

RIGHTS OF THE HEROES - MARTYRS, THE SURVIVORS AND THE WOUNDED AS WELL AS THE FIGHTERS FOR VICTORY IN THE DECEMBER 1989 REVOLUTION

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Résumé

Les droits des héros martyrs, des survivants, des blessés, et des combattants pour la victoire de la Révolution de Décembre 1989 sont réglémentés par la Loi no. 341/2004.

Les agents économiques qui emploient des personnes qui ont obtenu le titre de Combattant pour la Victoire de la Révolution de 1989 – Blessé, Détenu et Remarqué pour des actions particulières ou descendant d'Héros-Martyr bénéficie des facilités prévues par la législation en vigueur pour les employeurs qui offrent des lieux de travail aux chômeurs et aux jeunes diplômés.

Les titres et les médailles prévus pour chaque titre sont décernés par le Président de la Roumanie, à la proposition de la Commission spéciale. Les titres qui n'ont pas été donnés dans les conditions de la loi ou dont les bénéficiaires n'ont pas eu des mérites particuliers sont nulls.

La vérification des dossiers de ceux qui ont obtenu les titres mentionnés ci-dessus sera faite d'office ou à la demande de n'importe quelle personne intéressée, dans 1 an à partir de l'entrée en vigueur de la loi, par la Commission pour l'honneur et le soutien des héros de la Révolution de décembre 1989.

Mots clés: héros, martyr, révolution, descendant, titre, facilités, droits, blessé.

Rights of the heroes - martyrs, the survivors and the wounded as well as the fighters for victory of the Revolution from December 1989, are regulated by Law no.42/1990¹.

For honor the memory and the perpetuation of memory of those who have sacrificed their lives for victory of the Revolution of December 1989, was established the title of "hero-martyr of the Romanian Revolution of December 1989. The title of "hero-martyr of the Romanian Revolution of

¹ Repealed by Law no. 341/2004 regarding the gratitude to the heroes-martyrs and fighters who have contributed to the Romanian Revolution of December 1989, published in the Official Journal of Romania no. 654 of July 20, 2004

December 1989 was granted post-mortem: the patent certificate and the title badge has been given for safekeeping to the family of the decorated person or to his parents if applicable (Article 1)².

In sign of appreciation and gratitude for those who were wounded in the battles for victory of the Revolution of December 1989, was established the title "Fighter for the victory Revolution of December 1989" (Article 2, paragraph 1).

This title is awarded to those who were detained between 16 to 22 December 1989 as a result of participation in activities for the revolution victory, as well as those who, during 16 to 25 December 1989 were noted by special facts in the battle for the victory (Art. 2, paragraph 2)³.

The persons mentioned above must prove the participation in the revolution victory with special facts and be recommended by an association, a club, a foundation or a league of fighters, legally constituted until December 30, 1993⁴.

Therewith, was set up the title of "Participant at the victory of the Romanian Revolution of December 1989" for those who participated at Revolution from 1989, other than those specified in article 2, paragraph 2 (Article 3 paragraph 2)⁵.

The persons mentioned above must prove the participation in the revolution victory and be recommended by an association, a club, a foundation or a league of fighters, legally constituted until December 30, 1993⁶

The title of "Participant at the victory of the Romanian Revolution of December 1989" is an honorary title, the recipients of this title receiving distinct patent under Article 5 of law (Article 3, paragraph 3). To honor and appreciate actions of participants at the revolution victory was established

"Commemorative Cross of the Anticommunist Revolution from December 1989"⁷.

² Ghimpu S., Țiclea A., Constantin Tufan, *Social security law*, 1998, p. 480.

³ Ibid.

⁴ C. Bratu, V. Teodorescu, *Social security law*, Artprint House Publishing, Bucharest, 2005, pp. 543-555

⁵ Ibid, p. 481.

⁶ Ghimpu S., Țiclea A., Constantin Tufan, *Social security law*, 1998, p. 481

⁷ Name decoration "Medal Romanian Revolution of December 1989, was replaced by the name "Commemorative Cross of the Anticommunist Revolution from December 1989", Law no. 29 of 31 March 2000 published in Official Journal of Romania no. 146 of 7 April 2000.

Titles and medals provided for each title are conferred by the President of Romania, at the commission proposal, specially constituted. Titles that were not conferred by law or whose beneficiaries have not special merits are null. (Article 5, paragraph 2)⁸.

This nullity can be noticed from the officio or at the request of any interested person, by the Commission for honoring and supporting of the Revolution, stipulated in law by decision of finding of nullity. The decisions of finding of nullity of the certificates can be appealed, within 30 days, at the special parliamentary commission.

The verification of files of those who have acquired the above titles will be made ex officio or upon request of any interested, within one year after the entry into force of the law, by the Commission for honoring and supporting the heroes of the Revolution of 1989 (Art. 5 paragraph 4)⁹.

The criteria for awarding titles

To honor the memory of those who have sacrificed life and as a sign of gratitude to those who fought for the victory of Romanian Revolution of December 1989, the following titles have been established:

1). Hero-Martyr of the Romanian Revolution of December 1989 - is awarded to those who sacrificed themselves for Romanian Revolution Victory of December 1989, or have died in connection with this¹⁰ and is granted survivors, persons entitled to benefit from the provisions of Law no. 341/2004 namely the surviving spouse, parents of the deceased, each of his children. The title Hero-Martyr of the Romanian Revolution of December 1989 is awarded also to persons who died after the Romanian Revolution of December 1989 and whose death is in direct causal relationship with the wounds suffered during the Revolution, causal relationship proven by the certificate issued by National Institute of Legal Medicine "Mina Minovici" of Bucharest or as appropriate, by the Institute of Forensic Medicine from his supervision, in whose jurisdiction the person had his residence.

2). The title – fighter for the victory of the Revolution of December 1989, Wounded¹¹, is given to persons who have been wounded by

⁸ Ghimpu S., Ţiclea A., Constantin Tufan, *Social security law*, 1998, p.482.

⁹ Ibid.

¹⁰ Article 3, paragraph 1 of the Law nr.341 of 12 July 2004, published in the Official Journal, nr.654 of 20 July 2004.

¹¹ Article 3, paragraph 1., point 1 of the Law nr.341/2004.

participating directly and immediately to battle, or by participating in events that have direct and indisputable link with the battle for the victory.

3). The title – fighter for the victory of the Revolution of December 1989 – detained ¹²- is granted to persons who have been detained by the forces of repression, by participating directly and immediately to battle or by participating in events that have direct and indisputable link with the battle for the victory.

4). The title - fighter for the victory of the Revolution of December 1989-Noted by special Acts ¹³ - was established and is awarded, by applying the principle laid down in Article 2 d) of the Law no.341/2004, in order to distinguish, on one hand, the category of persons who have emerged among the participants and had a special role decisively to the Revolution, being noticed by the special facts and on the other hand, the great mass of people who participated in the revolution of December 1989 without a decisive personal contribution to the Revolution victory.

5). Title - Participant at the Revolution victory of December 1989¹⁴ - gives to the holder an honorary quality and is assigned to those which can prove that have been part of the great mass of people who participated in the 1989 Romanian Revolution

Proof of quality fighters and their merits are attested by the following required documents:

- Minutes made by established organizations;
- Certificates or other documents;
- Statements of the persons participating in the revolution of December 1989, recognized as fighters, but in conjunction with other evidence conclusive

The principles which formed the basis of gratitude to the heroes-martyrs and fighters who have contributed to the Romanian Revolution of December 1989¹⁵ (Law no. 341/2004) are:

- a). respect and gratitude to the heroes-martyrs and fighters participants in the Revolution from December 1989 and concern for survivors heroes-martyrs;

¹² Article 3, paragraph 1., point 2 of the Law nr.341/2004.

¹³ Article 3, paragraph 1., point 3 of the Law nr.341/2004.

¹⁴ Article 3, paragraph (1), point 3 of the Law nr.341/2004.

¹⁵ Article 2 of Law nr.341/2004.

- b). respect for historical truth by deepening the documentation on the Revolution of December 1989;
- c). differing stages of the Revolution;
- d). defining the categories of fighters, by distinguishing the commitment and participation in activities carried out for Revolution victory;
- e). distinction between civilians and soldiers on the stages and forms of participation in the actions undertaken for Revolution victory;
- f). fairness in the granting of rights provided by law.

Rights granted under Law No. 42/1990¹⁶ and Law no. 341/2004¹⁷

The survivor of Hero-Martyr means persons entitled to benefit from the provisions of Law no. 341/2004 namely the surviving spouse, parents of the deceased and each of his children¹⁸.

Individuals who obtained titles Hero-Martyr in Romanian Revolution of December 1989 are entitled to a monthly allowance reparative by applying the following coefficients to the average gross wage in the economy, the previous month in which payment is made so¹⁹:

- a) The surviving spouse of the deceased person, if not married again - a coefficient of 1.10;
- b) each of the parents of the deceased person - a coefficient of 0.50;
- c) each of the children of the deceased person, up to 18 years or until graduation, but not older than 26 years, a coefficient of 1.10.

Individuals who obtained titles fighter in Romanian Revolution of December 1989-Wounded and fighter for victory Revolution of December 1989 - are entitled to a monthly allowance reparative by applying the following coefficients to the average gross wage in the economy, the previous month in which payment is made so

¹⁶ Law no. 42/1990 for heroes-martyrs and to grant rights to their successors, the wounded and the fighters for the Revolution in December 1989, republished in the Official Journal of Romania no. 8 of 24 January 1997

¹⁷ Law nr.341 of 12 July 2004 in gratitude for the heroes, martyrs and fighters who have contributed to the Romanian Revolution of December 1989.

¹⁸ Article 4 para. (1) of the Law nr.341 of 12 July 2004, published in the Official Journal of Romania no. 654 of July 20, 2004

¹⁹ Article 4 para. (2) of the Law nr.341 of 12 July 2004, published in the Official Journal of Romania no. 654 of 20 July 2004.

- a). 2.00 - for mutilated persons;
- b). 1.75 - for those with I degree of disability;
- c). 1.50 - for those with II degree of disability;
- d). 1.25 - for those with III degree of disability;
- e). 1.10 - for those not classified in the degree of disability;

The mutilated persons and those with I degree of disability; benefit, in addition to the allowance referred to above, of an allowance granted monthly, by applying the multiplication coefficient of 0.50 on the average gross wage in the economy, from previous month of month in which the payment is made²⁰.

The people, mentioned above, in addition to compensation calculated have also the following rights:

The persons mentioned above in addition to compensation calculated, by the following rights:

- a). priority in securing of a house available from the social housing fund, in the area of the home, if the owner does not have another house up to the award;
- b). setting rent at the level legal minimum for housing of state fund,, if they have a monthly income less than or equal to the average gross wage in the economy;
- c). buying or renting with priority, without a tender, from the state, of a commercial space or providing services, with a floor area of 100 square meters, including lease or tenancy or hire, with priority, without a tender, a land area up to 100 square meters, from public domain for the establishment of a commercial or service space, with a clause of no estrangement for 10 years from the date of acquisition;
- d). Free granting of prostheses, orthoses and wheelchairs for individuals who have lost full or partial capacity to work, their full cost being borne by the Fund single national health insurance budget and the State Secretariat for Revolutionaries' Problems from December 1989;
- e). Free access of children to nurseries and kindergartens in the subordination of local governments, as well as providing school supplies for free, if monthly income is less than or equal to the average gross wage in the economy;
- f). grant of an state subvention equal to 50% of the bank loan interest of up to 20,000 Euro, contracted for the purchase or provision of a dwelling

²⁰ Article 4 para. (4) of the Law nr.341 of 12 July 2004.

place of residence, unless they have not owned or have not a property, and the possibility to guarantee loans with the allowance calculated in accordance with this Law;

g). award, whenever possible, in property and with clause of no estrangement of 10 years from the date of acquisition, of 10,000 square meters of land outside the city and 500 sq m of buildable land in the city - the latter for the purpose of housing, if did not have or did not has, in property, another housing

h).allocation of property, without payment of the final resting place;

i). Free access of the persons above mentioned - the expenses being supported by the respective ministries budget and from Unique National Fund Health Insurance - at treatments and medicines in hospitals, treatment bases and spas of the Ministry of Health, Ministry of National Defense and Ministry of Administration and Interior;

j). Free access to medicines, by family doctor, the full cost being met from the Fund's single national health insurance;

k). free urban transport by public transport, and annually, 12 free rail travel, at first class, round trip, with all categories of passenger trains; annually -12 free travel, round-trip, until to the locality, residence of county, with public transport for people who live in rural areas

l). exemption from taxes on property and for an home and its related land, hycomat car and motorcycle, and exemption on import of a single car type hycomat or free allocation of an way of transport appropriate to the international standards for mutilated people and for people who have a degree of mobility disability

m). granting an monthly allowance, added to old-age pension, equivalent to a coefficient of 0,6 applied to economy gross average salary in the month prior to receiving the payment.

n). retirement, with five years before of age standard, set by law;

o). exemption from fees for public radio and television broadcasting, for those with monthly incomes lower than the average gross wage in the economy.

The rights granted under this law are not considered income, are not taxed and does not affect the granting of other rights²¹.

²¹ Article 5, paragraph (2) of the Law nr.341 of 12 July 2004, published in the Official Journal of 20 July 2004 nr.654.

Businesses that hire people who have earned the title of fighter for the victory of the Revolution of December 1989 - wounded, arrested and noted for special acts or survivor of Hero-Martyr, benefit from the facilities provided by applicable law for employers which offer jobs to the unemployed and young people graduates²².

These facilities are properly applied to military and civilian employees of the Ministry of National Defense and Ministry of Administration and Interior who have acquired this title. These facilities are not for civilians and military who were proven to be involved in the former Security as political police activities and those who organized, acted, instigated and fought, in any form against the Revolution²³.

Establishment of degrees of disability is made by doctor expert of social Insurance from the cabinet to which the applicant residing in accordance with clinical diagnostic criteria, functional diagnostics and recovery of functional capacity for work, approved by Governmentment Decision no. 400/2001 for the approval criteria and standards and clinical diagnostic, functional diagnostics and capacity evaluation work on which are established grades of disability I, II and III

Case Law

The termination of individual employment contract. Reasons not attributable. Employee - fighter for the victory of the Revolution of December 1989

According to Art.10 paragraph 2 of Law no. 42/1990, the individual employment contract of fighter for the victory of the Revolution of December 1989, can not be terminated than for reasons attributable to them.

By decision no. 1948 of December 18, 2003, pronounced in file no. 1815/CM/2003, Dolj Court upheld the objection lodged by DAP and annulled the Decision No. 8/2/1242/2003 issued by respondent National Railway Company CFR S.A. Bucharest. He ordered the complainant reinstatement to the post and position previously held, with payment of

²² Article 6 of Law no. 341 of July 12, 2004, idem.

²³ Article 8 of the Law nr.341 of 12 July 2004, published in the Official Journal of 20 July 2004 nr.654.

salary according to Art. 78 paragraph 1 of the Labor Code, the date of dismissal until actual reinstatement.

To pronounce this sentence, court of first instance, held that, wrongly, was ordered the termination of individual employment contract of the person concerned for reasons not attributable as long as he was fighter for the victory of the Revolution of December 1989

Respondent filed an appeal, arguing that the appeal was granted erroneously because the termination of individual employment contract of the complainant, was made considering based on a dismissal project under the procedures stipulated by the legislation in force and it was not exempt from layoff.

The appeal is unfounded.

As a result of the study, of documents and materials were found the following:

Prior to issuing a decision of the termination of individual employment contract, the complainant was employed in the position of economist II, in the Division Heritage - Office of Records and Asset Management

The termination of individual employment contract , according to motivation of the decision issued by the employer, was made under Art. 55, point.c, Art. 65, paragraph 1 and Art.68 of the Labour Code.

Termination of the individual employment contract, due to the abolition of the position held by the employee as a result of economic difficulties, technological changes or reorganization of the business, represent, in conformity with Art. 65 of the normative act mentioned above, dismissal for reasons not related to the employee.

According to Art.10 paragraph 2 of Law no. 42/1990, individual labor contract of the fighters for victory Revolution of December 1989 can not be terminated than for reasons attributable to them.

The normative act, above mentioned, was not repealed by the new labor code by default because it is not expressly provided for such a repeal.

It follows that the termination of the individual employment contract of the respondent has violated the legal provisions on the protection of fighter for the victory of the Revolution of December 1989, so, correctly, by decision pronounced at the first instance, was ordered annulment of decision and must to classify the complainant to the post

previously held.

For the reasons shown it was found that the appeal is unfounded and therefore was rejected.

Court of Appeal Craiova

Department of labor disputes and social security

Decision no. 456/21.02.2005

Source: *Bulletin of jurisprudence, the Court of Appeal Craiova, Collection of legal practice, 2005*, Lumina Lex, Bucharest, 2006, pp. 483-484.