
PENSIONS FOR SPECIAL WORKING CONDITIONS - FROM LAW TO PRACTICE

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Abstract

In the social security legislation of the last 20 years, the legislator has often intervened to compensate for the work done and the increased contributions made in the public pension system with increases and pensions adequate to the contributions.

In this article I discuss and analyze the manner of application and non-application of the provisions of Law no. 221/2018, which refers to the recalculation of pensions for retirees before January 1, 2011 and between January 1, 2011-October 1, 2018.

The article deals with a number of issues because in practice there have been situations in which the legal provisions are given different interpretations, most of them aimed at disadvantaging the beneficiaries of pension rights. In the light of professional experience in the field of social security, I formulate in this article points of view and logical arguments based on the legal provisions applicable in the field of social insurance.

The problems arise for people who have benefited from full contribution periods of 20 years / 25 years, usually won by court decisions, for which the law was actually issued.

Even if we refer to the legal provisions applicable from October 1, 2018, the issues I am dealing with are topical, as numerous litigations reach the courts with the object of contesting the recalculation or the obligation to do so.

However, the biggest problem is the idea that these legal provisions would not be applicable to certain categories of pensioners.

Key words: *pensions, special working conditions, Law no. 221/2018, derogatory internships, social insurance, recalculations, aviation, miners, steelmakers, sentence*

INTRODUCTION

The granting of benefits to groups and higher working conditions in retirement has been the subject of successive regulations in social security legislation.

If for the persons who retire based on Law no. 263/2010 things seem to be correctly understood and applied, the persons whose pension rights have

been established on the basis of Law no. 3/1977 or Law no. 19/2000, after In this case, they are often required to apply to the courts for an increase in scores for special groups and working conditions.

In the social security legislation of the last 20 years, the legislator has often intervened to compensate for the work done and the increased contributions made in the public pension system with increases and pensions adequate to the contributions. Thus, in 2008, 2011, 2013, 2015 and 2018, in order to increase the number of pensions for the activity performed in groups / higher working conditions, normative acts and legal provisions were issued that completed the current legislation.

The legal provisions of 2008, 2015 and 2018 are for reference:

o GEO no. 100/2008 and Law no. 218/2008

o Law no.192 / 2015

o Law no. 221/2018.

In practice, there have been situations in which these legal provisions are given different interpretations, which are aimed at disadvantaging the beneficiaries of pension rights. In fact, these interpretations stem from the fact that in reality the following typologies have emerged:

Persons whose pension rights have been established through the use of full contribution periods

People who have benefited from full contribution periods shorter than the standard contribution periods (usually 20 years, 25 years, as the case may be).

The so-called full “derogation stages” of contributions were possible and legal due to the different regulations for the performance of work in groups and higher working conditions. The full contribution periods were largely acquired through court decisions.

LITERATURE REVIEW

In the literature, social insurance and public and private pension issues have been addressed by a number of authors.

As the article highlights current issues, I have reviewed a number of authors who have addressed these issues.

Mitruț, Anghelache, Carp, Dinu (2012) illustrated some aspects regarding the benefits from the public pension system.

Carp (2012) performed the analysis of the correlation between accumulation and distribution in the social insurance system in Romania and in representative countries in Europe and in the world.

Trends in the evolution of the private pension system in Romania were the subject of a study by the authors Anghelache, Manole, Carp, Sacală (2016).

Anghelache, Carp (2016) addressed the issue of voluntary contributions in the social security system, an opinion agreed by the legislator who later created the framework for supplementing social security contributions and the purchase of seniority.

Carp (2019) presented current issues of state social insurance pensions, explaining how to apply the provisions of Law no. 192/2015 and Law no. 221/2018.

METHODOLOGY, DATA, RESULTS AND DISCUSSIONS

In order to achieve the proposed topic, we approached a series of aspects, on the issue of problems that arose in practice.

The issues I am referring to are grouped by issues and cases. The arguments put forward by some “practitioners”, other than those specified in the legal provisions, are aimed at inducing the idea that a category of pensioners who worked in group I and / or special working conditions are excluded from the granting of increases for higher groups. work, ie from the application of the provisions of Law no. 221/2018.

If in 2015 by Law no. 192/2015 for the completion of Law no. 263/2010, art. 1691 In order to grant these benefits, the legislator subsequently amended this legal provision so that the calculation formula to be applied does not in fact bring any benefit to the pensioner.

According to this legal provision “(1) Retirees of the public pension system whose pension rights were established according to the legislation prior to January 1, 2011, who carried out activities in jobs included in group I and / or group II according to the legislation prior to April 1, 2001, respectively activities in jobs classified in special conditions and / or special conditions, according to the law, benefit from an increase of the annual scores achieved during these periods, as follows:

a) by 50% for the periods in which they carried out activities in jobs included in work group I or in jobs included in special conditions;

b) by 25% for the periods in which they carried out activities in jobs included in the second work group or in jobs assigned in special conditions.”

I emphasize that, as stated in the text, this legal provision was applicable to pensioners whose pension rights were opened before 1 January 2011 and who did not benefit from the increase in annual scores for working groups I and II under the GEO no.10 / 2008, Oug 209/2008, of Law no. 218/2008 and the provisions of art. 782 of Law no. 19/2000, as well as the provisions of art. 169 of this law, as well as the increase of the score for the periods performed in special working conditions performed after April 1, 2001.

In conclusion, this law applies to all persons retired based on Law no. 3/1977 or Law no. 19/2000, as the case may be, who did not benefit from the increase of the annual scores by 50% (25%), as the case may be.

The secret of the calculation formula was that the recalculation used full internships greater than or at most equal to the previous full contribution stages, so that mathematically could not result in average annual scores favorable to beneficiaries.

In 2018, the intention of the legislator was that by applying Law no. 221/2018, for all persons included in group I and / or special working conditions to be granted the benefits promised since 2015. This is done in two bearing:

- By increasing the scores by 50% (group I, special conditions)
- By using the full contribution periods specific to the special working conditions

If at the level of the issuers of pension decisions there can be justifications in terms of the large volume of activity, the existence of files with numerous recalculations, revisions and successive court decisions to be applied, software that is adapted on the fly, at the level of appeals real reasons for rejecting the application of the law, except in terms of understanding the successive legal provisions and the current ones.

As the most exposed category is the pensioners whose rights were opened based on Law no. 3/1977, we have deepened the legislation applicable to these persons, an approach that I present below.

The pensions established on the basis of Law no. 3/1977 became pensions within the meaning of Law no. 19/2000 and were recalculated by GEO no. 4/2005.

When recalculating the pensions established on the basis of Law no. 3/1977, the full contribution periods are considered the stages provided in art. 8, respectively 30 years for men and 25 years for women.

The possibility to benefit from complete contribution stages lower than the standard contribution stages arose from the interpretation and application of the provisions of art.14 and art.17 of Law no.3 / 1977, as the case may be.

Thus, people who worked in higher work groups were entitled to shorter full contribution periods. The full 20-year / 25-year contribution periods were considered derogatory periods.

Starting with 2008, according to art. 2 of GEO no. 100/2008, some persons were granted a partial benefit by adding an additional number of 0.50 points for each year of increase for the seniority achieved in the activity carried out in group I of work, as well as 0.25 points for each year of increase for each month of increase for the seniority achieved in the activity carried out in group II of work, as the case may be.

This category of beneficiaries included the persons:

a) whose pension rights were recalculated according to the provisions of the Government Emergency Ordinance no. 4/2005 regarding the recalculation of the pensions from the public system, coming from the former state social insurance system, approved with additions by Law no. 78/2005, with the subsequent completions, except for those in which the seniority required to open the right to pension provided by special normative acts was used to determine the average annual score;

b) whose pension rights were opened between April 1, 2001 and September 30, 2008 and for which, when determining the annual average score, the full contribution periods provided in Annex no. 3 of Law no. 19/2000, with the subsequent modifications and completions, depending on the date of birth or, as the case may be, the complete contribution stages, depending on the date of opening the right to pension, according to the provisions of art. 1671 of the same law. “

Theoretically, GEO no. 100/2008 does not apply to persons who benefit from complete “derogatory” contribution periods.

In practice, three situations have arisen:

1. Derogatory stages and GEO 100/2008 applied
2. Derogatory stages and GEO 100/2008 not applied
3. Complete internships and GEO 100/2008 applied

Case no. 1- Derogatory stages and GEO 100/2008 applied

By GEO no. 209/2008, the provisions of Law no. 19/2000 were completed. Thus, through the provisions of art. 1651, it was further noted that the increases were not granted for persons for whom “the seniority required to open the right to a pension provided by special normative acts was used to determine the annual average score.” So, the provisions of art. ^ 1 of Law no. 19/2000.

Arriving in 2011, through the provisions of art. 169 of Law no. 263/2010, the pension increases for pensioners with derogatory internships were not further granted:

“Art. 169 (1) Retirees of the public pension system whose pension rights were established according to the legislation prior to April 1, 2001, who carried out activities in places included in group I and / or group II work, benefit from a increase in annual scores achieved during these periods, as follows:

a) by 50% for the periods in which they carried out activities in places included in work group I;

b) by 25% for the periods in which they carried out activities in places included in the second working group.

(2) The provisions of par. (1) does not apply in the situation where, when recalculating the pensions in accordance with the provisions of the Government Emergency Ordinance no. 4/2005 regarding the recalculation of the pensions from the public system, coming from the former state social insurance system, approved with additions by Law no. 78/2005, with the subsequent amendments and completions, in order to determine the average annual score, the length of service necessary to open the right to a pension provided by special normative acts was used.

(3) The increase of the annual scores provided in par. (1) also benefit persons whose pension rights were opened between April 1, 2001 and November 2, 2008, inclusive, only in situations where, according to the law, the full contribution periods provided by the legislation in force during that period.”

Therefore, in the case presented, the provisions of art. 169 of Law no. 263/2010 did not apply.

Going through the legal provisions chronologically, arriving in 2015, we notice that the provisions of art.169 ^ 1, introduced by Law no.192 / 2015 are applicable to retired persons based on the legislation prior to January 1, 2011, so also to pensioners who retired in based on Law no. 3/1977.

We note that these legal provisions also apply to “pensioners whose pension rights were opened before January 1, 2011 and who, according to the legal provisions in force, did not benefit from the increase of annual scores according to Government Emergency Ordinance no. 100/2008 for the completion of Law no. 19/2000 regarding the public system of pensions and other social insurance rights, approved by Law no. 154/2009, Law no. 218/2008 for the amendment and completion of Law no. 19/2000 regarding the public pension system and other social insurance rights, art. 782 of Law no. 19/2000, by the provisions of art. 169 of this law, as well as the increase of the score for the periods carried out in special conditions after April 1, 2001.”

According to the reasoning presented, it results that the provisions of art.169 ^ 1 are also applied to the pensioners registered for retirement before April 1, 2001, because they did not benefit from the provisions of art.169 of Law no. 263/2010.

Arriving in 2018, the legislator completed Law no. 263/2010 and introduced art. 169 ^ 2, according to which “(1) Retirees of the public pension system to whom the provisions of art. 169 ^ 1 benefits from the recalculation of the pension with the use, when determining the annual average score, of the complete contribution stages considered, according to the law or of some court decisions, when establishing / recalculating the pension in payment or, as the case may be, due on 31 December 2015. ”

Or, one of the novelties introduced by Law no. 221/2018 is that the category of pensioners who had acquired the so-called derogatory contribution stages have the right to increase the annual scores for the period of activity in group I / or in special working conditions, therefore also the pensioners registered on the basis of Law no. 3/1977.

Case no.2- Derogatory internships and GEO 100/2008 not applied

The persons in case no. 2 have the right to apply the provisions of art. 169 ^ 1, they are not granted even the minimum benefit stipulated in GEO no. 100/2008.

Consequently, having the right to the application of the provisions of art.169 ^ 1, they also have the right to the application of the provisions of art.169 ^ 2.

Case no. 3 - Complete internships and GEO 100/2008 applied

This category includes persons registered for retirement prior to January 1, 2011. For these persons, in order to issue a correct solution, it is necessary to verify by accounting expertise the granting of score increases based on art.169 and art.169 ^ 1 of Law no. 263/2010, art. 78 ^ 2 (from Law no. 19/2000), as the case may be.

We note that there is no text identity between the provisions of art.169 and art.169 ^ 1. For case no. 3, the right to benefit from the provisions of art.

Since the provisions of art.56 paragraph 3 are introduced for application from October 1, 2018, the provisions of article II of Law no.221 / 2018 are relevant, according to which:

“Article II (1) The provisions of art. 56 para. (3) lit. b) and c) of Law no. 263/2010 on the unitary public pension system, with subsequent amendments and completions, also benefits, ex officio, the persons whose pension rights were opened between January 1, 2011 and the date of entry into force of this law. (2) The pension rights recalculated according to par. (1) are due from October 1, 2018.”

In this case, in order to benefit from the internship from art.56 par.3 it is necessary to submit an application if the pension rights were opened before January 1, 2011, because for the other persons the legal recalculation procedure is “ex officio”.

Conclusions

The provisions of art. 169 ^ 1 of Law no. 263/2010 apply to all persons who have carried out activity included in work group I and / or II, special / special working conditions according to the legislation prior to January 1, 2011.

Analyzing the successive legal provisions briefly presented in the article, it is found that in the case of derogatory contribution periods, no person was granted full benefits for groups and higher working conditions, except partially, respectively by GEO no. 100/2008.

Or, the provisions of art.169 [^] 2 refer to the granting of complete increases, respectively to the application of GEO no.100 / 2008 and art.169 or GEO no.100 / 2008 and art.78 [^] 2, as well as art.169 [^] 1 for special working conditions performed after April 2001, as appropriate.

The opinion according to which the application of the provisions of Law no. 221/2018 excludes persons who have benefited from full contribution periods of 20 years / 25 years and persons retired under Law no. 3/1977 is totally wrong, being refuted by legal provisions.

The arguments presented in the different opinions are not current and are in contradiction with the law and the intention of the legislator to reward people who have worked in steel, mining, aviation, underground, forging and other jobs under special working conditions.

In the context of the spread of opposing views, I conclude that the legislator should intervene, as most unfavorable opinions for pensioners refer to the older ones, for whom the “retroactivity” of the granting of rights may be late.

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