Information
on pension benefits of migrant workers
in the European Union countries

One of the most important rights of every person is the right to social security, i.e. the right to unemployment benefits, temporary disability benefits, invalidity benefit, widowhood benefit, old age benefit or in other cases of lack of means due to the circumstances beyond his or her control. This right is enshrined in such acts as the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights.

The main directions of the social policy of the European Union (hereinafter – the EU) is to ensure a high level of employment and reduce unemployment, to ensure a stable standard of living and social welfare of the population as well as to settle migration issues.

The principle of free movement of labor is at the heart of the European Community, the implementation of which gives the EU nationals the opportunity to be employed in another EU state without the need to obtain a labor permit, to live there with this end in view, to stay in the country even on completing labor relations and to enjoy the employment right, decent working conditions and all social and tax benefits on the same basis as the nationals of the host country.

Against this background, the question arose about the survival of rights to social (first and foremost, pension) security without restrictions on movement.

The process of worker migration among the European countries looking for new jobs has steadily developed since the early 20\textsuperscript{th} century and has led to a number of acute social security problems which require interstate regulation.

The first European bilateral agreement in Europe on social security was concluded between France and Italy in 1904. It forbade discrimination on the grounds of nationality in social security. It meant that the parties assumed the obligation to grant migrants the same social security rights as their own nationals enjoyed.

Since then, the coordination of national social security systems has been a priority of many international organizations.

In 1935, the International Labor Organization (ILO) initiated the establishment of a coordinating legislative system on retirement, disability and survivor pensions in order to ensure preservation by the migrants of their rights already acquired or acquirable. The \textit{Equality of Treatment (Social Security) Convention No. 118} (1962) was the next step towards the coordination of national social security legislation.

Article 2 of the Convention specifies that any member of the Organization may accept the obligations of this Convention in respect of any one or more of the following branches of social security for which it has in effective operation legislation covering its own nationals within its own territory: medical care; sickness benefit; maternity benefit; invalidity benefit; old-age benefit; survivors’ benefit; employment injury benefit; unemployment benefit; and family benefit.

The above Convention provides for the granting of equal rights to foreign nationals and stateless persons in the sphere of social security. With this end in view, it is
possible to sum up the periods of insurance coverage, employment or residence in order to preserve the acquired rights.

The European Economic Community (EEC), the economic predecessor of the European Union, played a major role in the coordination of social security legislation on the European continent.

In 1958, the EEC Council adopted Regulations No. 3 and No. 4 “On social security for migrant workers”, and in 1961 it adopted Regulation No. 16 “On social security for migrant families”. These Regulations applied to a certain range of persons:
- employees and equivalent persons, who are covered by social security legislation of one or more States and are nationals of one of those States;
- stateless persons and refugees residing on the territory of one of the States;
- family members of these groups.

These Regulations applied to all current and future legislative acts relating to common and special insurance systems for all types of social security. The Regulations established the principle of equal treatment for nationals of all Member States. In addition, they allowed for a derogation from the territorial principle in the national legislation of many Member States. This centered around survivor's pensions, if a breadwinner was covered by the social security system of one country and his/her family lived on the territory of another. Finally, it permitted to calculate the duration of employment and insurance periods under the laws of various Member States.

But despite the adoption of these multilateral acts, a great number of bilateral agreements remained in effect. In order to make the coordination of various social security systems more operational, the EEC Commission had to start revising the European regulations. The Common Market’s Council of Ministers adopted two Regulations: No. 1408/71 dated June 14, 1971 “On the application of social insurance schemes to employees and their families moving within the Community”; No. 574/72 dated March 21, 1972 “On the forms of application of the Regulation dated 1971”.

In accordance with these Regulations, new categories of employees were granted the right to social security: workers in border areas, seasonal workers, sailors, etc., as well as some self-employed persons (tradespersons in Italy and Germany, farmers in Italy, etc.). The following types of social security were extended: retirement, disability and survivor’s pensions; unemployment benefits; and family benefits.

The consolidation of numerous international treaties on these issues resulted in the adoption of the ILO Convention No. 157 “Concerning the Establishment of an International System for the Maintenance of Rights in Social Security” (1982) and Recommendation No. 167 (1983).

The EU social security standards, which were put into effect more than 50 years ago, are considered to be the most advanced social security coordination system in the world. These standards cover almost all nine major risks under the ILO Convention No. 102: illness, temporary disability, accidents at work, childbirth, unemployment, old age, family obligations and death.

The scope of this Regulation is extended to the countries of the European Economic Area (EEA) and Switzerland. But even the EU, where supranational structures are in place, failed to opt for harmonization of national pension systems in terms of social security, intervening in rare cases, for example, by declaring incompetent “the rules imposing a restriction on the combination of two or more pensions awarded in different EU Member States, by reducing the amount of pensions solely on the basis of national legislation” only by Decision of the EU Court of Justice.

The scope of the EU Regulation is nationals of the Member States, stateless persons and permanent residents of the EU, refugees, as well as their family members and heirs.

The Regulation amended the rules for coordination of social security systems of the EU Member States, clarifying the measures and the procedure for their implementation as well as simplifying their application by all interested persons, but failed to introduce anything new to the pension systems. Its preamble explicitly states that “It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination”, so it dealt rather carefully with the sovereignty of the Member States in building social security systems and minimally touched on the current pension systems of the Member States which differ greatly from the organizational point of view, having a different production task in the form of coordination of their actions while performing their obligations.

Therefore, the Regulation is based on the following principles:
- The principle of equal treatment (Article 4 of the Regulations) provides for the non-discrimination with respect to social insurance of foreigners. The persons to whom Regulation No. 883/2004/EC applies shall enjoy the same rights and perform the same duties as their own nationals in accordance with the legislation of the Member State. It should be borne in mind that the requirement of equal treatment also includes other requirements to reserve the grounds acquired in other Member States for the requirement of equal treatment.

- The principle of equivalence of benefits, information, circumstances or events (Article 5 of the Regulation No. 883/2004/EC) reflects the equal status of juridical facts. Article 5 is the main innovation of the Regulation No. 883/2004/EC. For the first time, extensive equality of all elements of the situation had been created, regardless of the Member State in which they were created. In applying this principle, the juridical facts adopted by the national legislator will not be limited.

- Summation, i.e. accounting for periods of employment in other EU countries (Article 6 of the Regulation). In practice, it means that pension insurance contributions are preserved in the EU until the person who has paid them reaches the retirement established by the legislation of the country. However, no country undertakes to pay insurance contributions paid under the laws of another Member country.
- Avoidance of duplication of benefits of the same kind (Article 10 of the Regulations), where a person cannot claim several identical benefits at the same time.

However, in case of life-cycle risks which include retirement benefits, the proportional payment of benefits shall be used. For this purpose, the dual calculation technology shall be applied once according to the system of the country of maximum stay and once on a proportional basis, with due regard to the years worked abroad. In order to establish the right to a pension a person who have worked and paid insurance contributions in more than one country, shall apply for its awarding to the pension insurance authority at the place of last insurance payments as well as to declare the availability of insurance pension payments abroad within the EU and the European Economic Area (EEA) or Switzerland. Then this authority shall start the interstate process of establishing pension rights. Each country where a person has paid insurance contributions for at least a year shall pay him/her pension benefits as required by its legislation, provided, however, that he/she has reached the retirement age established there.

- Export of benefits implies that a person can receive them even if he/she is domiciled outside the payer’s country.

- Electronic document flow is the most suitable way of “fast and reliable” data exchange between the organizations of the EU Member States. Online processing speeds up the relevant procedures for all interested persons.

- The principle of preserving acquired and expected rights, which allow a person to move freely within the EU without fear of losing privileges and rights, wherefore the above-mentioned principle of summation shall be applied in determining pension rights.

- Rapid enjoyment of the rights of insured persons upon the most favorable terms shall be ensured by coordinating the activities of pension system management authorities within the EU and the export of benefits.

- The principle of trust with interested persons who are to be informed of their rights and obligations, as well as be recommended on administrative procedures. As the case may be the interested persons can be insured persons, their family members and/or their surviving spouses, as well as other persons.

Coordination mechanisms and regulations are constantly updated and improved in accordance with the changes that occur in the Member States and in the EU as a whole.

A number of innovations have been adopted in recent years. The principle of equal treatment regardless of nationality has been enhanced. In addition, the principle of good administration has been introduced, whereby the institutions of the EU Member States shall be obliged to cooperate with each other and render assistance to each other for the greater public good. “Good administration” tasks shall be performed through electronic means of data exchange. In this regard, nowadays, the works are being carried out to create and implement a common database that will unite more than 50,000 branches of the national social security institutions of the EU countries.

The EU Regulations on pension benefits of workers can be illustrated by a number of examples.

If the insured has worked in several EU countries, he/she has formed pension rights in each of them. At the same time, the insured person may apply for the exercise of his/her right to pension either in the country where he/she lives or in the country where he/she was last employed. If the insured person lives in a country where he/she has never worked before, then the pension authorities of the country of residence shall
file a request, on his/her behalf, with the country where he/she was last employed to award a pension.

In any case, one country shall be responsible for processing the application, combining the entries for contributions made and accounting for pension rights accumulated in all countries where the insured has been employed.

The documents required for award of pensions vary from country to country, but their significant part is unified and reduced to the procedure of identification and Bank details.

The distinctive feature of the European integration is the maintenance of a wide variety of benefit systems and their award conditions, so rules of the application country shall be applied to the insured.

However, since the principle of proportionality is applied, the regulations of the country which exports part of the pension may have a significant impact on its amount and granting conditions.

The insured can receive a pension in the country of residence from the moment of reaching the retirement age established by the legislation of that country. However, if there are pension rights accumulated in other countries, the relevant pension parts accumulated in these countries shall be available only after reaching the age established by the legislation of the countries which export the relevant part of the pension.

Theoretically, when the insured person (woman) has formed pension rights in Denmark and France, and applied for a pension in France (country of residence) at the age of 60, the part of the pension, formed in Denmark, will be paid only after reaching the age of 67, as provided for by the legislation of the country-pension exporter.

Since the required qualifications (the employed service) differ as well, the EU applies the principle of aggregation of qualification periods. In these instances, the pension authority shall take into account all periods during which the insured person has been employed in the EU countries and shall take them into account as if the insured person had been employed in that country. Thereupon the impact of the employed service on the final pension shall be assessed.¹

An example is the case where the insured has been employed for 4 years in Germany and 32 years in Portugal. Since the minimum employed service in Germany is 5 years, it was assumed that the insured person should not have the right to apply for payment from the pension system of Germany. However, in accordance with the EU law, the German pension authorities shall be obliged to take into account the years employed in Portugal, based on the service aggregation principle.

Separate procedures shall be provided for account of insurance periods of less than a year. In these instances, such periods shall, as a general rule, be added to the insurance periods within the employed service taken into account in the country where the insured has been most employed.

A special mention should be made of the pension calculation procedure in the EU. Its assessment shall be based on the calculation of the “EU-equivalent rate”. According to this rule, the pension authorities of each country where the insured person has been employed shall sum up all the periods of his/her employed service (including in other EU countries), determine what pension amount the insured person would have had in that country with such employed service (theoretical pension rate). Then this theoretical amount shall be reduced in proportion to the actual period of participation in the pension scheme of the country (the establishment of pro rata benefit).

At the same time, if the insured is entitled to receive a full pension in one country regardless of the insurance periods in other EU countries, he/she shall be calculated the so-called independent pension.
Based on the calculations, the pension authority shall award a large pension, whereof it shall inform the insured in a motivated decision.
Conclusions from the analysis of the experience of pension benefits of migrant workers in the European Union.

The EU Regulations on social security coordination are not intended to replace the provisions of national social security systems with a uniform European law. Instead of harmonizing national social security systems, the EU rules provide for their coordination. At the same time, bilateral and multilateral agreements in the sphere of social security between the EU States remain admissible.

The European Coordination Regulations provide for general rules and principles to be observed by all national authorities, social security institutions, courts and tribunals applying national laws.

The EU Coordinating Rules are based on five principles:
- equal treatment regardless of nationality;
- summation of the employed service formed in national systems;
- export of pensions (benefits) within the EU Member States;
- uniform applicable law;
- coordination between administrative authorities of social insurance institutions.

Obvious intervention by the EU in the functioning of national pension systems is noticeable only in one line – decisions of the European Court of Justice in terms of abolition of the severest restrictions for nationals to receive benefits.

Both the European bilateral agreements and the EU Regulations proceed from the general premise that ensuring the right to migration is the key to increasing the security ratio of people. They are aimed at ensuring the fullest use of all possibilities of national social security systems beyond national boundaries.

In the age of economic globalization and widespread migration of workers, the issues of international coordination of the right to social security are of particular importance and significance. The approximation of laws based on the creation of a harmonized legal framework is the most important component of the integration processes in the countries of the Eurasian Economic Union.

In order to improve the coordination of the social security legal regulation, it is required that the coordination of the security system include such measures in the sphere of social security as are necessary for free movement of workers.

Within the framework of the Eurasian Economic Union, a draft Agreement on Pension Benefits of Workers of the Member States of the Eurasian Economic Union (hereinafter – the draft Agreement) has been elaborated, which formalizes some principles similar to the European rules for the coordination of pension systems of the EU countries.

The draft Agreement as well as international legal acts regulating the pension benefits of the EU migrant workers, provides for ensuring equal rights of workers of the Member States of the Eurasian Economic Union (hereinafter – the worker, the Member State) alongside the nationals of the state of employment.

The draft Agreement is based on a proportional principle, i.e. each state pays for the periods of employed service (formed rights) on its territory. Each Member State shall determine the right to a pension and shall calculate its amount in accordance with national legislation. In addition, the draft Agreement provides for the export of pensions.

However, the analysis of the EU experience failed to give a unique solution for the problematic issues on the draft Agreement, in particular, on the issue of calculation by the Russian Federation of the value of individual pension coefficients (hereinafter – the IPC) for the employed service within the territory of the Member States, if in accordance
with the Russian legislation the IPC value is insufficient for the creation of the right to a pension.

It should be noted that in some EU countries (Croatia, Estonia, France, Germany and Slovak Republic) there is a parameter (coefficient) similar to the IPC, while it is used exclusively for calculating the scale of pension, while in the Russian Federation the IPC is used both for determining the right to a pension and for calculating the scale of pension.

The analysis of the EU experience in terms of pension benefits of workers shows that the rules of the draft Agreement in progress are similar to the rules of the European rules of coordination of pension systems of the EU countries.