

CONDITIONS FOR THE ACQUISITION OF THE RIGHT TO COMPENSATION UNDER THE BULGARIAN LEGISLATION AND COMPLIANCE WITH THE TERMS OF REGULATION (EC) № 883/2004

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Abstract: *This article is dedicated to the legal framework of the conditions for the acquisition of the right to compensation due to unemployment under the Social Security Code of the Republic of Bulgaria. Unemployment is one of the main problems of labour, making it the current object of study not only in the legal, but also in the economic theory and practice. In relation to the intended subject, Regulation (EC) № 883/2004 has also been scrutinized, as it presents rules for coordination of the national social security systems of the EU Member States.*

Keywords: unemployment; unemployment benefits; insurance payments; termination of employment; jobless.

1. Introduction

Unemployment is one of the main problems of labour, which makes it the current object of study not only in the legal, but also in the economic theory and practice. Unemployment is a legal fact, which is characterized by adverse economic, employment and insurance and legal consequences both for the individual and for the whole society. The occurrence of the social risk of unemployment is the reason for the right of the unemployed person to obtain appropriate compensation insurance.

The current regulation on the right to unemployment benefit is contained in Section III of the Social Security Code (SSC). The unemployment benefit is a periodic cash payment of the separate “Unemployment” fund of the State Social Security, which is intended to offset a part of the salary that the unemployed person has lost due to remaining without work.

The right to unemployment benefit does not belong to any person registered as

unemployed, but to the one that has done work under Art. 4 para. 1 SSC, for which they were a subject to compulsory insurance for all insured social risks, including unemployment [2,3]. The largest part of this category is persons working under an employment relationship, regardless of the reason for its occurrence, nature of work or source of funding. Except for workers and employees, in case of unemployment the following are also insured: civil servants, magistrates and the judiciary; military; persons engaged in work of elected office and others. Outside the scope of compulsory social unemployment insurance remain self-employed persons (individuals, freelancers, farmers, etc.) and persons employed in a civil-law relation.

2. Conditions for acquiring a right to unemployment benefit under Bulgarian law

2.1. The occurrence of the insured social risk of “Unemployment”. The

moment of the occurrence of the unemployment risk coincides with the termination of the insurance of the person concerned.

2.2. The availability of preliminary, minimum periods of insurance (years are credited to pension) for the relevant risk. The right to unemployment insurance benefit will occur if the person were paid or due contributions to an “Unemployment” fund for at least nine months during the last 15 months before the date of the termination of the insurance.

In determining the required contributory service of the unemployed person, there may occur problems that are caused by failure to comply with the basic obligations of the employer - to calculate and pay the salary of employees, as well as to pay security contributions. The question that arises is - will the unemployed person have the right to unemployment benefit if the employer had not paid security contributions that match the period or had not paid the agreed salary? The answer is yes. Payment of security contributions is a public law obligation of the employer. The possible failure to meet this obligation must not bear the adverse consequences for workers or employees. According to Art. 6 para. 2 SSC, the income on which security contributions are due, includes all payments, including the accrued but unpaid ones. Consequently, individuals are regarded as insured and have the substantive law of the indemnified person in the event of the relevant risk, regardless of whether the salaries or insurance contributions are paid as the last ones are due.

It is possible that non-payment of social security contributions is not due to the unlawful conduct of the employer, but that the employee did not receive any remuneration - for example, if a worker or employee has taken a period of unpaid leave, has been on maternity leave and childbirth, or there is another hypothesis under Art. 54a para. 2 SSC [3]. These are known in practice as the “donated periods”, the time which is

commonly regarded as a contributory service in acquiring the law for unemployment benefits without owing security contributions.

2.3. Registration of unemployed people at the Employment Agency. According to Art. 54a para. 4 point 2 SSC, the registration must be made within 7 working days from the date of termination of the last insurance. The importance of registration is that it declares the fact of the occurrence of the “unemployment” risk. In the event that the registration is made after the expiry of the statutory period, the cash benefit is paid from the date of your registration for a specified period, reduced by the delay.

2.4. Another requirement is that of formally **submitting an application to the territorial division of the National Social Security Institute (NSSI)**, enclosing the act of termination of the employment relationship and documents certifying the total length and/or contributory service [1]. Submission of the application is essential for the payment of unemployment benefit, as it determines the time from which the latter one became due. Unemployment benefits are payable from the date of the last termination of insurance if the application is filed within 3 months from that date and its registration as an unemployed person is made within 7 working days from that date.

2.5. The person does not become entitled to retirement age or pension for early retirement. This negative condition implies that the person has reached retirement age and has accrued pensionable service which gives the right to receive funds for maintenance in the form of a pension.

The acquisition of the right of one of the indicated pensions is a legal impediment to acquire the right to unemployment benefit in accordance with Art. 54a para. 1 point 2 SSC. No matter whether the entitled person has exercised their right to a pension, i.e. whether it is actually granted such. Receiving more than one insurance payment for maintaining insured persons is mutually

exclusive, according to the Bulgarian social legislation [3].

2.6. According to Art. 54a para. 1 point 3 SSC, at the time of “unemployment” risk, **the person must not carry on an occupation**, which is subject to compulsory insurance under this code, except for persons under Art. 114a LC.

Persons under Art. 114a do a job, based on one-day labour contracts for a short-term seasonal agricultural work. Although these workers are employed under an employment contract, for which they are subject to compulsory insurance under Art. 4 para. 10 SSC, the legislator expressly excluded them from the scope of Art. 54a para. 1 point 3 SSC, which means that there is no obstacle such persons to receive both unemployment benefits and remuneration.

Beyond that exception, the accumulation of incomes from employment with unemployment benefits is not acceptable. The nature of the unemployment benefit aims to replace the lack of income for the period in which the person does not exercise work. In case the need of it does not exist because of exercising activity under Art. 4 SSC and realised incomes due to it, the compensation is not due.

3. The legal action of Regulation № 883/2004 (EC) laying down the law applicable to entitlement to unemployment benefit by Bulgarian nationals employed in another EU Member State

In the relations between Bulgaria and the other EU Member States in the field of social security, in particular in relation to unemployment benefits, Regulation № 883/2004 (EC) is applied. This Regulation lays down a set of security rights available to any national of an EU Member State or members of their family in the hypothesis that they lived and/or worked in several EU Member States, as well as the procedure for their implementation.

The principles for determining the applicable social legislation are typified and are essential for the acquisition of the right to

insurance prestations. To determine from which country and under what conditions a person is entitled to unemployment benefit, it is to be determined what the applicable right towards them is at that time.

Under the provisions of Regulation № 883/2004 (EC), when the person carries out a labour activity as an employed or self-employed in a Member State of the European Union (EU), they are subject to the application of the law of the relevant State in which the work is done. In this sense, entitlement to unemployment benefit and the procedure for its payment are placed depending on the requirements of the legislation of the Member State in which the person last worked. The main criteria that help determine the applicable law for entitlement to unemployment benefit are a place of employment and place of residence of the person.

Under the rules of Regulation (EC) № 883/2004 and (EC) № 987/2009, if the person has done their last work in a Member State of the EU other than their country of residence, they can be registered in the employment services of the State in which they reside. The provision of Art. 11 of Regulation (EC) № 987/2009 defines the elements necessary to specify the country of residence, such as: length and continuity of residence in the relevant Member State; permanent nature of employment and duration of any employment contract; family and residential status, etc.

This means that the person can be registered in the Employment Agency in the Republic of Bulgaria and to apply for the assessment of entitlement to compensation in Bulgaria only if during their last employment in another Member State the person had a resident status in Bulgaria. The most common cases are short-term or seasonal employment. If the employment in the other Member State has a longer duration and the person was residing there, the assessment for the entitlement to cash benefits for unemployment and their payment should be made by the competent authority of the

relevant Member State in accordance with the rules of the cited regulations.

If, during their last employment in another EU country, the person was a resident in Bulgaria and applied for assessment of the right to unemployment benefits in Bulgaria, it should be borne in mind that periods of employment acquired under the legislation of the Member State of the EU and insurance income in it may be taken into account by NSSI at the discretion of the right to unemployment benefits based on issued by the competent institution standardised portable document, certifying information on: periods of employment (contributory service) of the person in the country that can be taken into account when applying for unemployment benefits; insurable income in the country for these periods; the reason for the termination of the last employment in the country; grounds for the termination of insurance and others.

In these cases, the period of payment of the compensation and its amount will be determined according to the rules of the Bulgarian legislation. According to the provisions of Art. 54c para. 1 SSC, unemployment benefit is paid for a certain period of time, depending on the length of the contributory service. The basic principle is that the longer the length of service of the unemployed person is, the longer the time during which they will receive compensation is. Exceptions are cases of Art. 54b para. 3 SSC where the period of payment for compensation is a minimum of four months and is set depending not on the length of contributory service, rather than termination basis (disciplinary dismissal, termination of employment contract by mutual consent or notice by the employee). The amount of cash unemployment benefit is determined as a

percentage of the remuneration of the unemployed person before the termination of their relationship.

According to Art. 54b para. 1 SSC, unemployment benefit amounts to 60 per cent of the average remuneration or insurance income on which they are paid or due insurance contributions to the “Unemployment” fund for the last 24 months preceding the month of the termination of the insurance. The amount cannot be less than the minimum daily amount of the unemployment benefit, and it may not exceed the maximum monthly insurance income for the country that amounts to 2600 BGN.

4. Conclusion

The occurrence of “unemployment” risk fundamentally changes the legal and social situation of the unemployed person due to lack of income necessary for their maintenance. The purpose of unemployment benefits is to minimise the adverse effect of staying unemployed and partially offset the loss of funds necessary for the maintenance of the insured person. This determines the great importance and social function of unemployment benefits.

With the increase in labour mobility of the citizens within the EU, there emerge a number of issues and difficulties, both for employers and for workers to turn themselves to the applicable legal system concerning relevant insurance benefits. In this regard, Regulation (EC) № 883/2004 and (EC) № 987/2009 are important because they contain detailed substantive and procedural framework for coordination of national social security systems relative to each other, which is crucial in determining the applicable law on insurance rights and obligations of the persons caught in a trans-border situation.

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