

THE RIGHTS GRANTED TO PERSONS PROVIDED BY THE DECREE-LAW NO. 118/1990¹

Nicolae ROȘ

Résumé

Comme on souligne dans la littérature de spécialité, ces catégories de droits ont un caractère prédominant réparateur et servent pour la satisfaction de quelques besoins matériels des personnes qui ont des revenus très petits, en vue de compenser les privations d'ordre social et matériel auxquelles les bénéficiaires ont été ou continuent d'être exposés.

En ce qui concerne la nature juridique de ces droits, on observe qu'il s'agit d'une nature juridique complexe, qui résulte du raccord des caractéristiques des droits d'assurances sociales, d'une part, et des droits d'assistance sociale d'autre Article

Dans le cadre de la politique de réparation des injustices du régime communiste, par le Décret-loi no. 118/1990, quelques prestations d'assurances sociales au caractère noncontributif ont été réglementées en faveur des personnes persécutées par des raisons politiques.

Mots clés: *vérérans de la guerre, magistrats, le régime communiste, anciens détenus politiques, descendants.*

a. Financial rights

According to the law², these persons have the right to a monthly allowance for each year of detention, abusive internment in psychiatric hospital, deportation or captivity, whether are or not are retired.

The amount of allowance is lower, respectively, for persons who had obligatory residence.

¹ Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Gazette of Romania no. 768 of 14 November 2008.

² Law no. 271/2008, published in the Official Gazette of Romania no. 768 of 14 November 2008.

The allowances, above mentioned, are indexed regularly by government decision.

b. The right to seniority¹

As we have shown, the periods established by Article 1 para. (1) of Decree-Law are considered as periods of seniority (contribution periods) useful for determining the pension, for each year of detention and internment, being equivalent to 1 year and 6 months

For those who have been displaced or had the obligatory residence, respective periods are taken into consideration when is calculated the seniority which is useful for determining pension, under the same rules of equivalence if they prove that in these periods have not been able to have a job in accordance with their professional training

Seniority is recognized also, for those who have acquired disabilities, grade I and II, in periods of detention, hospitalization, or later, as a result of detention or internment, and because of this they can not have a job.

We mention, also, that by including those periods in seniority, the persons have the right, if are retired, to request recalculation of pension in order to obtain an increased amount of it, as a result of spore of seniority acquired.

On this line of thinking, Decree-Law no. 118/1990² provides that at the calculation of survivor's pension will be taken into account the amount of pension established, by taking into account of the spore of seniority obtained by including these new period of seniority.

c. Benefits in nature and tax facilities

According to Article 33 of Decree-Law no. 118/1990³ these people have:

¹ Mention that the right to seniority in terms of Article 8 of Decree-Law no. 118/1990 benefit and those who make a proof, by judicial decision of observation that could not exercise a profession or, as appropriate, the occupation, during have been pursued by repression bodies, for political reasons, before the arrest.

² Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Gazette of Romania no. 768 of 14 November 2008.

³ Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Gazette of Romania no. 768 of 14 November 2008.

- Exemption from payroll tax, tax on buildings and land within city;
- Free transport by public transport belonging to state-owned units
- 6 free travel by rail each year.

Rights granted to the surviving spouse

After rectification of the Decree-Law no. 118/1990¹, was recognized for the surviving spouse of the deceased person, disappeared or exterminated during detention, unfair internment in psychiatric hospitals, deportation or captivity, the right to a non-taxable monthly allowance on condition of not being married again.

Under the same conditions, by this allowance benefit also the husband of the person who died after release from psychiatric hospital, prison, after his return from deportation or imprisonment (Article 31, paragraph 1. (2)).

Practical implementation of the legal provisions, mentioned above, can put some problems concerning the conditions for granting of indemnity in the assumption provided by Article 31-1. (2) of the Decree-Law no. 118/1990.

Thus, might ask, whether, the surviving spouse has the right to benefit of allowance, if the other spouse's death occurred after release from prison, etc, and, whether, this allowance is conditional on proof that the death was caused due to diseases acquired during detention, captivity, and so on.

In relation to the general formulation of the law text, we believe that, irrespective of the causes of death and when that occurred, the surviving spouse's right to allowance must be recognized.

In addition to this argument, which is the literal interpretation of the legal provisions, in favor of the solution promoted, pleads, also, a considerent of principle.

In fact, this right to allowance is a remedial measure - extremely limited - in favor of the surviving spouse, on account of social and material deprivation suffered by him during the communist regime because of his marriage with a political prisoner or prisoner.

¹ See Article 31, Introduced by Article 1, point 1 of Law no. No. 53/1993, repealed by Law No. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons starting with 6 March 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

On the other hand we can discuss if this right can be exercised in the case where the spouse political prisoner, etc. dies after having been established his rights under the Decree-Law no. 118/1990.

A solution of principle in this regard must have as the application point following considerations:

Thus, from the law texts economy, results that, the rights of surviving spouse are granted only if the primary beneficiary of the provisions of the Decree-Law no. 118/1990¹ died.

In other words, the right of surviving spouse is in a subsidiary relationship with the principal right recognized in favour of husband which is in one of the situations provided by Article 1, para. 1 from law, consequently, it can not be exercised concurrently with it, but only, if the principal owner as a result the death he can not exercise.

Also, this right can not be equated with the survivor's pension, because to be transmitted, the rights with personal character, such as the right in question is required an express provision of law in this respect.

Procedure for determining the rights covered by the Decree-Law no. 118/1990².

Determination of the beneficiary of these rights is made by the county commissions established under the Decree-Law and consisting of two representatives from the Direction of Labor and Social Protection and a maximum of 4 representatives of the Association of former political prisoners and victims of the communist dictatorship in Romania.

Coordination of work of these commissions are performed by a central commission composed of one representative of Ministry of Administration and Interior, Ministry of Labour and Social Protection and five representatives of the Association of former political prisoners and victims of the dictatorship in Romania.

County Councils consider applications for grant of rights provided for

¹ Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

² See Article 5 and 6 of Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

in Decree-Law no. 118/1990¹ on official documents issued by competent authorities, and when it is not possible using any means of proof allowed by law.

The rights of magistrates which have been removed from the justice for political reasons between 1945-1952

By Law no. 51/1993² was established for magistrates which have been removed from the justice for political reasons between 1945-1952 the right to a monthly allowance, as a non-contributory social benefit.

Mention that benefit for the allowance only magistrates who do not qualify to receive the rights provided for in the Decree-Law no. 118/1990³.

Also, they are not entitled to award allowance, magistrates which were removed from the justice because their conviction for crimes against peace and humanity or in which the dismissal was motivated as a result of carrying out an activity within an organization or fascist movements that type⁴.

Social protection of veterans, invalids, orphans and war widows

In accordance with the provisions of Article 1 of Law nr.44/1994⁵ has the status of war veteran, people who participated in the first or in the Second World War and were found in the following situations:

a). fought in military units-subunits, large units or various echelons or were part of logistics, as specified in nomenclature of Great Staff⁶;

¹ Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

² Published in the Official Journal of Romania, no. 157 of 12 July 1993.

³ See Article 1 , point 3 of Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

⁴ See Article 6 of Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

⁵ Published in the Official Journal of Romania, Part I, no.172 of 7 July 1994, republished in the Official Journal of Romania no. 783 of 28 October 2002.

⁶ A. Ţiclea, C. Tufan, *Social security law*, Global Lex, 2003, p. 406.

b). have acted in special units prohibited area to defuse projectiles, as well as at cleaning the territory of mines until 31 December 1946¹;

c). were military commanders or commanders of military guards and reception control in enterprises which provide war material, as specified in nomenclature of Great Staff²;

d). fought on the national territory, temporarily occupied by the enemy, against him, in units or formations established, recognized as such by the Great Staff³;

e). were part of military justice, military police, police, constabulary, firefighters, of fire-fighting units and military police companies from the Ministry of Interior, who acted in the area of operations or have been in units or formations established and acted during the war, in the periods shown in nomenclature of Great Staff⁴;

f). became disabled war veterans⁵;

g). were prisoners of war⁶;

Are considered war veterans, also

a). Romanian citizens in any territory that have voluntarily joined and fought in the United Nations army ;

b). residents of the Romanian provinces, temporarily occupied during 1940-1945, which were obligatory incorporated or mobilized and fought in the armies of other states where they have maintained or regained Romanian citizenship and residence in Romania;

c). German persons who have been framed mandatory in German military units, where they have maintained or regained Romanian citizenship and residence in Romania.

The status of war veteran is determined by the Ministry of National Defense, based on data from military ticket, or failing that, based on official

¹ *Ibid.*

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*, p. 407.

⁶ *Ibid.*

documents issued by bodies established by the ministry¹.

If they do not have military ticket or is impossible to issue them the necessary proof, which may be due to the lack or destruction of archives, confirmed in writing, war veteran status will be determined by the commission of reconstitution, with witnesses, as provided by law and the methodology established for this purpose by the Ministry of National Defense.

War veteran ticket is issued by the Ministry of National Defense, the National Association of War Veterans or other veterans associations legally established.

Rights arising from the quality of war veteran decorated related to allotment of space house or equivalent, are transmissible to legal heirs if the owner applied for obtaining these rights during his lifetime².

In the category of war veterans, legislature included also, war invalids and prisoners of war.

According to Article 3 of Law no. 44/1994, war invalid is the war veteran who has suffered, due to a injury or accident, during or because the war, a disability, certified by a legal medical act

The status of war veteran is evidenced by rank minute and pension decision regardless of the degree of disability.

Article 4 of law refers to prisoner of war, namely:

a). person captured by the enemy during war operations, whether it was combatant or non-combatant, under international conventions to which Romania is party³;

b). person who, after the cessation of hostilities on 23 August 1944, was disarmed by Soviet and German troops, or even nedezarmată, was hospitalized to POW camps⁴;

c). Pupil from military schools for officers and military masters, sent to study in Germany, as well as, the soldier and military, being in this country, for specialization considered prisoners of war by German authorities on 23 August 1944⁵.

¹ *Ibid.*

² Article 8 of Law nr.44/1994 regarding war veterans and some rights of the disabled persons and war widows.

³ A. Țiclea, C. Tufan, *op. cit.*, p. 408.

⁴ *Ibid.*

⁵ *Ibid.*

To prove the status of prisoner of war, the person present military ticket or other document issued by the Ministry of National Defence or the body which has retained them..

The person which can not acquire the status of war veteran, according to Article 7 of Law nr.44/1994, is someone who¹:

a). committed acts of treason or has accepted to be used by the enemy as a spy or agent of diversion in the country, facts established by a final court decision;

b). fought as a volunteer in the foreign armies against country or of the United Nations, or committed acts of terror and crimes against indigenous peoples from the territories temporarily occupied by the enemy;

c). has deserted from the Romanian army during the war;

d). has obtained the proof required by paragraph 1 of Article 5 by making false statements or deceptive manipulations, found by final court decision or when the decision of reconstitution commission given in accordance with Article 5 paragraph 4 has been canceled.

War widow is the surviving wife of the deceased person on the front, imprisonment or as a result of wounds or disease contracted on front or imprisonment².

Quality of war widow is determined based on documents, as provided in regulations issued by the Minister of Labour and Social Protection.

The rights of war invalids, orphans and widows of war, according to Law no. 49/1999³

As noted in the specialty literature⁴, these categories of rights have an nature predominantly remedial and serve for the satisfaction of material needs of people with low incomes in order to offset the social and material deprivations, at which the beneficiaries were and continue to be exposed.

¹ *Ibid.*

² Article 9 of Law no. 44/1994

³ Published in the Official Journal of Romania, Part I, no.135 of 1 April 1999 amended.

⁴ C. Bratu, V. Teodorescu, *Social security law*, Artprint Publishing House, Bucharest, 2005, p. 562-574; Ciochina Barbu, I., *Social security law*, Junimea, Iasi, 2007, p. 240-241.

As regards the legal nature of these rights, can be seen that have a complex legal nature, which results from the combination of characteristics of social insurance rights, on the one hand, and social assistance rights on the other side.

Pension right of injured and war invalids is provided by Law no. 49/1991¹. Method of calculating pensions for these categories of persons, is different, as, this persons worked or not, when disability occurred.

War Invalids and injured which were not employed before becoming disabled receive pension in fixed amounts differentiated depending degrees of disability and urban and rural environment where they are living. Final change of residence, from urban or rural environment and vice versa, attract appropriate adjustment in the amount of pension. War Invalids and injured, big ones mutilated and in grades I of disability receive, in addition, disability pension IOVR and a fixed monthly amount for care, if not enjoy that right in another sector pensions.

Disability pensioners and war accidentații of any degree, and war widows pension, has the right to receive, during are employed, in addition to their remuneration, also the pension IOVR entirely.

Entitlement to invalidity pension will be paid depending on the degree of disability as follows²:

- Great mutilated and I degree - 2.000.000 lei / month;
- Grade II - 1.8 million lei / month;
- Grade III - 1.2 million lei per month.

War Invalids and injured, mutilated and I degree of disability receiving, in addition to pension IOVR and a fixed monthly sum of 500,000 lei which is regularly indexed. Such an index - 46.5% - took place, for example, under Government Decision no. 518 / 2002 (published in the Official Gazette of Romania, Part I, no. 367, May 31, 2002)³.

Injured war pension ordered out of service is 50% of the amounts provided for war invalids, differentiated by degree of disability are employed

¹ Amended by Law no.205 of 24 October 2008 to amend Law no. 49/1991 regarding the granting of allowances and bonuses invalids, veterans and war widows, published in the Official Journal of Romania no. 736 of 30 October 2008.

² These pensions and allowances are indexed regularly by government decision.

³ Țiclea A., Tufan C., op. cit., p. 414

and can be combined with other social security pension and can form the basis for granting pension survivor¹.

According to Article 7 of Law nr.49/1999, pensioners I.O.V.R. have the right of care, free medical care in hospitals, maintenance and medications during hospitalization, according to law. Also enjoy referring to treatment in spas.

Right to survivors' pension

According to the Law nr.49/1999, children and wives of those killed or missing in war and of those who died later that IOVR pensioners are entitled to survivor's pension, granted under the law.

To receive the pension, the beneficiary will have to meet conditions required by law on the surviving wife and minor children. Also, according to Article 11 paragraph 1 of Law nr.44/1994, the surviving wife (widow of war) may combine that pension with the pension of the work and the age limit, which is an exception to the common law, where, exist only the possibility of option between actual pension and survivors pension.

War widows have right at an pension IOVR in the amount of 1,000,000 lei per month².

In connection with the manner of determining the survivor's pension, Law no. 49/1991 regarding pension I.O.V.R.³ establish a measure of favor, referring to calculation base, stating that if the holder, the date of death, has cumulated IOVR pension with another social insurance pension, survivor's pension is determined taking into account the most advantageous pension (Article 5 paragraph 4).

Rights of the former political prisoners

In the context of repair Policy of injustices of communist regime, by Decree-Law no. 118/1990⁴ have been regulated in favor people persecuted

¹ Article 6, para. (2) of Law no. 49/1999.

² It is indexed annually by Government Decision

³ Published in the Official Journal of Romania no. 135 of 1 April 1999.

⁴ Republished in the Official Journal of Romania no. 187 of 18 September 1991. Subsequently Decree-Law no. 118/1991 amended by Law no. 22/1992 published in Official Journal of Romania no. 44 of 14 January 1992, Law no. 53/1993 published in Official Journal of Romania no. 157 of July 12, 1993, Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990

for political reasons some social insurance benefits with noncontributiv character.

The holders of rights provided by Decree-Law no. 118/1990¹

According to Article 1 para. (1) of Decree-Law no. 118/1990² rights holders are persons³ who have been in the following situations:

- has executed a period of deprivation of liberty under a court decision remaining final or has been deprived of his liberty under an arrest warrant for political offenses;

- has been hospitalized in psychiatric hospitals;

- has been displaced to another locality;

- has been deported abroad after August 23, 1944;

- has been constituted in prisoner by the Soviet after August 23, 1944 , being constituted as such before that time was detained in captivity after armistice.

Holder of rights may be the husband (wife) of persons above mentioned on condition of not being married again.

Jurisprudence. Rights of persons politically persecuted during the period 1940-1945

In the practice the courts and of the local pension houses was found that there is no uniform view about the application of Article 1 letter. c) from Government Ordinance no. 105/1999 regarding the granting of rights to

regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Gazette of Romania no. 768 of 14 November 2008.

¹ Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008.

² Law no. 271/2008 approving Government Emergency Ordinance no. 59/2008 amending Decree-Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons since March 6, 1945, and those deported abroad or in prison, published in the Official Journal of Romania no. 768 of 14 November 2008

³ Please note that you must remember that the holders of the rights provided for in Decree no. 118/1990 are all persons in situations covered by Article 1 of the decree, regardless of age. In this regard, see the Supreme Court, Civil Division, decision no.2028/22.09.1993 published in the journal "Law" no.8 / 1994, p. 82.

persons persecuted by the regimes established in Romania with effect from 6 September 1940 until March 6, 1945 because of their ethnicity, approved with amendments and additions by Law no. 189/2000.

Thus, some courts have considered that benefit of remedial measures provided by Article 1 letter. c) by Government Ordinance no. 105/1999, approved with amendments and additions by Law no. 189/2000, only Romanian citizens, which, between September 6, 1940-March 6, 1945, were displaced or expelled in the territories under the jurisdiction of the Romanian state, the argument being that of these measures may benefit Romanian citizens which have change residence in the territories under Romanian administration in the territories temporarily occupied by Hungary Horthy, while the Romanian state has not persecuted his citizens on grounds of ethnicity.

Other courts, on the contrary, have said that benefit of remedial measures provided by Government Ordinance no. 105/1999, approved with amendments and additions by Law no. 189/2000, any Romanian citizen, regardless of nationality, who during the regimes appeared starting with 6 September 1940 until March 6, 1945, suffering persecution, due to their ethnicity, was refuge, expelled or displaced to another location, indifferent if when was displaced was domiciled on Romanian territory or on Romanian territories under occupation of other states and if the locality where took refuge or has been expelled or displaced is under the administration of a foreign state.

For justification of this view they reasoned that the provisions of Article 1 letter. c) of that order not require the existence of persecution in relation to Romanian nationality for ethnic reason, but of the Romanian citizenship so that remedial measures concern, equally, at all Romanian citizens who have suffered persecution at that time, as a result of refuge, expulsion or displaced to another city, without making no distinction whether it took place on Romanian territory or outside his. Was also emphasized that the reason of refuge can be assessed only in relation to the realities of the moment, when were notorious the ethnic persecutions on grounds, as a result of modification of Romania borders, by yielding a part of Transylvania, Hungary.

Therefore, in order to establish uniform rights remedial, for those persecuted ethnic remedial, general prosecutor of Romania appealed, in the

interest of law, resulted in the Decision of High Court of Cassation and Justice of Romania, no.XLI (41) 7 May 2007¹.

In the uniform application of legal provisions by the territorial committees attached to retirement homes, should be amended Government Decision no. 127/2002 regarding the approval of Norms for the application of Government Ordinance no. 105/1999 regarding the granting of rights to persons persecuted by the regimes from Romania starting with 6 September 1940 until March 6, 1945 ethnic reasons showing that the full and correct interpretation of the provisions of Article 1 letter. c) from Government Ordinance no. 105/1999, as approved by Law no. 189/2000 and subsequently amended by Article 1 of Law no. 586/2002, leads to the conclusion that, regardless of nationality, Romanian citizens persecuted, if when was displaced was domiciled on Romanian territory or on Romanian territories under occupation of other states and indifferent if the locality where took refuge or has been expelled or displaced is under the administration of a foreign state or romanian jurisdiction, benefit by remedial measures provided for in Article 1 letter. c) from Government Ordinance no. 105/1999, as amended and supplemented.

Therefore, we propose *ferenda* law, the development of a draft of government decision, which to consider introducing the two articles after Article 2, as follows:

“Art 2¹ - The persons referred to in Article 2 enjoy the rights provided by law, indifferent if, when was displaced, was domiciled on Romanian territory or on territories temporarily occupied by other countries and whether the city have been displaced or are under Romanian jurisdiction under the administration of those states .and indifferent if the locality where took refuge or has been expelled or displaced is under the administration of a foreign state or romanian jurisdiction.

Art 2² - By the same rights, benefit upon request, to persons who have been in situations referred to in Article 2¹, whose previous claims were settled by decisions rejecting.”

Also, it will consider the amendment of Article 5 which will have the following content:

“(1) If the applications are approved, shall be granted monthly allowances starting from the month following request submission.

¹ Published in the Official Journal of Romania no. 833 of 5 December 2007.

(2) To the persons referred to in Article 21 and 22, monthly benefits shall be paid starting from the month following request submission, but not before the effective date of this decision". So, the extent that draft decision will be approved, by the rights provided by the Government Ordinance no. 105/1999 will benefit people who when was displaced, was domiciled on Romanian territory or on romanian territories temporarily occupied by other countries and indifferent if the city where have been displaced is under Romanian jurisdiction or under the administration of those states, even if previously, their applications were rejected¹.

¹ See Costel Gilca, *Journal of labor and social security law*, Year I, no. 2 / 2008, p. 17-18.