

# SOCIAL SECURITY FOR MIGRANT WORKERS IN THE EUROPEAN UNION

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**Abstract:** *Using the comparative analysis method of the national social security systems in the Member States, we propose to identify the minimum social elements common to the social systems so that, regardless of the worker's residence, the social protection of the worker is ensured as a right guaranteed for employees for the work done.*

**Key words:** *worker's residence, migrant workers, social protection, national social security systems*

## 1. Introduction

The European Union currently provides a workforce of 234.2 million people at work out of a total of over 500 million inhabitants (2016 figures indicated 512 million people together with the UK), the employment rate being at the highest level and rising since 2008. The growth trend in the number of people at work is also due to the social measures taken by the Member States regarding the social protection reform started in 2010 by harmonizing national legislation and replacing the 1970s regulations, a trend that continued despite the acute changes of the economic and political context of the past two years (increased numbers of immigrants across the EU, certain economic crises in sectors of activity, the political actions of the British separatists).

It has been proven that the EU's single market has led to significant reductions in the prices of many services and products, consumers having a generous supply of products and services, and creating new jobs (an estimated 2.8 million new jobs at the EU-level has been generated by the single market) accessible to the citizens of the Member States under people's freedom of movement.

Another characteristic of the current labour market in the EU is the pressure felt by the young generation (20-40 years) who complains about a low social protection due to the difficulties in finding a job, the need to ensure a steady income from work and the exposure of the employee to all forms of atypical employment (part-time work, home work, hiring agents / temporary work agents). Also, when it comes to women, there is a higher exposure to atypical forms of employment, while another tendency with effects from the perspective of social protection is the change of the young generation's mentality

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regarding the long-term maintenance of the employment relationship with the same employer and the tendency to change employers in the hope of finding a more favorable work relationship.

Against the backdrop of negative natural growth (an annual decline of the active population on the labour market by 0.3% by 2060 is expected), the sustainability of pension systems and economic growth are called into question, social protection measures to sustain employment growth being searched for.

Against the backdrop of these labour market developments over the last few years, from the economic and social point of view, in relation to the uniform minimum social protection standards imposed at EU level since 2004, the legal steps materialized on the one hand in debates on the redefinition, through the European regulations, of the concept of employee and the prevailing use of the concept of worker by separating the link between employment and subordination, on the other hand by the setting through legislation of a standard on the social security systems and ensuring an equal treatment for workers regardless of their type of work contract, number of hours or work.

In order to enable workers and their families to benefit from the right to free movement for the purpose of seeking employment in the single market, through the Treaty of Rome (articles 3, art. 45-48, art.145-161, art.162 164, art.174-175 and art.177-178), the social protection of labour was established as it follows: a coordination of the national social security systems was established, a principle of equal pay for equal work between men and women was consecrated, a principle directly applicable in its judicial work by the European Court of Justice, and the European Social Fund (EU Regulation no. 1304/2013) was set up, the purpose of which is to improve the employment opportunities, to strengthen the social inclusion, to combat poverty and to promote lifelong learning and education.

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## **2. General Aspects regarding the National Social Security System**

Article 876 of the Civil Code states the following: “The cadastral register describes immobile goods and shows the real rights over these goods. In certain cases stated by law, other rights, facts or legal relations can be registered in the cadastral register, if they pertain to the immobile goods registered in that register”.

A more restricted definition states that the cadastral register can be defined as that public document which describes immobile goods and shows the real rights, acts, facts or legal relations regarding that immobile good, as well as the people who hold these rights (Nicolae, M., 2011, p.169). A wider definition states that the cadastral register consists of the sheets of paper which provide legal inventory, as well as the documents which form

the cadastral register: the general entry register, the cadastral plan which identifies immobile goods, the justifying documents regarding the immobile goods (article 17 fourth alignment of Law no 7/1996).

The cadastral registers are operated by the National Agency for Cadastre and Immobile Publicity (ANCPI), organized as a public institution subordinated to the Government. Furthermore, there are Cadastral and Immobile Publicity Offices (OCPI) subordinated to the National Agency in each county as well as in Bucharest. In their turn, these offices are organized in each judicial district, thus maintaining cadastral registration for each administrative unit: county, city and/or village.

The registration office of the competent Cadastral Office registers requests which pertain to immobile goods and releases documents.

The same office solves requests and maintains an archive (digital and paper support). Thus, the cadastral office is the place where the citizen directly interacts with the cadastral authorities.

Real rights which pertain to immobile goods registered in the cadastral register are called tabular rights. Registration of the immobile real rights in the cadastral registers is performed with the respect of the rules established in the Cadastral and Immobile Publicity Law no 7/1996, republished, with subsequent changes and the Regulation for the reference, reception and registration in cadastral register as approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes and also other legal provisions such as the Civil Procedure Code or Law no 17/2014.

Once registered in the cadastral register, tabular rights are acquired, changed or ended with the respect of cadastral rules and regulations.

Registration in the cadastral register can be achieved by any of the following means: *tabulation, temporary registration and notation (article 881 first alignments.)*

Tabulation can be defined as that specific form of *registration by which an immobile real right is acquired, changed or permanently ended from the time the registration request is file*. The constitutive of rights effect of the registration of tabular rights was suspended until the finalization of the general cadastre for each administrative unit and until the creation of new cadastral registers.

Until this date, the immobile rights acquired based on legal acts are registered with the sole purpose of ensuring third parties opposability (article 56 of Law no 71/2011).

The registration of the ending of a tabular right is also called cancelation (Article 907 second alignment of the Civil Code).

Tabulation is a definitive registration as, once the request is filed, the effects of tabulation occur from the time the registration request is filed (article 890 of the Civil Code) without the need for subsequent justification, as is the case with temporary registration. This provision is regulated in article 885-897, 907-910, 912 of the new Civil Code; in regard to the form, the provisions are found in Law no 7/1996 (article 47 and the following) and the Regulation for the reference, reception and registration in cadastral register as approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes (article 55 and the following).

*Cadastral registration conditions.* In order to perform the cadastral registration, certain conditions must be met, such as form and content conditions needed for each cadastral operation (according to article 888 Civil Code, article 48 of Law no 7/1996), as well as some special conditions in the expressly regulated cases.

Registration is performed based on certain mandatory documents:

1. a completed, signed request.
2. the legal act which justifies the request, original or legalized copy. The acts based on which registration is performed are: the authentic act concluded by a Romanian public notary, definitive and irrevocable court decision, the administrative act, in cases stated by law, other documents stated by law.
3. proof of payment of the immobile publicity fee, in case the operation is subject to such payment.
4. fulfillment of other legal demands, established by special laws, whose verification pertains to the cadastral office registration. For example, correction of the cadastral registrations is amicably performed, by authentic notary declaration of the holder of the right which is about to be changed or, in case of litigation, by definitive court decision (article 908 second alignment).

The content of the request is as mentioned in the Regulation for the reference, reception and registration in cadastral register as approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent,

The legal act which justifies the request must be concluded with the respect of the formal conditions stated by law, it must correctly identify the name of the parties, it must individualize the immobile by cadastral register number, the county where it is located and/or the topographical number; if the act is not drafted in Romanian, it must be accompanied by translation.

As for the legal acts concluded by the public notary, the request must be accompanied by a copy of the authentic or informative cadastral registration certificate based on which the act was drafted, except for the case in which this is mentioned in the act itself.

The immobile publicity fees are established in annex 1 of the Internal Affairs Minister no 39/2009.

The solutions of the registration can be any of the following:

- admission of request, in case the above listed conditions are met;
- the request for completion or remedy of any incomplete information. The completion request is the only way by which an already registered request (including that for the tabulation of an immobile real right) can be changed or completed;
- rejection, in case the documents are not complete or there are other restrictions for registration.

The model for admission or rejection of request is stated in the Regulation approved by Minister's Order no 700/2014 with subsequent changes.

The admission or reject solution can be attacked, thus requiring reexamination within 15 days from the time it was communicated.

This request must be solved within 20 days from the time it was filed. This solution can also be attacked, by filing a complaint which is to be solved by the courts where the immobile good is located.

Tabulation of the property right acquired by sale is achieved in a conventional manner based on the sale contract. The property right is registered to the buyer, whether a person or a company.

In case of people, the cadastral register will mention whether the immobile good is acquired as an own good or as a common good. In case of goods acquired as own goods, the name of both spouses will be mentioned even if only one of them signs the sale contract.

In case of goods acquired as own goods, even if the owners are married under the regime of legal community of goods, according to the provisions of article 340 of the Civil Code, the consent of the other spouse is necessary, whether provided by authentic notary act or a separate document.

In case consent is provided by separate act and not within the sale contract, this act must be attached to the registration request. In case of goods acquired as own goods by a married person under the regime of separation of goods, as proved by matrimonial convention and the verification in RNNRM, agreements from the other spouse are no longer necessary. In this case, the cadastral registration will mention that the owner is married under the regime of separation of goods.

In case the good is registered in favor of co owners, but the registration no longer matches the real situation, the rectification of each owner's part of the property right over the immobile is achieved only based on a notary act or a court decision (The National Union of Public Notaries, 2013, p.346).

In case the price of sale is not entirely paid, according to the provisions of article 161 of the Regulation for the reference, reception and registration in cadastral register, approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes, the cadastral operator will register the seller with a right of legal mortgage for the amount which was not yet paid.

The seller can renounce this right, whether within the act or by separate authentic document; in the latter case, the renunciation act must be filed along with the sale contract.

The registration of the property right acquired by sale over agricultural lands located outside cities is performed based on the notary act, along with the law required documents, depending on the specific case (notice from the National Defense Minister, notice from the Culture Minister and so on).

In case the land is located within a certain city, but the cadastral register shows it is located outside the city, it is necessary that the request for registration also asks for the notation of the urban character based on a urbanism certificate or a receipt; both documents must be issued by the competent city.

This obligation is also present in case the cadastral registers do not show whether the land is located in rural or urban areas.

The registration of a property right acquired based on a sale contract, with the reserve of property right is a special case. In the case where, until the full payment of the price of sale, the seller reserves property, the sale contract *in itself* will be filed with the competent cadastral office in order to acknowledge its existence, based on article 902 second alignment point 9 of the Civil Code.

The registration of the buyer's property right is subsequently performed, after the price of the contract is paid in full, based on the following documents: (i) the seller's authentic declaration by which he confirms the full payment of the price and declares that he agrees that the buyer registers the property right to his name or (ii) the definitive court decision of registration or (iii) the document issued by an officer of the court which confirms full payment of the price.

The three above mentioned means are regulated by article 187 of the Regulation for the reference, reception and registration in cadastral register, approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes.

In the first case, that of the authentic declaration of the seller, the public notary must request the authentication cadastral certificate. However, practice shows the registration of the property right in favor of the buyer can also be performed based on the bank's confirmation of the payment in the seller's account, in which case the seller's agreement in regard to the cancelation of his right needs to be provided within the content of the sale contract (The National Union of Public Notaries, 2017, p.76).

### 3. Conclusions

The cadastral register is a real and mandatory system of immobile publicity.

Along with temporary registration and notation, cadastral registration is a form of registration in the cadastral register whose main effect is (or at least, will be) the constitutive effect of rights.

Until the cadastral works are finalized and the cadastral registers are created for each administrative unit, the constitutive effect is suspended.

However, a person can only use his rights if registered in the cadastral register.

Furthermore, the registered right can only be disputed within 3 years in case of onerous acts and 5 years in case of free acts.

As a consequence, the *registration or real rights in the cadastral registers can be seen not only as an obligation, but also as a right* of the person who aims to protect its patrimony, as if a certain real right is registered in the cadastral register, it is presumed that certain rights exists to the use of the person who requested registration.

### References

- \*\*\* *Law no 7/1996 of cadastre and immobile publicity* republished based on the provisions of article III of Law no 150/2015 for the modification and completion of the Law of cadastre and immobile publicity no 7/1996, published in the Official Bulletin of Romania, part I, no 459 of June 25<sup>th</sup>, 2015, thus providing new numbering for the texts.
- \*\*\* *Regulation EU no. 1304/2013 on the European Social Fund* and repealing Council Regulation no.1081/2006, published in the Official Bulletin no 409 of June 10<sup>th</sup>, 2011
- \*\*\* *Regulation for the reference, reception and registration in cadastral register*, approved by the General Manager of the National Agency for Cadastre and Immobile Publicity no 700/2014, with subsequent changes, published in the Official Bulletin no 571 bis of July, 31<sup>st</sup>, 2014.
- \*\*\* *Tratatul privind Uniunea Europeană – versiunea consolidată [The Treaty on the European Union – the consolidated version]*, published in the Official Journal of the European Union no.C326 of October, 26<sup>th</sup>, 2012.