes. For example, the MVI and the Andalusian minimum income are incompatible: applicants for the Andalusian minimum income must have a negative decision on their application for the MVI in order to be eligible for the Andalusian benefit.⁴³ As a result, the number of applications for this regional minimum income has fallen in recent years as has expenditure: 32,712 beneficiaries and a budget of EUR 77,223,918 in 2022 vs. 110,397 beneficiaries and a budget of EUR 107,673,708 in 2020. This incompatibility also exists, for instance, in the Balears, Galicia, Cataluña and Cantabria. On the other hand, there are Autonomous Communities whose minimum income schemes are compatible with the MVI, but the amount of the

40 Ministerio de Derechos Sociales, *Informe Rentas Mínima de Insercion en España* (2022), p. 10.

41 Exactly 62.5% of women in 2022, see Ministerio de Derechos Sociales, *Informe Rentas Mínima de Insercion en España* (2022), p. 21. In Andalucía, in 2022, 63.71% were women. By age, the largest group is women over 45 years, see Junta de Andalucía, 'Memoria de la Renta Mínima de Inserción Social en Andalucía (RMISA)' (May 2022) <<https://www.juntadeandalucia.es/sites/default/files/inline-files/2023/06/Memoria%20RMISA22.pdf>> accessed 10.04.2024.

42 Ministerio de Derechos Sociales, *Informe Rentas Mínima de Insercion en España* (2022), p. 21.

43 Decree-Law 3/2017.

MVI counts as income to determine the poverty line to get these regional minimum incomes. This, for example, is the case in Madrid, País Vasco, Navarre, Asturias, Canarias and Valencia.

The advantage of the regional minimum income compared to the MVI is that all beneficiaries are entitled to a minimum amount (which varies greatly from Community to Community), whereas, as will be explained in detail later, in the MVI there is no guaranteed minimum, so the final amount may be very small.

c) State Non-Contributory Minimum Incomes Linked to Typical Social Security Risks and their Relationship to MVI

aa) Old-Age and Disability Pensions

Non-contributory retirement and non-contributory disability pensions were established by Law 26/1990. Both pensions share common elements. They are means-tested and have been listed under Annex X Regulation 883/2004, and must be qualified as special non-contributory cash benefits according to EU law.

To calculate the poverty line, the income and assets of the applicant and the members of his/her cohabitation unit are calculated according to the same criteria.⁴⁴ Spanish nationality is not a requirement, but legal residence in Spain is required: 10 years in the case of non-contributory retirement pension and 5 years for a non-contributory disability pension. Persons who do not meet these residency requirements may try to apply for the MVI, since the MVI only requires one year of residence in Spain.

The amount of these non-contributory pensions are determined annually in the General State Budget Act. In 2024, it is EUR 7,250.60 annually in 14 payments. The updated individual amount for each pensioner is established on the basis of the aforementioned amount but depending on the number of beneficiaries living in the same household, their personal income and/or that of their economic unit of cohabitation.⁴⁵ Beneficiaries

44 See Instituto De Mayores y Servicios Sociales, 'Pensiones no contributivas' (2024) <https://sede.imserso.gob.es/documents/20123/1595507/fpnc_2024.pdf/a614ed0e-7cd9-50e6-d0a3-c78a4bbb7f80> accessed 13.10.2024.

45 The amounts of the resource accumulation limit applicable in 2024 depending on the number of persons in the economic unit can be consulted at: Gobierno de España,

will never receive less than the minimum of 25%⁴⁶ of the annual amount. In 2012, a supplement for non-contributory pensioners living in rented accommodation was regulated by Royal Decree 1191/2012.⁴⁷ It consists of a one-off payment of EUR 525 per year.

On the other hand, there are also relevant differences between both non-contributory pensions with regard to the age requirement: beneficiaries must be 65 years old for a retirement non-contributory pension while the disability pension requires to be at least 18 years of age and not having reached 65 years of age. When the MVI was introduced, there was an age limit set at 65 years of age, probably because it was expected that at that age the person would be able to collect the non-contributory retirement pension. However, since the requirements for these two non-contributory benefits are different and collecting the MVI did not guarantee that the non-contributory retirement pension could be received, the maximum age requirement was removed for the MVI.

To be eligible for a non-contributory disability pension, the beneficiary must be affected by a disability or chronic illness to a degree of 65% or more.⁴⁸ Persons who do not meet this degree of disability have the option of applying for the MVI, since the MVI does not require proof of any degree of disability.

Other differences are that the non-contributory disability pension is compatible with the salary for work up to a limit in 2024 of EUR 14,450.60 per year. If this amount is exceeded, the disability pension will be reduced. Disability pensioners who are affected by a disability or chronic illness to a degree of 75% or more, and who, as a result, require the assistance of another person to carry out the most essential acts of life (such as dressing, moving about, eating and similar) are entitled to a fixed allowance equivalent to 50 percent of the amount of the pension (EUR 258.95 monthly).

Ministerio de Derechos Sociales, Consumo y Agenda 2030 (2024) 'Guía resumen de las pensiones no contributivas de la seguridad social. Año 2024' <<https://imserso.es/documentos/20123/1595507/pncresumen2024.pdf/62e24a0f-cede-5580-326e-2baebbf2ad3c>> accessed 08.04.2024.

46 14 instalments of EUR 129.48 each.

47 This is a pension supplement aimed at those persons receiving a non-contributory social security retirement or disability pension who can prove that they do not own their own home and that their habitual residence is a home rented from owners who are not related to them up to the third degree of kinship.

48 The degree of disability or chronic illness shall be determined on the basis of the scale provided for in Royal Decree 1971/1999.

Non-contributory disability pensions and non-contributory retirement pensions are incompatible with each other.

The amount of the pensions and benefits, whether contributory or non-contributory, public or private, are counted as income in order to assess the beneficiary qualifications for the MVI. Therefore, formally, the MVI and non-contributory pensions are not incompatible, but in practice, aggregated income above the poverty line will result in incompatibility. There is no obligation to apply for non-contributory pensions before MVI, nor vice versa.

Here too, it is worth noting that three quarters of non-contributory pension recipients are women.⁴⁹

bb) Family Benefits⁵⁰

A non-contributory benefit is granted for children with a disability of more than a certain degree (33% if under 18 years of age, 65% if over 18 years of age), regardless of the legal nature of the filiation, as well as for minors in permanent foster care or guardianship for the purpose of adoption, who are (financially or in any other way) dependent on the beneficiary and live with him/her. Beneficiaries can be biological or adoptive parents, foster parents and even applicants for adoption in charge of minors.

This benefit is not means-tested. Legal residence in Spanish territory is required for recognition, although no minimum period of residence is required. This benefit has not been listed in Annex X of Regulation 883/2004 and therefore is paid for children and minors residing in countries where EU law applies.

The amount differs according to the age and degree of disability of the dependent child or minor. For the year 2024 the amounts are:

- EUR 1,000 per year (EUR 83.33 monthly) for a dependent child or minor with a degree of disability equal to or greater than 33%;

49 Vicepresidencia Segunda del Gobierno, 'Estadísticas de Prestaciones no contributivas' (2024) <https://www.mites.gob.es/es/estadisticas/prestaciones_ss_otra_proteccion/PNC/welcome.htm> accessed 03.04.2024.

50 Since only a lump sum is granted, the non-contributory allowance for birth or adoption of a child in cases of large families, single parent families and in the case of disabled mothers or fathers will not be analysed here, nor will the economic allowance for multiple births or adoptions.

- EUR 5,647.20 per year (EUR 470.60 monthly) for children over 18 with a degree of disability equal to or greater than 65%;
- EUR 8,469.60 per year (EUR 705.80 monthly) for children over 18 with a degree of disability equal to or greater than 75% and who require the assistance of another person to carry out basic vital acts.

The receipt of this benefit for a dependent disabled child over 18 years of age is incompatible with the child's status as a non-contributory retirement or disability pensioner.

A special maternity allowance, not means-tested and non-contributory, is paid to women who, in the event of childbirth, would meet all the eligibility criteria to receive the contributory maternity benefit except for the minimum contribution period. The amount shall be equal to 100% of the Public Multiple Effects Income Indicator⁵¹ in force (in 2024: EUR 17.93 daily). The duration of the benefit shall be 42 calendar days from the date of birth.

Formally, these two family benefits are not incompatible with MVI, but their amounts are considered in the means-testing for MVI, possibly leading to a sum above the poverty line, which would result in incompatibility.

cc) Unemployment Allowances

For unemployed people who are not entitled to contributory unemployment benefits there is a “second level of protection” consisting of eight different kinds of means-tested unemployment allowances. They share with the non-contributory social security pensions the common purpose of guaranteeing a minimum subsistence income to those who are in real need.⁵²

Spanish nationality is only required in the case of Spanish emigrant workers returning to Spain from countries outside the European Econo-

51 The “*Indicador Público de Renta de Efectos Múltiples*” is an index used in Spain as a reference for the granting of aid, subsidies or unemployment benefits. It was created in 2004 to replace the Minimum Interprofessional Wage as a reference for these benefits. Monthly amount: EUR 600.

52 S. Barcelón Cobedo, ‘Las Prestaciones Autonómicas de Garantía de Ingresos como Cobertura de la Brecha de Protección del Sistema de Seguridad Social en Relación con las Situaciones Reales de Necesidad Económica’ *Temas Laborales* 143 (2018), pp. 13-54.

mic Area. All unemployment allowances are coordinated under Regulation 883/2004.

The amount is fixed: in all cases it is 80% of the Public Multiple Effect Income Indicator⁵³, i.e., EUR 480 monthly in 2024.

They are means-tested benefits: applicants' incomes on a monthly basis must be less than 75% of the Minimum Interprofessional Wage, excluding the proportional part of two extra payments.⁵⁴ Moreover, beneficiaries must be unemployed persons who have been registered as job seekers for a period of one month (waiting period) and who have not refused a suitable job offer and have not refused to take part, except for justified reasons, in promotion, training or vocational retraining activities.

If applicants are of pensionable age it is necessary for them to apply for the pension and not for unemployment allowances.

As a general rule, the benefit is provided for 6 months, extendable for six-month periods, up to 18 months, although there are exemptions. Only the allowance for persons over 52 years of age will be paid until the retirement age is reached.

Theoretically, the MVI is compatible with all unemployment allowances, although not in all cases both can be received simultaneously, nor, even if a person is entitled to receive both, will the same amount be received since the maximum monthly income that can be received for MVI is the difference between the computable income of the applicant and his or her family unit. This income includes the amount of unemployment allowances, so the amount of unemployment allowances is deducted from the total amount that guarantees the MVI. Therefore, whether or not the two minimum incomes (MVI and unemployment allowances) are compatible, in practice depends on the income of the applicant and his or her family unit. In any case, there is no obligation to apply for unemployment benefits before MVI, nor vice versa.

53 The “*Indicador Público de Renta de Efectos Múltiples*” is an index used in Spain as a reference for the granting of aid, subsidies or unemployment benefits. It was created in 2004 to replace the Minimum Interprofessional Wage as a reference for these benefits. Monthly amount: EUR 600.

54 The amount of social assistance benefits granted by the Autonomous Communities will be computed as income.

dd) The Active Insertion Income

It is aimed at the unemployed with special economic needs and difficulty in finding employment. It is a perfect subjective right although is not regulated in the General Social Security Law but in Royal Decree 1369/2006.⁵⁵

The requirement for receiving the Active Insertion Income is to not be entitled to contributory unemployment benefit nor unemployment allowances. Moreover, beneficiaries must be under 65 years of age and have been registered as unemployed at the employment office for 12 months or more.

It is a means-tested benefit: the beneficiaries' incomes must be less than 75% of the Minimum Interprofessional Wage excluding the proportional part of two extra payments.⁵⁶ This benefit lasts for a maximum of 11 months and its amount is equal to 80 percent of the public monthly Multiple Effects Income Indicator in force, i.e., EUR 480 monthly in 2024.

The Active Insertion Income is incompatible with the non-contributory retirement and disability pension. However, it is only compatible with the MVI with the same limitations applicable to unemployment allowances. There is no obligation to apply for this benefit before MVI.

ee) Extraordinary Unemployment Allowance

The Social Security Act regulates the Extraordinary Unemployment Allowance for persons who are not entitled to unemployment protection either through the contributory or the assistance level, and also for those who have extinguished the Active Inclusion Income.

Beneficiaries must not have reached the age at which they are entitled to a retirement pension, whether contributory or non-contributory. They must be long-term unemployed workers.⁵⁷ It is a means-tested benefit. For 2024, the amount paid is EUR 480 monthly. The allowance is paid for a

55 C. Sánchez-Rodas Navarro, 'La Exportación de la Renta Activa de Inserción ¿Buena práctica legislativa?', in: M. Ramírez Bendala (ed.), *Buenas Prácticas Jurídico-Procesales para Reducir el Gasto Social* (Laborum 2015), pp. 65-93.

56 The amount of social assistance benefits granted by the Autonomous Communities will be computed as income.

57 A long-term unemployed person is a person who has been registered as a job seeker for at least 360 days in the 18 months immediately preceding the date of claiming the benefit.

maximum length of 180 days and cannot be recognised in more than one occasion.

This extraordinary allowance is theoretically compatible with the receipt of the MVI. However, since the calculation of the MVI is differential, this income will reduce the amount of the MVI or may even, when added to other incomes or assets of the applicant, exclude him/her from meeting the economic requirements to apply for the MVI. There is no obligation to apply for it before MVI.

III. Analysis

Since 2020, the social benefits listed above have been coexisting with the Minimum Vital Income, which is the main object of our analysis. According to Article 2.1 Law 19/2021, the Minimum Vital Income is configured as a subjective right, this implies that administrative appeals can be filed in case of denial or rejection of the benefit claim. Further, against the administrative decision, a lawsuit can be filed before the social jurisdiction.

1. Conditions

a) Nationality and Legal Residence Requirements

Spanish nationality is not a requirement to receive the MVI but 82.3% of all recipients are Spanish.⁵⁸ MVI is the only non-contributory and means-tested social security benefit that has not been listed under Regulation 883/2004.

MVI beneficiaries⁵⁹ must not only legally reside in Spain, but they must also have resided in the country continuously and without interruption for at least one year immediately prior to the date of submission of their application. Requiring a prior period of residence stems from the idea of avoiding “social tourism”. The one-year period is not required for two categories of beneficiaries: minors incorporated into the cohabitation unit by

58 Secretaría de Estado de la Seguridad Social y Pensiones, ‘El Ministerio de Inclusión publica una nueva estadística del Ingreso Mínimo Vital, que llega a cerca de 1,7 millones de personas en febrero’ (29 February 2024) < <https://revista.seg-social.es/-/nueva-estad%C3%ADstica-del-ingreso-m%C3%ADnimo-vital-febrero-2024> > accessed 13.10.2024.

59 Asylum seekers are excluded from the MVI as well as stateless persons.

birth, adoption, family reunification of sons and daughters, guardianship for the purpose of adoption or permanent foster care; victims of human trafficking and sexual exploitation.

A change of place of residence within the national territory does not affect the collection of MVI. However, it is a cause for the extinction of this right to transfer the residence abroad, even if it is to a state of the European Union.

b) Age

Although the legal age of access to the Spanish labour market is 16, MVI's individual beneficiaries must be, as a general rule, persons of at least 23 years of age. There is no legal explanation as to why the threshold of 23 years of age has been set, since it does not correspond to any legally relevant age. This age limit does not apply in the case of women victims of gender violence, or victims of human trafficking and sexual exploitation.⁶⁰ Exceptionally, beneficiaries may also be persons between 18 and 22 years of age who come from residential centres for the protection of minors in the different Autonomous Communities, and who have been under the guardianship of public entities for the protection of minors within the three years prior to reaching the age of majority, or who are absolute orphans, provided that they live alone without being part of a cohabitation unit.

c) Means Test

The MVI is a means-tested benefit. Therefore, benefit holders will have to prove incomes below the poverty line calculated in accordance with the specific and complex rules for calculating incomes and assets⁶¹ contained in Articles 11 and 20 of Law 19/2021. For the computation of income, the

60 Permanent users of a social, health or public health residential service benefit are not entitled to the benefit, except in the case of women victims of gender-based violence or victims of human trafficking and sexual exploitation.

61 Rules for calculating incomes and for calculating assets can be found at this link: Gobierno de España, Ministerio de Inclusión, Seguridad Social y Migraciones, 'Requisitos' (2024) <<https://www.seg-social.es/wps/portal/wss/internet/Trabajadores/PrestacionesPensionesTrabajadores/65850d68-8d06-4645-bde7-05374ee42ac7/71a1fba3-daee-4b01-b447-5d6096cb154e/reglasparaelcomputodepatrimonio#Reglasparaelcomputodeingresos>> accessed 13.10.2024.

income obtained by the beneficiaries during the fiscal year prior to the application will be taken into account. In case of cohabitation units, the income of all members will be considered. The regional minimum incomes will not be counted as income or revenue. The value of the habitual residence is excluded. Contrary to this, the amounts of pensions and benefits, whether contributory or non-contributory, public or private, will be counted as income.

It is not possible to collect MVI when the applicant is the holder of a net worth valued at an amount equal to or greater than three times the corresponding annual amount of guaranteed income guaranteed by the MVI for an individual beneficiary. In the case of cohabitation units, it will be understood that this requirement is not met if they are holders of a net worth valued at an amount equal to or greater than the amount resulting from applying the scale of increases contained in Annex II Law 19/2021.

Moreover, individual beneficiaries or cohabitation units who own non-corporate assets (without a habitual residence) of a value greater than that established in Annex III Law 19/2021 will be excluded from access to the MVI, regardless of the valuation of the net worth. Also excluded from access to the MVI, regardless of the valuation of net worth, are individual beneficiaries or persons who are part of a cohabitation unit in which any of its members is a legal administrator of a commercial company that has not ceased its activity.

Given the complexity of determining eligibility for MVI, a simulator is available to help potential beneficiaries consider whether or not to apply.⁶²

2. Level of Benefits

a) Amount and Child Supplement

The amount of the Minimum Vital Income is the difference between the guaranteed income, fixed by law, and other income that the beneficiaries may have, provided that the resulting amount is equal to or greater than EUR 10 per month (Article 13.1 Law 19/2021). Therefore, the MVI can only be accessed if the beneficiary's income is lower than the guaranteed income, and the amount received will be the amount necessary for the

62 Gobierno de España, Ministerio de Inclusión, Seguridad Social y Migraciones, 'Ingreso Mínimo Vital y Complemento de ayuda a la infancia' (2024) <<https://imv.seg-social.es/>> accessed 14.04.2024.

beneficiary to reach this economic threshold. In case of cohabitation units, the income of all its members is considered.

In 2024, the guaranteed income in case of one single adult will be 100% of the annual sum of non-contributory social security pensions divided by 12, i.e., EUR 7,250.52 divided into 12 payments (EUR 604.21 monthly). In the case of a cohabitation unit, the above amount is increased by 30% for each additional member, adding EUR 2,175.16 per year (EUR 181.26 per month) to the guaranteed income of the unit.⁶³ However, as of 5 members, the amount stops increasing, so that the guaranteed income of the cohabitation unit cannot exceed 220% of an individual income. Therefore, for a unit of 5 members or more, the guaranteed income will be EUR 15,951.24 per year (EUR 1,329.27 per month).

The amount thus calculated may be increased by two supplements: in case of a single-parent cohabitation unit⁶⁴, 22% of an individual guaranteed income is added to the amount received, i.e., EUR 1,596.11 per year (EUR 132.93 per month). If any member of the unit has a recognised degree of disability equal to or greater than 65%, a supplement of the same amount is added.

Furthermore, a monthly Child Support Supplement will be granted for each minor child member of the cohabitation unit. This supplement had not been foreseen when the MVI was established: it came into force in January 2022 resulting from the fact that the MVI did not adequately protect those who, having family responsibilities, could no longer claim the non-contributory benefit for a non-disabled dependent child or minor.

The government states that this Child Supplement is having a particular impact on reducing child poverty. However, we believe that this is misleading, as practically, what used to be non-contributory family benefits for non-disabled children are now paid under the name of MVI.⁶⁵ In fact, Law 26/1990 had introduced non-contributory family benefits for non-disabled dependent children or minors. In 2019, there were a total of 1,223,482

63 The specific amounts are available at: Secretaría de Estado de la Seguridad Social y Pensiones, 'Cuantías y otras novedades del IMV en 2024' (4 January 2024) <<https://revista.seg-social.es/-/novedades-del-imv-2024>> accessed 12.04.2024.

64 In February 2024, there were 98,315 single-parent households.

65 J. Álvarez Cortés and V. Cardenas Porta, 'Ingreso Mínimo Vital Como Prestación Familiar y La Supresión de las prestaciones familiares por hijos o menores a cargo', in: I. Villar Cañada (ed.), *Renta Mínima y Democrática Sustantiva* (UJA 2001), p. 101: the MVI is essentially a family benefit that aims to provide a level of income that fits many different types of households and is also intended to reduce child poverty.

beneficiaries of these non-contributory social security benefits which guaranteed a benefit of uniform amount throughout the national territory. It was a benefit coordinated by Regulation 883/2004 as a non-contributory social security benefit but not listed in Annex X. Nevertheless, this non-contributory family benefit was not only declared incompatible with the MVI but also destined to become extinct. As of 1 June 2020, the date of entry into force of Royal Decree Law 20/2020, which established the minimum living income, no new applications for the non-contributory family benefit for a child or dependent minor could be submitted. Therefore, former recipients of non-contributory family benefits have now statistically become beneficiaries of the MVI although the number of beneficiaries has decreased as the Child Supplement is not paid for children residing abroad, unlike the previous non-contributory family benefits.

The Child Support Supplement is part of the MVI and recipients are included in the statistics of MVI beneficiaries, although it can also be granted independently to families who, due to their income, are not eligible for the MVI if they meet certain conditions.⁶⁶ Statistics show that a total of 964,787 people in Spain received the MVI in February 2024, i.e., 258,619 individually and 706,168 together with the Child Supplement. In addition, there are 705,574 persons who only receive the Child Supplement without MVI.

This supplement is always calculated according to the age of the child at the beginning of the year for which the aid will be granted. In 2024, it is, for children under 3 years of age, EUR 115; for children over 3 years of age and under 6 years of age, EUR 80.50; and for those between 6 and 18 years of age, the aid amounts to EUR 57.50. The Child Supplement is not subject to the pension revaluation rules and its amount in 2024 remains the same

66 Beneficiaries must cumulatively meet the following requirements: 1) income below 300% of the thresholds established in the scale of increments for the calculation of the guaranteed income according to the type of cohabitation unit; 2) a net worth of less than 150% of the limits established in the scale of increments for the calculation of the net worth limit applicable according to the type of cohabitation unit; 3) meeting the asset test requirements whose limit for an adult is 6 times the guaranteed income, with a scale of increments equal to that of the income limit according to the type of cohabitation unit. The limits for 2024 can be consulted at: Secretaría de Estado de la Seguridad Social y Pensiones, 'Guía sobre el complemento de Ayuda para la Infancia del Ingreso Mínimo Vita' (07 February 2024) <<https://revista.seg-social.es/-/gu%C3%ADa-sobre-el-nuevo-complemento-a-la-infancia-del-imv>> accessed 12.04.2024. In any case, the Child Supplement, when paid alone, has higher income and net worth limits than the MVI.

as in 2023; whether it is revalued in the future will depend on budgetary possibilities.

The amount of the beneficiary's MVI will be reviewed each year taking into account his/her income information of the previous year. As a result, 67% of the beneficiaries saw the amount revised last year and 16% had their benefits withdrawn after the revision, for which they were asked to return an average of EUR 2,500.⁶⁷

There is scepticism regarding the potential of the MVI to overcome the poverty threshold, as the amounts of this benefit are recognised as insufficient to cover basic needs and household supplies.⁶⁸ Ironically, it has been pointed out that this is a benefit that is minimal rather than vital.⁶⁹

b) Revaluation

Since the amount of the MVI is calculated on the basis of the amount of the non-contributory pension, it is revalued annually in the same amount as the non-contributory pensions. And pursuant to Article 62 of the General Social Security Law, non-contributory social security pensions will be updated in the corresponding General State Budget Law by at least the same percentage as that established by said law as the general increase in contributory social security pensions. The annual revaluation of contributory pensions is made in accordance with the evolution of the Consumer Price Increase.

Non-contributory pensions, once revalued in accordance with the quoted Article 62, will be increased each year by multiplying by 0.75 the poverty threshold of a single-person household. The poverty threshold for these purposes is calculated in accordance with the latest available data from the Living Conditions Survey of the National Statistics Institute, updated up to the corresponding year in accordance with the average year-on-year growth of that income over the last eight years (Additional Provision 53 of the General Social Security Law).

67 Autoridad Independiente de Responsabilidad Fiscal, 'Opinión 2/2023 Ingreso mínimo vital' (June 2023), p. 46.

68 J. M^a Prieto Lobato and P. de la Rosa Gimeno, 'Convivencia entre IMV y rentas mínimas balance y propuestas desde los profesionales de la intervención social' Cuadernos de Trabajo Social 36 (2023)2, pp. 293-304, p. 302.

69 M. Básica, 'IMV: más Mínimo que Vital' Rescoldos 41 (2020), p. 10.

The concretisation of the amounts referred to in the previous paragraphs will be made by the respective general State Budget Laws for each year: in 2024 non-contributory pensions and the minimum vital income have increased by up to 6.9%.

3. Activation Mechanism

Initially, it had been a prerequisite to be registered with the Public Employment Services in order to receive the MVI, but this requirement was later abolished. Currently, the National Social Security Institute sends the identification of beneficiaries over 18 and under 65 years of age to the Public Employment Services of the Autonomous Community in which these persons are domiciled, in order to proceed to register them as job seekers.⁷⁰ However, the receipt of the MVI is not conditional on a commitment to accept a placement offer.

Since 2021⁷¹, the state government has promoted pilot projects implemented by Autonomous Communities, local entities and the third sector to create itineraries of socio-labour inclusion linked to the MVI and financed by Next Generation EU funds (EUR 212 million). These projects have dealt with work and entrepreneurship, social accompaniment and non-take up, education, comprehensive care, digital training and housing, and fuel poverty. According to the report published in 2024 by the government⁷², 76,000 beneficiaries have participated in 32 projects, mainly in Andalucía, Cataluña, Galicia and Madrid, and 80% were not working at the time of setting up the itinerary. 57% of participants were women and 30% of participants were foreigners.

On September 2022, Royal Decree 789/2022 improved the opportunities for social and labour inclusion of the MVI's beneficiaries guaranteeing that their disposable income will be higher than what they would have had if they had not taken up work. Royal Decree 789/2022 entered into force in January 2023 with the objective of serving as a stepping stone to facilitate the transition from a state of exclusion and poverty to a situation of social and occupational inclusion that allows people to integrate themselves

70 Eleventh Additional Provision of the Royal Decree-Law 19/21.

71 Royal Decree 938/2021 and Royal Decree 378/2022.

72 Ministerio de Inclusión, 'Palancas para la Inclusión' (30 May 2024), <<https://www.inclusion.gob.es/documents/d/inclusion/20240530-laboratorio-de-politicas-de-inclusion-1>> accessed 19.11.2024.

better in the society in which they live. The amount of exempt income is calculated by applying certain percentages to the increase in income from employment or self-employed economic activity obtained in the two tax years prior to the review of entitlement. The incentive is greater in households with children than in households without children, or in households with only one adult (single-parent families) as opposed to those with two or more adults.⁷³

As long as the statistics published by the government do not include the number of people who receive the MVI and work at the same time, it is not possible to assess the impact of the reform introduced by Royal Decree 789/2022. The fact that 62% of MVI beneficiaries in 2022 have maintained their benefit since 2020 does not suggest that collecting the MVI is a guarantee for getting out of poverty.⁷⁴ Moreover, it has been pointed out that MVI does not seem to overcome the distinction between unemployed people, people in need and households at risk of exclusion.⁷⁵

4. Infringements and Penalties

Chapter VIII of Law 19/2021 regulates infringements and penalties for MVI beneficiaries. Infringements are classified in terms of minor, serious and very serious. Minor infractions shall be sanctioned with a warning to the offender.⁷⁶ Serious infractions shall be sanctioned with the loss of the benefit for a period of up to three months.⁷⁷ When the infractions give rise to

73 Trade union USO, 'Ingreso Mínimo Vital, compatible con un empleo a partir del 1 de enero' (11 October 2022) <<https://www.uso.es/ingreso-minimo-vital-compatible-con-un-empleo-a-partir-del-1-de-enero/>> accessed 13.10.2024.

74 Autoridad Independiente de Responsabilidad Fiscal, 'Opinión 2/2023 Ingreso mínimo vital' (June 2023), p. 75.

75 J. M^a Prieto Lobato and P. de la Rosa Gimeno (n 68), p. 300.

76 Failure to provide the documentation and information necessary to accredit the requirements and the preservation of the benefit, as well as to guarantee the receipt of notifications and communications, when this has not resulted in the undue receipt or preservation of the benefit, are minor infringements.

77 Among which are: failure to provide the necessary documentation and information or to communicate changes that would give rise to the modification, suspension or termination of the benefit, when these would have resulted in an undue receipt less than or equal to 50% of the due amount; the committing of a minor offence for the third time; failure to comply with the obligation to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration, under the terms established; as well as failure to comply with the conditions associated with

the extinction of the right, the sanction will consist in the obligation to pay back three monthly payments of the benefit. Very serious infractions⁷⁸ shall be sanctioned with the loss of the benefit for a period of up to six months.⁷⁹ In particular, failure to comply with the obligation to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration is also considered an infraction. When the infractions give rise to the extinction of the right, the sanction will consist in the obligation to pay back six monthly payments of the benefit.

In addition to the corresponding sanction and obligation to reimburse the amounts unduly received, and without prejudice to the criminal, civil and civil liability responsibility, the National Institute of Social Security may decree the extinction of the right, as well as the impossibility for the offending party to become a beneficiary for a period of two years.

5. Practical Aspects

a) Non-Take-Up

According to the Independent Authority for Fiscal Responsibility Opinion 2/2023⁸⁰, 58% percent of households that could potentially benefit from the MVI have not applied for the benefit (57% in 2021). These are concentrated in the Autonomous Communities with the largest number of potential beneficiaries (Andalucía, Cataluña, Valencia and Madrid). Only one in four applications for the MVI are approved by the Administration. Seventy-six

the compatibility of the minimum living income benefit with income from work or economic activity.

78 As, for instance, failure to notify any change or situation that could lead to the modification, suspension or termination of the benefit, when this would have resulted in an undue receipt of more than 50% of the amount entitled; travel abroad for more than ninety days a year, without having previously notified or justified such departure from Spain to the National Institute of Social Security; repeated failure to comply with the obligation to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration.

79 On 27 March 2024, the media report the news of an Algerian who was receiving Spanish minimum incomes when he had been living in the south of France since 2014. He is accused of having unduly collected EUR 140,281, see J. Izarra, 'La Policía Nacional detiene a dos argelinos por cobrar 140.281 euros de ayudas vascas desde Francia' (27 March 2024) <<https://www.elmundo.es/pais-vasco/2024/03/27/66047240e9cf4a9a638b458d.html>> accessed 17.04.2024.

80 Autoridad Independiente de Responsabilidad Fiscal, 'Opinión 2/2023 Ingreso mínimo vital' (June 2023), pp. 12-74.

percent of households that could receive Child Supplement have not yet applied.

There is no single cause that explains this situation; among those that have been alleged are: lack of information for potential beneficiaries, difficulty in bureaucratic procedures, and fear of having to pay back money to social security if resources are obtained while collecting the benefit. In the meantime, more people without resources are sleeping on Spanish streets than before the pandemic.

b) Overlapping of Different Schemes

When the MVI was created in 2020, Royal Decree-Law 20/2020 required beneficiaries to have previously applied for all the pensions and benefits to which they may be entitled. This requirement no longer exists in the current Law 19/2021 that regulates the MVI. Therefore, nowadays the MVI is not really a last safety net after all benefits have been exhausted, because it can be applied for as a first option without having to have applied before for any other non-contributory benefit from the social security or social assistance system.

The most relevant difference between the MVI and other non-contributory means-tested social security benefits is that the MVI does not offer protection against a specific social risk, a feature it shares with the social assistance benefits regulated by the Autonomous Communities. So, a certain overlap will be inevitable as long as there has not been a reorganisation of non-contributory social security pensions and non-contributory social assistance benefits⁸¹, something that does not seem likely since the Autonomous Communities are protective of the competences attributed to them by the Constitution, as is the case with social assistance.

There is no shortage of voices calling for the unified management of the MVI and regional minimum incomes, suggesting that the processing of the regional minimum income should always be a step prior to the application

81 M. Ramírez Bendala, 'IMV y Rentas Autonómicas. Un Nuevo Marco para una Recomendable Armonización aún Pendiente', in: I. Villar Cañada (ed.), *Renta Mínima y Democracia Sustantiva. De los Derechos de Pobreza a los de Ciudadanía Social* (Universidad de Jaén, 2021), pp. 137-151.

for the MVI, which would simplify the application process and speed up the resolution procedure.⁸²

Moreover, since each non-contributory social security and social assistance benefit is subject to different rules for determining the poverty line and its amounts, it can be complicated for beneficiaries to know which would be more profitable for them. For example: it is true that compared with unemployment allowances, MVI has the advantage that it recognises an indefinite entitlement as long as the circumstances that led to it being granted persist. But the latter also applies to non-contributory pensions. On the other hand, MVI differs from the Active Inclusion Income and unemployment allowances which guarantee a fixed amount identical for all beneficiaries, regardless of whether they are single persons or members of a cohabitation unit.

c) Gender Dimension

It is mainly women who need to resort to minimum income schemes in Spain: two-thirds of MVI beneficiaries are women and they are, on average, 45 years old.⁸³ As Spain leads the unemployment ranking in Europe, it is not surprising that the largest segment of the population receiving the regional minimum incomes and/or the MVI is of working age.⁸⁴ In addition, persons in this group have a low employability profile due to their low level of education and training.

IV. Concluding Remarks

The Spanish social security system has been built on the basis of legal reforms and counter-reforms that have obeyed more the political or electoral

82 J. M^a Prieto Lobato and P. de la Rosa Gimeno (n 68), p. 299.

83 Secretaría de Estado de la Seguridad Social y Pensiones, 'El Ministerio de Inclusión publica una nueva estadística del Ingreso Mínimo Vital, que llega a cerca de 1,7 millones de personas en febrero' (29 February 2024) <<https://revista.seg-social.es/-/nueva-estad%C3%ADstica-del-ingreso-m%C3%ADnimo-vital-febrero-2024>> accessed 02.04.2024.

84 54% of beneficiaries had not received salaries in any of the three years prior to receiving the MVI in 2020: Autoridad Independiente de Responsabilidad Fiscal, 'Opinión 2/2023 Ingreso mínimo vital' (June 2023), p. 5.

interests of the moment than focused on long-term programming. This consideration applies to minimum income schemes as well.

The constitutional basis for the right to adequate benefits in case of need is not Article 10.1 (human dignity) but Article 41 of the 1978 Constitution, which establishes that the public authorities shall maintain a public social security system for all citizens which will guarantee adequate social assistance and benefits in situations of hardship. However, this right has no direct effect insofar as it could only be invoked before the ordinary courts in accordance with the legal provisions implementing them.

Without a doubt, the interrelationship between all the social protection measures analysed in this chapter is a bit chaotic: although the MVI was intended to homogenise the diversity of minimum income systems that existed throughout the territory, the fact is that all pre-existing minimum incomes (with the exception of the non-contributory family allowance for non-disabled children) remain in place. The MVI is a very important step forward for the non-contributory branch of social security. However, the multiplicity of existing non-contributory benefits and allowances implies that the social security system needs to be coordinated and regulated in order to clarify the relationship between all the social protection measures analysed.

The complexity of the Spanish minimum income system derives, on the one hand, from the large number of benefits, and on the other, from the variety of administrations involved in its design, management and financing, in accordance with the competences attributed to each one by the Spanish Constitution, which implies diversity in benefit amounts, access requirements, duration of benefits, etc. The Minimum Vital Income is, for the time being, the last non-contributory and means-tested cash benefit to be added to the list of non-contributory social security level payments. Its originality is that it is not directly linked to any typical social security risk and that it is the first one to incorporate the term “minimum income” in its name, but it would be a mistake to consider the MVI to be the only social security benefit to guarantee a minimum income.

A characteristic feature of the Spanish social protection system is that it does not recognise a universal basic income, insofar as all minimum incomes schemes are linked to a poverty line (which is different for each specific benefit).

It is worth noting that three quarters of the beneficiaries of minimum income, both state and regional, are women and most of them are of working age. Admittedly, the best way to combat poverty would be to incorporate

them into the labour market, something extremely complex in a country that has one of the highest unemployment rates in the European Union. Therefore, the improvement of the minimum income schemes currently in place is, ultimately, the best way to adapt social protection to a system where full employment is currently not possible.