

The Status of TCNs, Refugees and Stateless Persons under the EU Social Security Regulations and the Nordic Convention on Social Security

Ómar Berg Rúnarsson,

PhD Research Fellow at the University of Bergen, Faculty of Law

Why this topic?

- **Complex situation in the Nordic countries:**
 - EU Member States and EEA/EFTA States
- **Overlapping set of rules:**
 - Regulation (EC) No 883/2004
 - Regulation (EU) No 1231/2010
 - Nordic Convention on Social Security (2012)
- **Special situation of Denmark**
 - Does not participate in Regulation (EU) No 1231/2010
 - Reservations to the Nordic Convention on Social Security

Regulation (EC) No 883/2004

- **Legal basis in EU law:**
 - Article 48 TFEU (Art. 29 EEA)
- Incorporated into Annex VI (Social Security) to the EEA Agreement
 - See JCD No 76/2011 of 1 July 2011
 - **Case C-431/11 *UK v Council***
- **Geographical scope:**
 - EU Member States
 - EEA/EFTA States
 - Switzerland (EU-Switzerland Agreement)

Personal scope

- **Article 2(1) – persons covered:**
 - *“This Regulation shall apply to nationals of a Member State, **stateless persons and refugees residing in a Member State** who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.”*
 - See also judgment of the EFTA Court in **Case E-5/22 Maitz** (paragraph 37)

Why are refugees/stateless persons included?

- **Joined Cases C-95/99 to 98/99 and C-180/99 *Khalil and Others*** (paras 43-45):

*“In that regard, it is necessary first to recall **the historical context** of the inclusion of stateless persons and refugees in the personal scope of Regulation No 1408/71.*

*Within the framework of the United Nations, **the Geneva Convention**, to which the original six Member States of the European Economic Community were all contracting parties, was signed on 28 July 1951. [...]*

***Article 24(l)(b) of the Geneva Convention** provides that the contracting states are to accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of 'social security.’”*

Regulation (EU) No 1231/2010 extends the scope of the Social Security Regulation to TCNs

- **Legal basis:**

- Art. 79(2)(b) TFEU which forms part of Title V (area of freedom, security and justice)
 - Chapter 2, entitled 'Policies on border checks, asylum and immigration'

- **Conditions for TCNs:** Legal residence and cross-border situation

- See **Case C-477/17 *Balandin and Others***

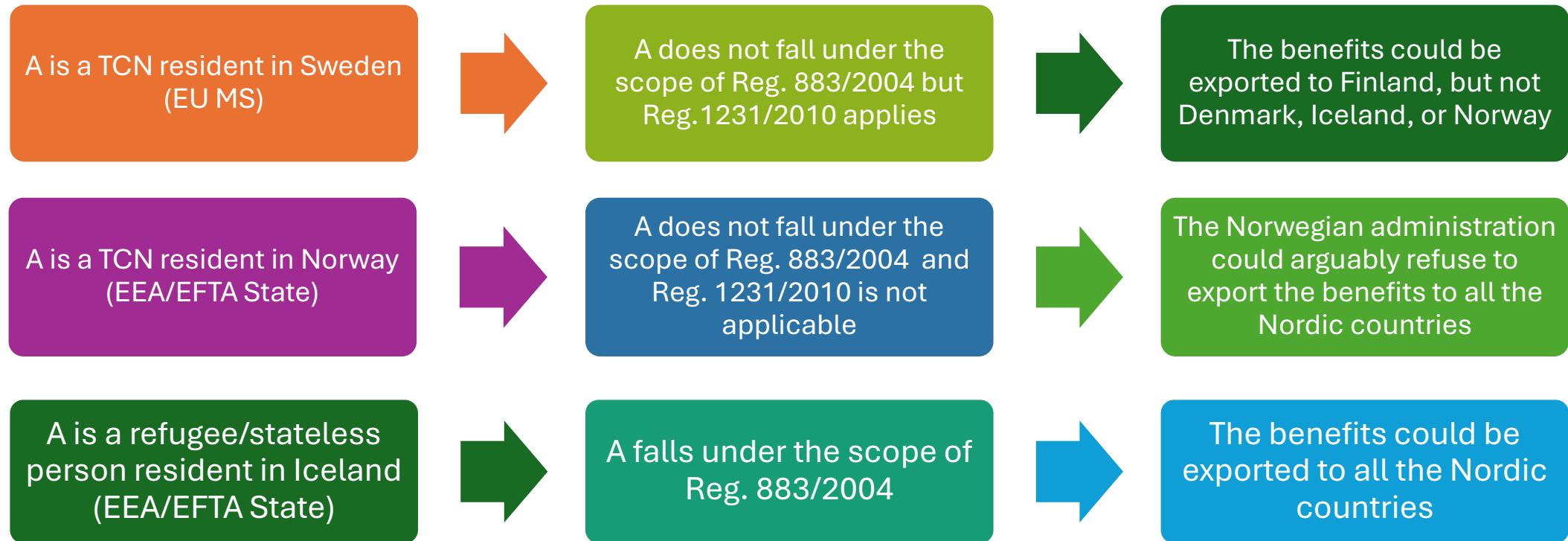
- The Regulation is not incorporated into the EEA Agreement

- **Geographical scope:**

- EU Member States
 - Except for Denmark (Protocol No 22 TFEU)
 - Not the EEA/EFTA States or Switzerland (**Case C-247/09 *Xhymshiti***)
 - Of all the Nordic countries Reg. 1231/2010 applies only to Sweden and Finland

How does this play out in the Nordic countries?

- Person A wants to export her sickness benefits – some examples:



The Nordic Convention on Social Security

- **International treaty:**
 - The current (fifth version) was adopted on 12 June 2012 in Bergen
 - In principle all the Nordic countries adhere to a *dualistic* approach
- **Geographical scope:**
 - Finland, Sweden, Denmark, Norway, Iceland
 - Greenland, the Faroe Islands and the Åland Islands
 - Svalbard: See judgment of the EFTA Court in **Case E-3/12 Stig Arne Jonsson**
- **Material scope:** Mirrors Reg. 883/2004, plus certain more favorable rights

Personal scope

- **The Nordic Convention covers:**

- **Art. 3(1):** All persons who are covered by Reg. 883/2004
- **Art. 3(2):** Persons who do not fall within the scope of Reg. 883/2004, but are:
 - a) Persons who are or have been subject to the laws of a Nordic country
 - b) Relatives and survivors who derive their rights from a person of the kind referred to in subparagraph (a)

- **Article 4 (extended application of the Regulation):**

- The application of Reg. 883/2004 is extended to all persons who are:
 - Covered by the Convention
 - Resident in a Nordic country

How does this work?

- The personal scope of the Convention is **broader**
- Nationality is **irrelevant**
- Reg. 883/2004 can apply to **everyone** *via* the Nordic Convention
- Nordic Convention bridges the gap
 - But only in **intra-Nordic cases** (e.g. Sweden - Norway)
 - And see Article 3(3) and Annex 3 of the Convention concerning Denmark's reservation regarding TCNs!
 - Applies also to the Faroe Islands and Greenland

Points for consideration...

- Complex legal framework - overlaps and interacts:
 - EU law, EEA law and international law
- Some gaps in the legal framework
 - Reg. 1231/2010 is not part of EEA law
- The Nordic Convention **plays an important role!**