THE PARENTAL ACCOMMODATION LEAVE AND BENEFIT IN ROMANIA, IN THE LIGHT OF THE EUROPEAN UNION SOCIAL SECURITY COORDINATION FRAMEWORK

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Abstract
In the European Union, social security systems vary widely from one member state to another, in particular regarding the family benefits. In order to reconcile the conflicting provisions contained in the relevant national legislation and to ensure the right to move and to stay within member states, the European Union provides coordination of social security systems, regulating the principle of equal treatment and the principle of aggregation of insurance periods.
The current paper analyses whether the parental accommodation leave and benefit regulated in the Romanian legislation qualifies as social security benefit, specifically a family benefit, under EU law, meeting the criteria set out in the Court of Justice of the European Union relevant case-law.
Keywords: *coordination of social security systems, Regulation (EC) No 883/2004, Regulation (EC) No 987/2009, family benefits, accomodation leave and benefit in Romania, child adoption, principle of aggregation of periods*

Introductory remarks on the coordination of social security systems in the EU

Within the Internal Market, the European Union (EU) offers legislative and procedural guarantees for the exercise of the rights arising from the European citizenship, specifically the right to move and to stay within member states. Thus, when moving within Europe, for living or working abroad, the European Union provides rules to protect social security rights.

Social security and social protection are a subcategory of social policy, covered under Articles 151-161 of the Treaty on the Functioning of the European Union (TFEU). Social policy is a shared competence between the EU and the Member States under Article 4 TFEU.

Taking into account the fact that social security systems of the member states may differ significantly with regard to the beneficiaries, to what kind and amount of benefits and under what criteria are granted, the EU provides common rules and principles useful when dealing with cross-border social security claims.

[1] This paper is not written in consideration of the author's profession, as a member of the Diplomatic and Consular Corps of Romania, and the opinions expressed do not reflect the position of the Ministry of Foreign Affairs.

In accordance with Article 153(1)(c) TFEU, the EU shall support and complement the activities of Member States in the field of social security and social protection of workers by, for instance, encouraging cooperation and exchange of best practices among competent national authorities and social security institutions.

The European Union regulates on the coordination of the social security systems of the member states, Iceland, Liechtenstein, Norway and Switzerland within the legal framework of Regulation (EC) No 883/2004 on the coordination of social security systems [1] (hereinafter referred to as “the basic Regulation”) and Regulation (EC) No 987/2009 for implementing Regulation (EC) No 883/2004 [2] (hereinafter referred to as “the implementing Regulation”).

According to Article 3 of the Regulation (EC) 883/2004, the EU coordination provisions apply to all legislation concerning the following branches of social security: (a) sickness benefits; (b) maternity and equivalent paternity benefits; (c) invalidity benefits; (d) old-age benefits; (e) survivors' benefits; (f) benefits in respect of accidents at work and occupational diseases; (g) death grants; (h) unemployment benefits; (i) pre-retirement benefits; (j) family benefits.

Family benefits in the EU legislation and the CJEU case-law

In practice, due to member states’ diversity of social security systems and since family benefits have a very broad scope, it may be difficult to determine whether or not a particular benefit is covered by the coordination rules laid down in the basic Regulation and its implementing Regulation.

It follows from the established case-law of the Court of Justice of the European Union (CJEU) that the distinction between benefits excluded from the scope of Regulation (EC) No 883/2004 and those which fall within its scope “is based essentially on the constituent elements of the particular benefit, in particular its purposes and the conditions on which it is granted, and not on whether a benefit is classified as a social security benefit by national legislation.” [3]

Moreover, the Court held in its judgments [4] that “a benefit intended to enable one of the parents to devote himself or herself to the raising of a young child, and designed, more specifically, to remunerate the service of bringing up a child, to meet the other costs

of caring for and raising a child and, as the case may be, to mitigate the financial disadvantages entailed in giving up income from an occupational activity, must be treated as a family benefit within the meaning of Articles 1(u)(i) and 4(1)(h) of Regulation (EEC) No 1408/71" [5], currently replaced by Regulation (EC) No 883/2004.

According to Article 1(z) of Regulation (EC) No 883/2004, "family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I to the regulation. The Court has held that the phrase "to meet family expenses" is to be interpreted as referring in particular to a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children. [6]

When dealing with cross-border social security, relevant stakeholders can obtain country related information on national social security legislation available on the European Commission's Directorate General for Employment, Social Affairs and Inclusion webpages (DG EMPL) [7] and on the EU's Mutual Information System on Social Protection (MISSOC) database [8], useful for decision-making process or for research and consultation on specific cases.

The parental accommodation leave and benefit in Romania

According to legislation currently in force in Romania, the family benefits that are currently considered to fall under the provisions of the Regulation (EC) No 883/2004 on the coordination of social security systems are the following: the state allowance for children [9] (regulated by Law No 61/1993 regarding the state allowance for children), parental leave and the monthly indemnity for raising children (including the monthly indemnity granted for raising children with disabilities) and, as the case may be, the return to work bonus (regulated by the Emergency Ordinance of the Government No 111/2010 regarding parental leave and the monthly indemnity for raising children) [10]. These mentioned family benefits are subject to the rules regarding the coordination of social security systems provided in the basic Regulation and its implementing Regulation.

With regard to the parental accommodation leave and benefit (in Romanian, *concediul și indemnizația de acomodare*), following the adoption of a child, regulated by the provisions of Law No 273/2004 regarding the child adoption procedure [13], national

legislation does not make any explicit mentions about the applicability of Regulation (EC) No 883/2004 to this kind of family benefit. Nor did Romania request to include the accommodation benefit among the childbirth and adoption allowances mentioned in Annex I to the basic Regulation, thus excluding it from the meaning of family benefit in the sense of Article 1 (z) of the basic Regulation.

In the case of Romania, in Annex I to Regulation (EC) No 883/2004, only the childbirth allowance and the layette for newborn children are listed as special birth allowances, having the specifics of single payments granted on the occasion of the birth of a child.

The parental accommodation benefit is an earning-related benefit granted to a person who adopts a child. Parental accommodation leave and benefit is granted to any of the spouses of the adoptive family who earned taxable income. It can be chosen as an alternative to the child-raising leave and benefit.

In fact, at present, the conditions for granting parental accommodation leave and benefit are similar to those granting parental leave and the monthly indemnity for raising children regulated under Emergency Ordinance of the Government No 111/2010.

Article 50 of Law 273/2004 on the adoption procedure and Article 2 of the Emergency Ordinance of the Government No 111/2010 regarding parental leave and the monthly indemnity for raising children regulate eligibility criteria, payment calculation and duration. The entitled persons may benefit from accommodation leave, respectively from parental leave, for a period of maximum two years. The amount of the monthly allowance is 85% of the average net income earned during twelve months within the last two years preceding the date of the entrustment for adoption issued by court decision, respectively, the date of the child's birth.

Unlike the provision on parental leave for raising children, national legislation does not explicitely states that accomodation leave and benefit falls within the scope of Regulation (EC) No 883/2004. Therefore, one must determine whether it qualifies as family benefit not under national law, but under EU law, meeting the criteria identified in CJEU relevant case-law.

Taking into account the fact that parental accommodation leave and benefit is intended to enable one of the parents to devote himself or herself to the raising of the

adopted child, and designed, more specifically, to remunerate the service of bringing up a child, to meet the other costs of caring for and raising a child, we hold the view that it subscribes to “benefits in kind or in cash to cover family expenses”, being a family benefit within the meaning of Article 1(z) of Regulation (EC) No 883/2004 and subject to the rules on the coordination of social security systems provided in the basic Regulation and the implementing Regulation.

Relevant applicable rules of the EU coordination social security systems

One of the main advantages of the coordination of social security systems under Regulation (EC) No 883/2004 is the applicability of the principle of aggregation of periods, described in recital 10 of the basic Regulation as “the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.”

Article 5 of the basic Regulation, entitled “Equal treatment of benefits, income, facts or events”, provides that “unless otherwise provided for by the basic Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.”

Therefore, in order to be granted social security earning-related benefits, a person who has carried out professional activities and paid social security contribution in at least

two member states of the European Union or other states that apply the provisions of Regulation (EC) No 883/2004 and of Regulation (EC) No 987/2009, benefits from the aggregation of periods worked in these states under the conditions provided by the EU Regulations.

In the specific field of family benefits, Article 67 of the basic Regulation provides that "a person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. […]"

Furthermore, Article 60(1), second sentence, of Regulation (EC) No 987/2009 provides that, for the purposes of the application, in particular, of Regulation (EC) No 883/2004, the situation of the whole family is taken into consideration as if all the persons concerned were subject to the law of the Member State concerned and were resident there, in particular as regards the entitlement of a person to claim family benefits. [7]

In the case C-32/18, the Court held in its judgment that in the event that "the grant of a family benefit is made subject to the condition that the person concerned has worked in the national territory of the competent Member State (…) which makes entitlement to the allowance conditional upon the completion of periods of insurance in that member state territory, that condition must be considered to have been fulfilled where the person concerned has worked in the territory of another Member State. However, the principle of equal treatment established by Article 67 of Regulation (EC) No 883/2004 is not absolute, in the sense that, where several entitlements are payable under different laws, the rules against overlapping benefits laid down in Article 68 of Regulation (EC) No 883/2004 apply." [8]

Conclusions

In dealing with cross-border social security claims, the European Union coordinating social security systems aims at protecting persons exercising their rights within the EU Internal Market.

Regulation (EC) No 883/2004 provides common rules and principles which enable the European Union, together with the member states, to fulfill the objective of promoting "proper social protection" set out in Article 151 TFEU.

It is not always obvious whether a social benefit falls under the scope of the basic Regulation, as emphasized in the current paper, with regard to the parental accommodation leave and benefit under the Romanian legislation.

Taking into account the fact that the parental accommodation leave and benefit meets the criteria identified in the EU legislation and CJEU relevant case-law, it qualifies as family benefit. Therefore, provisions in Regulation (EC) No 883/2004 apply, which involves, among others, the applicability of the principle of equal treatment and the principle of aggregation of periods.

References

[1]Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
[2]Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.
[3]Case C-78/91, Hughes, EU:C:1992:331, para 14.
[4]Case C-275/96, Kuusijärvi, ECLI:EU:C:1998:279, para 60.
[5]Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.
[6]Case C-449/16, Martinez Silva, EU:C:2017:485, para 23, Case C-802/18, Caisse pour l'avenir des enfants, ECLI:EU:C:2020:269, para 38.
[7]European Commission, Employment, Social Affairs & Inclusion, Your rights country by country, https://ec.europa.eu/social/main.jsp?langId=en&catId=858.
[8]European Commission, Mutual Information System on Social Protection (MISSOC), https://www.missoc.org/.
[9]Law No 61/1993 regarding the state allowance for children.
[10]Emergency Ordinance of the Government No 111/2010 regarding parental leave and the monthly indemnity for raising children.
[11]Law No 273/2004 regarding the child adoption procedure.
[12]Case C-378/14, Trapkowski, EU:C:2015:720, para 36.
[13]Case C-32/18, Moser, EU:C:2019:752, para 39-40.