

**THE MONTHLY SUPPORT STIPULATED BY
LAW NO.578/2004-A LEGAL BENEFIT FOR THE
SURVIVOR SPOUSE**

**AJUTORUL LUNAR PREVAZUT DE LEGEA NR.578/2004
-BENEFICIU LEGAL ACORDAT SOȚULUI SUPRAVIEȚUITOR**

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Abstract. Our legislation stipulated along the time some successional rights and also benefits for the survivor spouse, taking into consideration the idea that after the death of one spouse, the other one should have almost the same living as he/she had before. The Law nr.578/2004 concerning a monthly payment for the survivor spouse, although is not yet operative has raised already arguments and discriminations between different categories of pensioners, being more a social measure, a help from the state, because the right to a pension is and should remain in person

The length of service, in the sense of general seniority in activity is an important source of rights for each person who is appointed. The right for a pension is the principal form of material ensurance in case of invalidity, old age, or loss of the upholder.

For the survivor spouse the legislator dedicates some successional rights through Law nr.319/1944 (a right to inherit when he/she competes with any class of the legal heirs, and a special right to inherit all the mobile goods that belong to the domestic household, the wedding gifts and a temporary right to occupancy, all this when there is no relative from any class of heirs) but also other benefits and legal rights stipulated in legislation.

Law nr.19/2000 concerning the public sistem of pensions and other rights of social ensurances stipulates in the art.67 the right to the pension for the successor-the survivor spouse for the rest of his/her life, when he/she has the age to be pensioned off, only if the perioud of the marriage is at least 15 years, but also in case of invalidity-rank I or II while it lasts, no matter the age, if the perioud of the marriage is minimum 1 year. The establishing of the rank of invalidity for the survivor spouse in order to get the pension as a successor can be made no matter her/his age. The survivor spouse is being examined and a medical revision is being made from time to time, and he/she has the obligation to follow all the programs for a good recovery, respecting the same rules as for the pension of invalidity. The pension as a succcessor for the survivor spouse is granted no matter the age

and the period of marriage if the demise of the upholder spouse happened because of an accident at work or a professional illness and he/she does not have monthly incomes from a professional activity for which the insurance is compulsory or these are lower than $\frac{1}{4}$ from the average gross salary on the economy. In the case these conditions are not accomplished, the survivor spouse has however the right at the pension as a successor, but only temporary, for a 6 month period, in case he/she does not have monthly incomes from a professional activity for which the insurance is compulsory or these are lower than $\frac{1}{4}$ from the average gross salary on the economy.

The Law nr.578/2004 concerning the monthly support for the survivor spouse has raised some arguments, although the provisions from this law will be valid starting from 2008, on a date established by the government. Art.1(1) from this law stipulates: "The survivor spouse of a person who had at the time of the demise, the position of a pensioner in the public system of pensions and other rights of social insurances, in the former system of the social insurances from the state, or in the former system of the social insurances for the farmers, can benefit at his/her request, according to this law, of a monthly support of 25% from the pension of the spouse who passed away".

This monthly support can be granted to the survivor spouse only if he/she has the standard age to get retired stipulated in Law nr.19/2000 and the period of marriage has been at least of 15 years. In the case when the marriage lasted less than 10 years, the survivor spouse can not benefit from this support, but if the period of marriage has been between 10 and 15 years, the amount of the support will be decreased proportionally.

The right to a pension is a personal one, which is earned after completing a length of service and after paying the dues. The amount of the pension is established by taking into consideration some parameters: the years of effective work, the job everyone has after specialization and improvement classes, the difficult conditions that need to be endured when working, and so on.

As a benefit for all the work during the years, everyone has a private right to a pension, which is a personal and an unnegotiable one. The support stipulated by Law nr.578/2004 is a legal benefit for the survivor spouse, in order to have at least a part of the living possibilities he/she had over the years with his/her spouse that died. This way we believe this law creates some discriminations between the possibilities given to different categories of pensioners, while same law remains lacunary about some other aspects too: what happens with the survivor spouse if the period of

the marriage was about 10 years, not 10 years completed, or after 10 years of marriage the couple got a divorce, and after that one of them dies?

There is a draft law that is about to change Law nr.578/2004, which stipulates that this monthly support should have a fixed amount of 34 RON or 90 RON (depending on the modality to establish the pension- according to Law nr.19/2000 concerning the public sistem of pensions and other rights of social ensurances or established in the former sistem of the social ensurances from the state, and also in the former sistem of the social ensurances for the farmers, or a pension established only in the former sistem of the social ensurances for the farmers).

This provision has a fair effect: all the pensioners can benefit in an equal way from the legal support and there can be no discriminations when granting this support by the state. In this case, the pension remains a reflection of all the efforts endured during all the years of working, and this financial support increases equally the possibilities of living of all the categories of pensioners.

CONCLUSIONS

In our legislation the survivor spouse has a privileged position and a definite condition. He/she has some legal rights and benefits that are stipulated in few normative documents: Civil Code, Law nr.319/2944, Law nr.578/2004.

The pension is a reflection of personal efforts in all the years of working and should remain the same about its personal carácter. This right should be an unnegotiable one and granted as long as every person lives. His/her survivor spouse as a sucesor should not benefit of it, because this is a provision that can stirr discrimination among all the categories of pensioners.

The survivor spouse can have a monthly payment as a support from the state through different laws, to improve the possibilities of living, but this should not be related to anyone's pension.

REFERENCES

1. **Deak Fr.**, 2002 - *Treatise of successional right*, Ed.Juridical Universe, Bucharest.
2. *Law nr.319/1944 concerning the successional rights of the survivor spouse*
3. *Law nr.19/2000 concerning the public sistem of pensions and other rights of social ensurances*
4. *Law nr.578/2004 concerning the monthly support for the survivor spouse*
5. *Civil Code, Code of the work*