

SINE DIE SUSPENSION OF LAW ENFORCEMENT - REASON FOR THE CESSATION OF ITS EXISTENCE?

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Abstract

*The successive suspensions of aid payments from 2011 and to date, as provided by the framework Law 284/2010-Annex ,7 for uniform pay, amended, section 3, have caused serious damage to property observance, as guaranteed by Art. 1 of Protocol no. 1, additional to the European Convention on Human Rights. "Invoking the country's economic and financial situation by the legislator, in order to restrict the exercise of a fundamental right springing from a law that is still in force, is not sufficient, but that restriction must meet all the requirements specified in Art. 53 of the Constitution"². The rules that have the effect of "sine die" suspending the rights of former employees, now retired, restrict and limit forcedly their rights guaranteed by law and cannot be considered democratic measures, as long as successive suspensions can affect the very existence of the law. **Research methods used:** direct documenting through case studies from personal law practice and not only, as well as from primary and secondary bibliographic documentation. **Results and implications of the study:** the impact of these rules that defer the payment of aids to former employees is significant, in that they bring material losses, but also that it violates the constitutional principle of the rule of law. Sue petitions pending lawsuit in courts have been formulated, whereby admitting the application of these rights and compelling former employers to pay the "aids" given by the law, and largely the courts upheld these claims.*

Keywords: aids under Law 284/2010, the restriction of a fundamental right, pecuniary rights, the principle of laws' supremacy, art. 1 of Protocol No. 1 additional to the European Convention on Human Rights, CEDO jurisprudence.

JEL Classification: K10, K42.

1. Introductory aspects on the legal framework

According to article 20 paragraph 1 and 2 of Annex VII, Section 3³ of Law no. 284/2010⁴ regarding the unitary remuneration of personnel paid from public funds, with effect from 31.12.2010:

(1) "When passing or directly in retreat or on termination of service with pension rights, military personnel, policemen and civil servants with special status in the penitentiary system, for their activity, according to their seniority level in the military activity, policeman, civil servant with special status in the penitentiary system and civilian personnel in public defense, public order and national defense, benefit from an aid fixed in relation to the pay office, the salary of the basic occupation in the month of the activity position change as follows:

Effective seniority:

- up to 5 years - an aid equal to 3 balances of the basic occupation/ basic occupation salaries;
- between 5-10 years - an aid equal to 6 balances of the basic occupation/basic occupation salaries;
- between 10-15 years - an aid equal to 8 balances of the basic occupation/basic occupation salaries;
- between 15-20 years - an aid equal to 10 balances of the basic occupation/basic occupation salaries;
- between 20-25 years - an aid equal to 12 balances of the basic occupation/basic occupation salaries;
- between 25-30 years - an aid equal to 15 balances of the basic occupation/ basic occupation salaries;
- over 30 years - an aid equal to 20 balances of the basic occupation/basic occupation salaries.

(2) The military personnel, policemen and civil servants with special status in the penitentiary system, retired or direct in retirement or whose work relations have ceased entitled to a right to service pension before reaching the age limit for retirement prescribed by law they benefit, for each full year remaining until the retirement age or where they can conduct business over the limit, up to

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² Decision no.1655/2010 of Constitutional Court.

³ "The thesis *The budgetary function occupational family "Defense, public order and national security"*.

⁴ Uptaded form at 30-06-2016.

the age limits in the degree to which these categories of personnel may be kept, an aid equal to two balances of the basic occupation, respectively two salaries of the basic occupation."

Although, the provisions of Article 13. 1 of Law 285/2010, art. 9 of Law 283/2011, Article 2 of OUG 84/2012, article 10 paragraph 1 of Law 28/2014, 83/2014 and Article 11 para 1 of OUG 57/2015 GEO, the payment of that aids has been suspended every year.

By not granting these rights, suspended consecutively in 2011 and to date, there have been significant material damages to former employees that have ended their work report with pension rights and the provisions art. 53 have been violated and the provisions of Article 53 of the European Convention, Article 1 of Protocol 1 of the European Convention, Article 60 of the European Convention on Human Rights and Freedoms, Article 1. par. 5 of the Convention and Article 17 of the Universal Declaration of Human Rights and Freedoms.

2. On the legal basis of writ of summons for damages' compensation

The suspension of aid payments granted by applicable law, has brought a serious violation of citizen's enjoyment of property, right guaranteed by Article. 1 of the Protocol No. 1 additional to the Convention: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and under the conditions provided by law and by the general principles of international law. The preceding provisions shall not affect the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. "*

The refusal to pay these aids has lead to a discrimination, contrary to art. 14 of the Convention in relation to other pensioners who benefited from the payment of these allowances, before the appearance of discriminatory law. The Constitutional Court found that the difference is discriminatory in the sense of art. 14⁵ of the Convention, where it has no objective and reasonable justification.

By adopting rules that suspend the rights of pensioners, the legislature has limited and restricted their rights guaranteed by law, these rules cannot be considered democratic measures for that reason, but also because they are applied discriminatory and through the successive suspensions that may affect the existence of the right.

To motivate the restriction of these rights, the legislator has cited the poor economic situation of the country. But this reason is not sufficient to limit the exercise of a fundamental right, but that restriction must meet **all the requirements stipulated by art. 53 of the Constitution**. On the limitation of a right, the Constitutional Court stated⁶ the following: *"Because the restriction can be justified, the requirements of art. 53 must be met cumulatively by the Constitution expressly provided: to be prescribed by law; to impose restriction to; be circumscribed by the constitutional text namely: safeguarding national security, public order, rights and freedoms of citizens; conducting a criminal investigation; preventing the consequences of a natural calamity of a disaster, or an extremely severe catastrophe; to be necessary in a democratic society to be proportional to the situation that caused it, to be applied without discrimination, without the prejudice of the right or freedom "*⁷.

It also becomes applicable art. 60 of the Convention, which provides that *"nothing in this Convention shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or any other treaty to which it is a Party"*.

⁵ "The exercise of the rights and freedoms recognized in the present Convention shall be ensured without distinction and, in particular, on race, color, sex, language, religion, political opinions or any other opinions, national or social origin, membership of a national minority, wealth, birth or any other situation".

⁶ Decisions 872 of 874 of June 25, 2010.

⁷ Decision no.1576/2011 of Constitutional Court.

The monetary rights of former employees, now retired, have been won since they were in legal work reports, therefore the authorities refuse to pay to the former employee *says after due and deprives the citizen of a right won, even while he was working, engaged in a legal relationship, a right that has become part of the assets, proceeds of this employee*⁸.

Because the right to the aids, granted by the *Framework Law 284/2010 unique salary* not to be devoid of substance it is necessary that the right created to produce positive effects for which it was created.

In a state of law, the authorities must ensure and guarantee to the citizen the compliance with these effects and not to limit its right through ordinances that bring the touch of law and give the reason for the refusal of its application. The state, in this case the government as state authority *cannot rely on a lack of funds as an excuse for not fulfilling their obligations*.⁹

3. On the possibility of the court to appreciate the infringement of law regarding the rights and freedoms of the person

According to Article 20 of the Romanian Constitution, entitled *International treaties on human rights: "constitutional dispositions on citizens' rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is part. If there are conflicts between the covenants and treaties on fundamental human rights to which Romania is a party and internal laws, the international regulations shall take precedence with the except of the Constitution or national laws compromise more favorable provisions."*

Therefore the court can appreciate, when national legislation is contrary to the Convention for the Protection of Human Rights and the jurisdiction exercised by the European Court of Human Rights and other treaties on human rights, issues of unconstitutionality of certain provisions of national law under *Articles 1,4 and 5 of the new Civil Code and art.3,4 and 8 of the Civil procedure Code, Article 20* of the Constitution and the obligations that our country has assumed by signing international and European treaties on respect for human rights and freedoms.

Thus, *the first Judge of the Convention is the National Judge*¹⁰, which will directly apply the international legal standards on protection of human rights, applicable in national law, but will also have the opportunity to remove those provisions that contravene these international rules in national law.

4. Regarding the issue of law on the suspension of aid

By the decision of the High Court of Cassation and Justice no. 16 of 08.06.2015 - Bench to solve law issues, published in the Romanian Official Gazette no. 525/ 15.07.2015, as given on solving the problem of the suspension of aids. The time sequence of the non-application of the law by suspensions occurred, imposed the reason of this interpretation of the highest Court of Justice rulings which, according to *art.521 (3) the second thesis of the Code of Civil Procedure is compulsory from its publication in the Official Gazette Part I*.

According to this decision, the intention of the legislature when these suspensions was not to eliminate these benefits or terminating the existence of the right, but only to suspend the exercise of this right.

Thus, the suspension of the right must be justified by objective reasons to regulate the procedure to resume his award in future those rights that have not been repealed for compensation to

⁸ Civil Sentence no. 4653 / 10.03.2013 Bucharest Court, the Contentious Department of section IX

⁹ *Hecko c. Ukraine, Hechko* Decision case of 8th of November 2005 (to be seen, *mutatis mutandis*, *Burdov against Russia*, no. 59498/00, pct. 35, CEDO 2002-III).

¹⁰ The document is available online at www.hotararicedo.ro, last access 10.11.2016, Elena Blidaru, "Right to an effective remedy and the reasonable term of Romanian law".

citizens by the state through these suspensions and the refusal of the rights and the fulfillment of the correlative obligation state.

Moreover, the High Court ruled on removing and depriving content of the right and when Decision XXIII in December 2005 through unite sections *"For a right not to become a free of binding obligation reduced to nudum jus, which should be an illegitimate restriction on its exertion, such a right cannot be considered to have been existed during the period when its exercise has been suspended and not removed."*

5. CEDO jurisprudence in the domain

Vilko Eskelinen v. Finland in 2007¹¹: *"If by a statutory provision shall be established the payment of raises and the conditions for these were met, authorities cannot deliberately delay their payment, as long as the laws are in force"*.

Malone c. United Kingdom, August 2, 1984¹²: *"Yet internal law should provide protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention."*

The case of R. c. of Romania¹³ *"effective control procedure of the judiciary, is all the more necessary because, under the cover of defending democracy, such measures threaten to undermine, namely to destroy."*

Broniowski c. of Poland¹⁴: *"According to the European court's standards of human rights, whether a radical reform of the political and economic system of a country or its financial condition in principle can justify draconian limitations of damages, such circumstances can be made at the expense of the fundamental principles under the Convention, such as for example the principle of legality, the principle of the authority and the effectiveness of the judiciary power."*

The case of Greek refineries and Stratis Adreatis c. of Greece; Iasiuniene c. of Lithuania, V.I. c. of Romania *"the state violates its right to property guaranteed by the First Protocol to the Convention, considering that the defendant has a claim sufficiently established to benefit from the protection of Article 1 of Protocol 1 and the delays in payment or refusal payments constitute interference with the right to property "*.

Akdivar and other c. of Turkey, Yagtzilar and other c. of Greece: *"The impossibility to obtain even partial compensation, but adequate, if a deprivation of property is a breaking of the balance between the need for protection of this right and ensure the achievement of general mandatory imperatives, which may have won it."*¹⁵

Gashi C.c. of Croatia of 13 December 2007¹⁶: *"The Court does not accept the argument regarding the budget put forward by the Government because it is not allowed to a State authority to cite lack of funds as an excuse for not honoring its obligations. See Burdov c. of Russia "*.

Kopecky c. of Slovakia September 2004¹⁷: *"The Court recognized that the exception of Article 1 of Protocol No. 1 guarantees the legitimate expectation of obtaining a good or an outstanding debt with the patrimonial value. For existing the legitimate expectation, it is necessary that the request for obtaining an asset to be based on a legal act, whose conditions are indisputably fulfilled and to become virtually a formality of the current recognition of the right ..."*

Hecko c. Ukraine, the Heckko Decision of November 8, 2005¹⁸, stating that: *" If by a statutory provision shall be established the payment of raises and the conditions for these were met, authorities cannot deliberately delay their payment, as long as **the laws are in force"**.*

¹¹ Internet source www.hotararicedo.ro, last access 10.11.2016.

¹² Internet source www.hudoc.echr.int., last access 10.11.2016.

¹³ Civil Sentence nr.505 /23-05- 2016 Arges Court-Civil Section.

¹⁴ Internet source www.jurisprudencedo.com, last access 10.11.2016.

¹⁵ *Ibid.*

¹⁶ Internet source www.hudoc.echr.int, last access 10.11.2016.

¹⁷ Internet source www.hotararicedo.ro, last access 10.11.2016.

¹⁸ Internet source www.hotararicedo.ro, last access 10.11.2016.

Lawless c. of Ireland 1961¹⁹, "which establishes that "restricting the right to a pension or salary from the perspective of a single public utility cannot be accepted... "

6. Conclusions

Government orders that have suspended aids, have suppressed the applicants' right to payment of economic aids. We have to do with a *limitation of a right restriction of a civil right that belongs to a professional activity, which would be contrary to national law, but also art. 6 of the CEDO, which prohibits limiting the use of restriction of rights. Thus, the reason regarding aid payments conditioned on the availability of funds is unfounded, because if it would be accepted that conditioning, it would mean that the payment of the salary should be conditioned by limited funds*²⁰.

Moreover, it follows from *article 64 of Law 24/2000* on legislative technique, the suspension must have a fixed term and the expiry of the suspension provision affected will have to re-enter as a right in force. In this way, it is ensured the constitutional principle the rule of laws' supremacy and the exceptional character of limiting certain rights²¹.

Thus, the suspension of aid granted by the legislature, won by virtue of service, with no objective and reasonable justification by so many suspensions, breaking the balance between protecting general interests and guaranteeing the right of property by the Convention.

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¹⁹ Internet source www.jurisprudencedo.com, last access 10.11.2016.

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