

CONSIDERATIONS ON THE RIGHT TO CHILD RAISING ALLOWANCE IN ROMANIA AND THE EUROPEAN UNION

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Abstract: *The exercise of the right to free movement of individuals in general and of European workers in particular cannot be provided without effective and adequate social protection for migrant workers and their families. The EU legislation on social security coordination does not replace the national social security systems with a single European legislation so that the compliance with the principle of equal treatment in the social security of migrant workers can be achieved through the effective coordination of the Member States' social security systems. One of the areas of social security covered by the European legislation closely related to the national legislation refers to family benefits. This article aims to highlight the important provisions of the Romanian legislation and the European Union legislation on the right to benefit from child-raising allowance as well as the conditions governing the acquisition of such allowance, including the cases when the beneficiary of the allowance has performed different activities on the territory of several European countries.*

Key words : *free movement of workers; European Union; child-raising allowance; social insurance system.*

JEL classification : *K31, K33, H55.*

1. Preliminary considerations

Currently, free movement of people, labor mobility is increasingly perceived as a key instrument in the European integration process, contributing to closer political integration within the EU. It is an essential factor that offers significant benefits to all those involved. On the one hand, free movement allows employment, the economic development of Member States and their sustainable development, and, on the other, contributes to improving the personal development of workers within the European Union.

The right of European citizens and their families to move freely, to perform a lucrative activity and to live in any country in the Union is one of the four fundamental freedoms provided under the European law. According to the data provided by the European Commission, over the last decade, the number of mobile citizens living and / or working in another Member State has almost doubled, reaching to 17 million in 2017.

In this context, the adoption of legislation to eliminate formal social protection disparities and to ensure that self-employed and independently employed persons working in comparable conditions can enter into appropriate social security systems regardless of where they work has represented one of the EU's concern.

Thus, the European Union has a long history in coordinating social security systems, the first Regulation on Social Security Coordination of the European Economic Community (EEC) dating back to 1958. As a result of the increase in the number of EU Member States and the number of migrant workers, a modernized system of Social Security Coordination has been applied since 1 May 2010, the framework being established by Regulation (EC) No 883/2004 of the European Parliament and of the Council as of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council as of 16 September 2009 laying down the procedure for implementing Regulation 883/2004. These regulations improve and complete the basic principles set out in the previous regulations, enhancing cooperation between national administrations competent in the field of social security.

The Regulations are binding legal acts in all their elements and directly applicable in the Member States of the European Union, which do not replace the national legislation in this case, but only ensure that they are co-ordinated, leaving it to the EU Member States to determine the scope of the insured persons, the types and levels of benefits, as well as the obligations of beneficiaries and the procedures for entitlement to social security benefits. However, generally, Member States are not allowed to interfere with the direct application of the EU regulation in the national legal order.

The legislative framework created by these regulations has been constantly upgraded through the legislative acts of the EU legislation as well as by the interpretations of the Court of Justice of the European Union (CJEU), the rules constantly adapting to social and legal changes at a European level, constantly expanding the material and personal application area. Thus, they were updated by Regulation (EU) No. 465/2012 of the European Parliament and of the Council as of 22 May 2012, Regulation (EU) No 1368/2014 of the European Commission as of 17 December 2014 aiming at a more effective social protection for European workers and their families and the creation of a modernized system for the coordination of Member States' social security systems that should correspond to the social and economic reality of their level.

In 2016, the European Commission drew up proposals for the coordination of family benefits intended to replace income during child raising periods. 22 Member States offer this type of benefit (1).

2. European regulations for the coordination of family benefits intended to replace income during child raising periods

According to the Regulations, each Member State is free to determine the characteristics of its own social security system, namely the benefits provided, the eligibility conditions, the method of calculating the benefits and the contributions to be paid and the categories of social security such as pensions, unemployment and family benefits, provided that national provisions comply with the principles of EU law, particularly to those concerning equal treatment and non-discrimination.

The basic Regulation 883/2004 sets out such principles as:

- equality of treatment (Article 4), by which nationals of a Member State, and persons residing in that country without being nationals of it, are equal in terms of the rights and obligations provided for by the national legislation;
- equal treatment of benefits, income, facts or events (Article 5) in respect of their legal effects; and - aggregation of periods (Article 6), pursuant to which periods of insurance, employment or residence in one Member State are taken into account in all the other EU countries.

Family benefits are covered by Art. 67-69 (a) of Regulation 883/2004 and Art. 58-61 of the Implementing Regulation. They represent any type of benefits, cash or in kind, necessary to cover family expenses, with the exception of advance payments of child support benefits and special birth or adoption allowances. [Art. 1 letter z)].

Child raising allowances are a distinct category of family benefits intended to replace income during child raising periods designed to meet the individual and personal needs of the parent subject to the legislation of the competent Member State, a compensation for loss of income or salary during the child-raising period.

According to the Regulations, where the national legislation makes the granting of family benefits subject to the condition that a minimum period of insurance, employment or self-employment be fulfilled, the State liable to pay family benefits must take account of periods of insurance completed under the legislation of any other Member State, if this is

necessary to satisfy the conditions for entitlement to benefits (Article 6 of the new Regulation and Articles 12 and 13 of the Implementing Regulation).

Where a person is insured under the legislation of a Member State while his family members reside in the territory of another Member State, benefits shall be provided by the competent institution in accordance with the legislation it applies as if all the family members would reside on its territory.

The Regulations introduce a set of priority rules applicable to situations where it would be possible to overlap with national social security systems due to the fact that they are due to social benefits under the legislation of several Member States for the same period and for members of the same family.

Thus, in the case of rights acquired on different bases, the following rights have priority: rights deriving from the pursuit of an activity as an employed or self-employed person, secondly, the rights resulting from the receipt of a pension and, in the end, the rights acquired based on the residence.

Where benefits could be granted by more than one Member State on the same basis, the order of precedence shall be established by reference to the following subsidiarity criteria: a) in the case of rights acquired on the basis of an employed or self-employed activity, benefits shall be awarded, mainly by the state on the territory where the children reside, provided that the person perform such activity on that territory and, in the alternative, by the State granting the benefits in the highest amount. (b) in the case of rights acquired as a result of receiving a pension, benefits shall be granted mainly by the State where children reside, provided that a pension is paid under its legislation and, in addition, if needed, benefits shall be provided by the State where there is the longest period of insurance or residence under the conflicting legislation; (c) in the case of rights acquired subject to pre-established residence, benefits shall be provided by the state where the children reside.

Paragraph 2 of Article 68 stipulates that in the case of rights overlapping, family benefits are granted in accordance with the legislation intended as having priority, and the rights to family benefits granted under other or a conflicting legislation are suspended up to the amount provided for in the first legislation; and shall be granted, where appropriate, as a supplement representing the difference, for the part exceeding that value. It is not, however, necessary that this additional difference be granted to children who are resident in another Member State if the right to the benefits in question is based solely on the place of residence.

If the application is received by the competent institution and it examines the applicant's rights and concludes that his legislation is applicable as a matter of priority, he shall grant family benefits. If it finds that the person has opened a right for a differential supplement under the legislation of another Member State, it shall forward the file to the competent institution of that Member State and inform the applicant (Article 60 Implementing Regulation).

Where, upon receipt of a application, the competent institution finds that its legislation is applicable but does not take precedence, it shall forward the application to the institution whose legislation has priority, inform the applicant of such transmission and, where appropriate, grant a differential supplement. The competent institution of the Member State whose legislation applies as a matter of priority shall deal with the application as if it had been submitted directly and the date when it was submitted to the first institution shall be considered the date of its receipt at the priority institution (Article 68 of the new Regulation).

In order to ensure that during these periods the applicants receive the family benefits to which they are entitled, in the event of delays in communication between

institutions or in the absence of an answer within the prescribed time limit, the Regulation provides for the provisional payment of benefits (Article 60 and Article 6 of the Implementing Regulation).

In accordance with the provisions of Article 68, where the family benefits are not used by the person to whom they are to be provided for supporting his/her family members, the competent institution shall be exonerated by its legal obligations by granting such benefits to the natural or legal person actually providing the support of family members at the request and through the institution of the Member State of residence or the institution or body designated for that purpose by the competent authority of the Member State of residence.

3. Childraising allowance in compliance with the Romanian law

In Romania, the conditions for child raising allowance are set by GEO no. 111/2010 and the Methodological Norms for the Application of the Ordinance, adopted by the Government Decision no. 449/2016, published in the Official Gazette of Romania, Part I no. 473 / 24.06.2016. The legislation on child-raising allowance was successively amended in the Romanian legislation, the controversies surrounding the subject being determined, first of all, by the conditions for granting the allowance, its amount and possible limitations, but also the extent of the time of the right to child-raising allowance.

The most recent changes occurred following the adoption of GEO no. 55/2017 amending and supplementing Government Emergency Ordinance no. 111/2010 on parental leave and indemnification (published in the Official Gazette No. 644 of 7 August 2017), and GEO 82/2017 for amending and completing some normative acts.

According to the current regulation, applicants who meet the requirements of the law may benefit from parental leave up to 2 years and 3 years, respectively, in the case of a disabled child, as well as a monthly allowance.

According to the provisions of art. 8 of 1 and 2 of Government Emergency Ordinance 111/2011, the monthly allowance is granted to the natural parents of the child, the person who adopted the child, the person entrusted to the child for adoption or who has the child in placement or in emergency placement, except for the professional nursing assistant who can benefit from these rights only for his / her children and the person who has been appointed tutor.

The right to parental leave and child raising allowance shall be granted if the applicant fulfills cumulatively a number of conditions listed in Article 12, namely he is a Romanian citizen, a foreign national or a stateless person, has, according to the law, his domicile or residence on the territory of Romania, he or she lives in Romania together with the child / children for whom he / she claims his / her rights and takes care of him/them and fulfills the condition regarding the contribution period. Regarding the fulfillment of the contribution period, it is necessary that during the last 2 years prior to the date of the child's birth, the applicant has earned for at least 12 months income from wages and salaries, income from independent activities, income from agricultural activities, forestry and fish farming, subject to income tax according to the provisions of Law no. 227/2015 regarding the Tax Code, as subsequently amended and completed, or was in one of the assimilated periods. If a person simultaneously earns incomes subject to tax from several sources, all the monthly income earned by him / her will be taken into account for determining the amount of the allowance. In the income situation listed above, if the person simultaneously earns income subject to tax both in the country and in the European states applying Regulation (EC) no. 883/2004, only revenues earned in the country are taken into account.

The overall periods of activity completed in other Member States is possible if persons who have carried out professional activities in other Member States are subject to the legislation of Romania at the time of the child's birth. If the person performed professional activities in Romania during the period before the child's birth, then according to the provisions of art. 11 par. (3) letter (a) of Regulation (EC) No. 883/2004, is subject to the Romanian legislation in force. He/she can benefit from child-raising allowance in Romania by cumulating the periods of activity in other EU Member States, EEA or Switzerland, applying the provisions of Art. 8 of Regulation (EC) No. 883/2004 and art. 12 of Regulation (EC) No. No 987/2009 of the European Parliament and of the Council of 16 September 2009. According to these provisions, the periods of activity performed in another Member State shall be cumulated and added to those completed in Romania, to the extent necessary to open the right to child raise allowance.

Regarding the amount of the allowance, art. 2, paragraph 2 of the GEO 111/2010, establishes that this represents 85% of the average of the net income of the applicant in the last 12 months of the last 2 years preceding the date of childbirth. The monthly parental allowance has a minimum limit of 85% of the amount of the gross minimum wage per country guaranteed in payment, so starting with 1 January 2018 the minimum value is 1,250 lei, rising from 1,232 lei (the minimum value in 2017), but there is also a maximum limit of 8500 lei.

In case of multiple pregnancies, twins or triplets, the current regulation provides in Article 5 that the level of monthly allowance shall increase by 85% of the amount of the country's gross minimum wage guaranteed for each child born in a gemelar pregnancy, of twins, triplets or multiple babies, starting with the second child from such a birth.

The applicant's right to return to work also remains in the current form of the law as a potestative right, which once exercised, entitles the person concerned to an insertion incentive, an incentive amounting to 50% of the allowance which would have been granted.

The rule established in Article 16 of GEO 111/2010 is that in principle the allowance cannot be cumulated with other income. Thus, in case the beneficiary earns income subject to tax and the child has not reached the age of 2 years, respectively 3 years, in the case of the disabled child, the right to allowance is suspended unless the person receives various amounts under the law, the collective labour or individual labour contract granted during parental leave other than those resulting from the actual carrying out of an activity in the period of parental leave or allowances as a local or county councilor, regardless of their level or the level of income made in a calendar year shall not exceed three times the minimum amount of the allowance

4. Conclusions

We can conclude that there has been a constant concern both at European level and internally for improving the mechanisms for the effective implementation of the principle of equal treatment for Union workers and members of their families exercising their right to free movement and to allow for the elimination of formal disparities in the field of social protection.

The actions have been carried out in a number of areas: on the one hand, there has been achieved the synthesis and improvement of the existing legal framework, including the solutions provided by the CJEU jurisprudence and, on the other hand, efforts have been made to establish mechanisms that allow correct application and uniformity of European rules, together with an efficient and coherent system of coordination of social systems between Member States that corresponds to the social, economic and legal reality.

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