

Legal Issues Regarding the Compensations Granted by the Romanian State for the Children of Former Political Prisoners

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Abstract

The article refers to certain changes that need to be made to the paragraphs (5) - (9) regarding article 5 of the Decree - Law no. 118/1990 on granting rights to persons persecuted for political reasons by the dictatorship established starting with 6 March 1945, as well as to those deported abroad or constituted as prisoners, as republished in the Official Gazette, Part I no. 1208 of December 10, 2020, with subsequent amendments.

Keywords: *decree-law, rights, special allowance, former political prisoners.*

JEL Classification: K23, K38

1. Introduction

After December 1989, an attempt of material reparation of the damages suffered by former political prisoners and prisoners of war, was made in Romania. Thus, they could write to the Association of Former Political Prisoners and to the Association of War Veterans to receive a pension and some facilities for public transportation, telephone payment, electricity, and after their death, the surviving wives also benefited from these rights. This way, a financial reparation was tried and achieved, for the years of suffering and injustices, endured by some persons in the socialism period.

2. The content of the regulation *de lege lata*

The content of the five new paragraphs of the Decree - Law no. 118/1990 *on granting rights to persons persecuted for political reasons by the dictatorship established starting with 6 March 1945, as well as to those deported abroad or constituted as prisoners*, published in the Official Gazette no. 623 of 15 July 2020 is as follows:

(5) The child of the person deceased in the fights with the communist repression bodies, in the peasant uprisings, or of the person deceased, from the category of those who disappeared or were exterminated during detention, abusively hospitalized in psychiatric hospitals, deported, displaced, prisoners or established the obligatory domicile is entitled to a monthly allowance of 500 lei.

(6) The minor child on the date when one or both parents were in one of the situations provided in art. 1 paragraph (1) and (2), as well as the child born during the period in which one or both parents were in one of the situations provided in art. 1 para. (1) and (2) is entitled to a monthly allowance in the same amount as the allowance received by his parent.

(7) The child born after the end of the situations provided in Art. 1 paragraph (1) and (2) has the right to receive a monthly allowance in the amount of 50% of the allowance from which his parent benefited.

(8) The child who was both in the situations provided in par. (6) as well as in one of the situations provided in art. 1, para. (1) and (2) benefits from the allowance whose amount is higher.

(9) When establishing the allowance provided in par. (6) or (7), in the situation where both parents of the child have benefited from a monthly allowance according to the provisions of Art. 4 the allowance of the parent whose amount is higher is taken into account.

So, in Romania, only on 15 July 2020, the rights of the children of former political prisoners and prisoners of war were taken into account.

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3. Proposals regarding the completion of the Decree - Law no. 118/1990

In our opinion, the law should be extended to the successors in rights of former political prisoners and prisoners of war given that the reparation by monetary equivalent of the damage suffered was made very late in Romania, and the children of former political prisoners and prisoners of war are already in age and will only be able to benefit for a very short time from the special allowance granted and it is normal that their children to benefit further of it. In this way, the injustices committed will be remedied, leading in some cases to death or serious illness and to the impediment to the right to work and to a decent life.

In our opinion, the law should also not distinguish between children born when the parent was a political prisoner or they were not yet born, because the situation that followed was one of suffering, deprivation, need in all cases. The law should also provide for a special allowance for the adult child when his parent was taken prisoner or when he became a political prisoner. Given the status of child, the grown up child also deserves compensation for the suffering of the parent and, implicitly, of his/her own.

4. Additions to the Decree-Law no. 118/1990

The law was amended by the Ordinance of the Government no. 17/04.08.1995 (approved and amended by Law no. 122/15.XII.1995), amended by the Ordinance of the Government no. 24/11.08.1995 (approved by law no. 114/29.XI.1995). Then Law no. 130/2020 for completing Art. 5 of the Decree-Law no. 118/1990 on granting rights to persons persecuted for political reasons by the dictatorship established as of 6 March 1945, as well as to those deported abroad or constituted as prisoners.

In the end, Law no. 232/2020 for the amendment and completion of the Decree-Law no. 118/1990 on granting rights to persons persecuted for political reasons by the dictatorship established as of 6 March 1945, as well as to those deported abroad or constituted as prisoners had passed.

Another important law in this matter was Law no. 221/02.06.2009 on political convictions and administrative measures assimilated to them pronounced in the period 06.03.1945 - 22.12.1989 which aimed: deletion *ope legis* all criminal consequences of political convictions, restoring rights in case the conviction ordered the termination of rights and the military degradation, the explicit assertion of the possibility of the courts to award compensation for non-pecuniary damage if it is considered, after the examination of all circumstances, the causes that the reparation obtained by the effect of the Decree-Law no. 118/1990 as republished and of the Emergency Ordinance of the Government no. 214/1999 approved with amendments and completions by Law no. 568/2001 with subsequent amendments and completions is not sufficient, the regulation of a special possibility to repair the material damage caused by confiscation of property as a result of the conviction of a political nature.

5. Judicial practice

If the Ministry of Labour and Social Protection - National Agency for Payments and Social Inspection - Agency for Payments and Social Inspection of Bucharest City does not settle favourably the claim for compensation to be granted to children of former political prisoners and war veterans, they have the right to appeal against the decision rejecting the application for granting the rights provided in the Decree-Law no. 118/1990, as republished with subsequent amendments and completions, to the contentious-administrative and fiscal department of the competent Court within 30 days as of the communication of the decision, according to the Law no. 554/2004 on contentious-administrative matters, with subsequent amendments and completions³.

³ Regarding the appeal procedure, see Cătălin-Silviu Săraru, *Tratat de contencios administrativ*, Universul Juridic Publishing House, Bucharest, 2022, p. 345-416; Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 514-552; Anton Trailescu, Alin Trailescu, *Legea contenciosului administrativ*, 5th ed., C.H.

The court may dismiss the action if the application for lawsuit is not provided in a separate article of the Decree-Law, or it may allow the appeal, to cancel the decision and to order a new decision, given that if the law does not distinguish a particular situation, nor is the court able to distinguish, and the law cannot make a discrimination by completely omitting the grown up children, all the more so as they were not accepted to certain universities, services due to the fact that their parents were political prisoners or prisoners of war, and some of these children even witnessed the political persecution of their parents, the searches and the confiscation of objects and money.

6. Conclusions

We consider that an act of justice was done in Romania by adding the five new paragraphs, respectively 5-9 to Article 5 of the Decree-Law no. 118/1990, paragraphs published in the Official Gazette no. 623 of 15 July 2020. We maintain our previous view and request that the paragraphs be supplemented with our proposals as well.

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