

THE INVOLVEMENT OF LOCAL PUBLIC ADMINISTRATION IN THE EXERCISE OF SUCCESSION RIGHTS IN THE LIGHT OF THE ADMINISTRATIVE CODE. SPECIAL LOOK AT THE ROLE OF THE SECRETARY GENERAL OF THE ADMINISTRATIVE-TERRITORIAL UNIT

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Abstract

This material aims to analyze the involvement of the local public administration in the succession procedure. The secretary general of the administrative-territorial unit has the central role in this procedure. The powers he exercises in this field were also provided for in the old Law of local public administration no. 215/200 and were taken over by the Administrative Code. I have designed the material so that the doctrinal and legislative dimension of this attribution is addressed, through a brief presentation of the current legal framework, of the significance of the Administrative Code of Unitary Normative Act for the regulation of local public administration, but also of the regime of the legal regime that emerges from the interpretation of the provisions of the Administrative Code.

Keywords: public administration, secretary-general, administrative-territorial unit, succession rights, attribution

Résumé

Ce matériel vise à analyser l'implication de l'administration publique locale dans la procédure de succession. Le rôle central dans cette procédure est joué par le secrétaire général de l'unité administrative-territoriale. Les attributions qu'il exerce dans ce domaine étaient également prévues dans l'ancienne Loi de l'administration publique locale no. 215/200 et ont été repris par le Code administratif. Nous avons conçu ce matériel de manière à aborder la dimension doctrinale et législative de cette responsabilité, à travers une brève présentation du cadre juridique actuel, l'importance du Code administratif de l'acte normatif unitaire pour réglementer l'administration publique locale, mais aussi le régime juridique qui émerge de l'interprétation des dispositions du Code administratif.

Mots-clés: administration publique, secrétariat général, unité administrative-territoriale, droits de succession, attribution

I. Brief presentation of the current legal framework in the field of public administration regulation

One of the golden dreams, which many of the „sacred monsters” of the administrative doctrine lived, was undoubtedly the codification of public administration. Denied or adulated, the idea of public administration codification crossed political regimes, generations of theoreticians, and after 1990 it went from a „dream” to an objective, being

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assumed not only by specialists², but also by politicians, who introduced it into the political objectives they assumed through the governing programs with which they ran and, respectively, won the vote of the electors.

But the need for codification was also felt at the level of practitioners, who had a hard time managing in the „trough” of legislation, which changed according to how frequent political changes were, and who were „burdened” by the „thick cloth” of secondary and tertiary legislation, too often resembling a „cobweb”.

That is why the drafting of the Administrative Code, in the years 2018-2019, completed, in a first stage, with a law declared unconstitutional by the Constitutional Court³, and then with the adoption of GEO no. 57/2019⁴ it undoubtedly represented an important step in the evolution of the administration. If Neil Armstrong, the first man to walk on the moon⁵ said, 53 years ago, „*One small step for man; one giant leap for mankind*”, we allow ourselves to paraphrase this line that is known to have made history, stating that **the adoption of the Administrative Code was, perhaps, a small step for legislation, at a global level, but it undoubtedly represented a leap for the evolution of the public administration in Romania, for the legislation and administrative practice, for the administration staff, and the beneficiaries of the services it provides.**

Far from being a perfect law, its „flaws” can be seen, some, with the „unaided eye”, others are discovered in the process of applying the Code, we say that it was a huge *leap* given the fact that **the public administration currently benefits from a unitary regulatory framework, which represents a real support for the administration and the administered, equally.**

The regulation of local public administration can be found in Part III of the Administrative Code, without that part exhausting the scope of the provisions that apply to it. We could say that provisions relating to local public administration can be found in almost all 10 parts of the Code, but the third part is specifically and expressly devoted to local public administration. To give an example, in the first part we find terms and principles that apply to it, in part IV we find the institution of the prefect, which is exercised at the level of administrative-territorial units and the examples could continue.

II. The secretary general of the administrative-territorial unit – leading civil servant with an important role, validated by the history of administration on the Romanian territory

At the level of administrative-territorial units on the territory of our country, starting from the 9th century, there was constantly a public official named at first *notary*, then *secretary*, whose role was essential in the development of the Romanian administrative phenomenon. The position was created in 1860 „*as a body with complex attributions at the level of rural communes...a key figure in the communal administration, in the conditions where, as a rule, communal councilors were chosen more for their intelligence, moral and*

² Antonie Iorgovan, *Administrative law treatise*, vol. I, 4th Ed., All Beck Publishing House, Bucharest, 2005, p. 148; Verginia Vedinaş, *A dream that is getting closer to reality*, in RDP no. 1/2018, pp. 16-19; Verginia Vedinaş, *A hope come true – The Administrative Code*, in RDP no. 2/2018, pp. 13-16.

³ By Decision no. 681/2019, published in The Official Gazette of Romania no. 190/11 March 2019.

⁴ Published in The Official Gazette of Romania no. 555/5 iulie 2019.

⁵ With NASA's Apollo 11 mission in 1969.

*material qualities and less for their skills in the field of writing and reading, the vast majority being illiterate. „*⁶

Various other affiliations were associated with the title of *secretary* over time, which also varied according to the political regime. During the totalitarian regime, the titles of *secretary of the executive office* or *secretary of the executive committee of the people's council* were used⁷.

After 1990, the name evolved from *secretary of local or county council*, *secretary of the commune, city, municipality or county*, to the current *secretary general of the administrative-territorial unit*, which can be found in all categories of administrative-territorial units, including municipal subdivisions. The title of *secretary general* was introduced by the Administrative Code, and it is good that this happened, because it establishes to an even greater extent the special role that he has in the activity of the administration and in the life of local communities. The name becomes common with that of the relatively similar position in the central administration, so that the most important civil servant in the Romanian central and local public administration becomes the **secretary general**. The difference lies in the fact that at the level of the specialized central administration, the secretary general has the status of a **high public servant**, while at the level of the local public administration the status is that of a **leading public servant**. They are also joined by the **secretary general of the prefect's institution**, which was established in 2021⁸, but which also existed until 2005, when its abolition was determined by the transformation of the prefect and sub-prefect into *high public servants*, a solution that was returned to under the conditions in which such a status was mainly in the law, and in administrative and governmental practice prefects and sub-prefects continued to be treated as political dignitaries.

The regulation of the secretary general of the administrative-territorial unit can be found in chapter I of title VII of part III, articles 242-243, specifying that applicable provisions in the matter can also be found in other chapters and titles of this part. For example, we invoke Article 136 (9)⁹, Article 138 (13)¹⁰ and Article 140 (1) and (3)¹¹ and the examples could go on. Equally, we find attributions for the secretary general of the administrative-territorial unit in other parts of the Administrative Code, such as, for example, Article 289 (7)-(8), located in Part V of the Administrative Code¹², which regulates

⁶ Cristina Feurdean, *The legal status of the secretary of the administrative-territorial unit*, Universul Juridic Publishing House, Bucharest, 2018, p. 125.

⁷ The correspondent of the currently existing local and county councils.

⁸ By GEO no. 4/2021, published in The Official Gazette of Romania no. 117/3 February 2021.

⁹ Article 136 „(9) The secretary general of the administrative-territorial unit/subdivision ensures the fulfillment of the conditions from paragraph (8) and brings to the notice of the local council the case of their non-fulfillment before the adoption of the agenda”.

¹⁰ Article 138 „(13) The summary of the debates in the local council meetings, as well as the way in which each local councilor exercised his vote, is recorded in a minute, signed by the president of the meeting and the secretary general of the administrative-territorial unit/subdivision”.

¹¹ Article 140 „(1) After the meeting, the decisions of the local council are signed by the president of the meeting and countersigned, for legality, by the secretary general of the administrative-territorial unit/subdivision. (3) The secretary general of the administrative-territorial unit/subdivision does not countersign the decision if he considers it illegal. In this case, in the next meeting of the local council, he submits in writing and presents his reasoned opinion before it, which is recorded in the minutes of the meeting”.

¹² This part regulates *specific rules regarding public and private property of the state and administrative-territorial units*.

a *declaration on one's own responsibility* that the secretary general of the administrative-territorial unit gives in the inventory procedure, regarding the immovable goods for which there are no proof of ownership and which are to be inventoried¹³.

III. Duties of the secretary general of the administrative-territorial unit/subdivision.

The duties of the secretary general of the administrative-territorial unit are mainly listed in Article 243, which bears the very name we gave to the section. In paragraph (1) of Article 243 we find these attributions listed, specifying that the text does not exhaust their scope, providing, in letter p), „*other attributions provided by law or tasks given by administrative acts by the local council, the mayor, the county council or the president of the county council, as the case may be*”.

We find these other *attributions*, as it follows from the content of the reference rule, in the law, it can be about the Administrative Code itself and other special *laws*, such as, for example, electoral laws, but they can also be represented by *tasks given by administrative acts* by the deliberative and executive authorities of the local administration within which they operate. It is important to specify that *the tasks* can be given through *administrative acts*, because **administrative acts implement the law**. It follows that **the administrative acts establishing tasks for the secretary general of the administrative-territorial unit must comply with the attributions that the law establishes for him and his status**. It follows that **it is not possible to require the secretary general to perform tasks that do not fall within the above-mentioned coordinates, i.e. attributions and status**. We believe that for **the clarity and predictability of the law**, which represents a requirement and a principle permanently imposed in the jurisprudence of the Constitutional Court, of European origin, **it would be desirable that the text that refers to the tasks that can be given by administrative acts, should be completed with the specification established based on the attributions provided by law for the secretary general**, a proposal that we make *de lege ferenda*. In this way, the risk of these assignments not having a support in law could be eliminated.

If we are to analyze the content of the duties listed in paragraph (1) of article 243, we believe that they can be classified into the following categories¹⁴: duties exercised in relation to the local/county council; duties exercised in relation to the mayor/president of the

¹³ Article 289 (7) and (8) have the following content: „As an exception to the provisions of paragraph (6) a), in the event that there are no documents proving the right of ownership of real estate in the public ownership of the commune, the city, the municipality or the county, these goods can be registered in the public domain of the respective commune, city, municipality or county, the inventory attestation decision provided for in paragraph (5) being accompanied by a declaration on his own responsibility by the secretary general of the administrative-territorial unit, regarding the following: a) the property in question is not the subject of any litigation regarding its belonging to the public domain of the respective administrative-territorial unit at the date of signing the declaration; b) the property in question is not the subject of requests for the reconstitution of private property rights or for restitution submitted pursuant to the normative acts that regulate the legal regime of immovable property taken over abusively by the Romanian state between March 6, 1945 and December 22, 1989. (8) The self-responsibility declaration, provided for in paragraph (7), signed by the general secretary of the administrative-territorial unit, will be accompanied by a report on compliance with reality for the respective property, drawn up for the purpose of assuming what was declared, signed by the head of the relevant department in the specialized apparatus of the executive authority. The statement explicitly mentions the existence of the report and other supporting documents, as the case may be.

¹⁴ Verginia Vedinaș, *The Annotated administrative code, 3rd Ed.*, Universul Juridic Publishing House, Bucharest 2021, pp. 262-266.

county council; duties exercised in relation to the prefect; duties exercised in relation to other legal subjects, such as courts, the Public Ministry etc. Here we will find, as we will analyze in the next section, also those that are directly related to the present study, namely the duties exercised in relations with the National Union of Notaries Public in Romania.

IV. The duties of the secretary general of the administrative-territorial unit/subdivision in matters of succession.

We use the noun in the plural, not in the singular, as it could be more rigorous, given the fact that, as we will show, it is about *a set of activities*, which are circumscribed to the attribution regulated in paragraph (3)-(7) of Article 243.

According to paragraph (3) of Article 243, *„The secretary general of the commune, the city, the municipality, respectively the administrative-territorial subdivision of the municipality communicates a notification for the opening of the succession procedure to the chamber of public notaries, as well as to the cadastre and real estate advertising office, in whose territorial constituency the deceased had his last residence: a) within 30 days from the date of death of a person, if the death occurred in the place of residence; b) on the date of taking cognizance, in the situation where the death occurred within the scope of another administrative-territorial unit; c) on the date of receipt of notification from the territorial office, within whose territorial jurisdiction are the buildings of the deceased registered in land registers established as a result of the completion of the systematic registration”*.

We note that this article regulates the **attribution** of the secretary general of the commune, the city, the municipality, respectively the administrative-territorial subdivision of the municipality to submit an administrative document called **notification**, the objective of which is to **open the succession procedure**. This *notification* is forwarded to two public authorities, respectively to **the chamber of public notaries**, as well as to **the cadastre and real estate advertising office, in whose territorial constituency the deceased had his last domicile**.

Paragraph (4) regulates the **elements that must be included in the notification**, respectively: „a) the name, surname and personal numerical code of the deceased; b) date of death, in day, month, year format; c) date of birth, in day, month, year format; d) the last domicile of the deceased; e) the movable or immovable assets of the deceased registered in the tax records or, as the case may be, in the agricultural register; f) data on possible successors, in the format of name, surname and the address to which the citation is made”.

We notice, among these, listed the **movable or immovable assets of the deceased** and, referring to the text in paragraph (3), regarding the **recipients of the notice**, we wonder **if it is mandatory that both recipients be seised of the notification, regardless of the nature of the assets that are found in the deceased's estate and are registered in the records of the local administration?**

We believe that **the notification is always mandatory to be submitted to the chamber of notaries public in whose territorial constituency the deceased had his last residence**.

Regarding the **cadastre office and real estate advertising**, we think **that it is to be notified when real estate is also found in the deceased's estate**. In the situation where **only movable goods are found, we appreciate that it is not required that the notification be also submitted to the OCPI**. From the content of the text, this does not expressly follow, and we believe that it would be useful for the legal provision from

paragraph (3) to be clarified, as follows: „*The secretary general of the commune, the city, the municipality, respectively of the administrative-territorial subdivision of the municipality communicates a notification for the opening of the succession procedure to the chamber of public notaries in whose territorial constituency the deceased had his last domicile: a) within 30 days from the date of a person's death, if the death occurred in the place of residence; b) on the date of notification, in the event that the death occurred within the scope of another administrative-territorial unit; c) on the date of receipt of notification from the territorial office, in whose territorial jurisdiction are the buildings of the deceased registered in land registers established as a result of the completion of the systematic registration. **When real estate is also found in the deceased's estate, the notification is also forwarded to the cadastre and real estate advertising office, in whose territorial constituency the deceased had his last residence***”. Practically, we removed from the first sentence of the text the reference to OCPI and introduced a new sentence, which provides for the situation in which the deceased had immovable property.

According to paragraph (5) it is provided that” (5)*The attribution provided for in paragraph (3) can be delegated to one or more persons who exercise delegated duties of a civil status officer, by the mayor's order on the proposal of the secretary general of the administrative-territorial unit/subdivision*”. We find that the legislator expressly establishes the subject of law to whom this attribution can be delegated and it targets **the person or persons exercising civil status attributions. Depending on the organization chart of each institution, it may be an official from the civil status structure or the only official who exercises this attribution.**

The delegation is made **by order of the mayor, at the proposal of the secretary general.**

The significance of this attribution results from the corroboration of paragraphs (6) and (7) of Article 243. Thus, in paragraph (6) we find the provision according to which „*The mayor seeks the fulfillment of this attribution by the secretary general of the commune, the city, the municipality, respectively of the administrative-territorial subdivision of the municipality or, as the case may be, by the delegated civil status officer, under the conditions of paragraph (5)*”. According to paragraph (7), „*Non-fulfillment of the attribution provided for in paragraph (3) attracts the disciplinary and contraventional sanctions of the responsible person*”.

We find that the legislator attaches great importance to the way in which this attribution is exercised, which may attract the intervention of disciplinary or contravention liability of the one who actually exercises it.

We believe that the text still has **a deficiency**, in the sense that **it does not also provide for the secretary general's attribution to supervise how this attribution is carried out when it has been delegated, at his proposal, to one or more persons who exercise delegated attributions as an officer of civil status.** We believe that **such a supplement would be required**, given the fact that the secretary general is the *specialist* and the *first person responsible for fulfilling this attribution*. For these reasons, we believe that **the text of paragraph (6) should be supplemented with a new sentence**, which should have the following content: „*In the situation of delegating this attribution, the secretary general monitors the way it is exercised by the person or persons to whom it was delegated*”, a proposal that we make *de lege ferenda*.

V. The legal nature of the referral made by the secretary general of the administrative-territorial unit/subdivision.

The question arises whether this notification is an **administrative act** or an **administrative operation**. These are the two possible solutions that we could identify in relation to the legal nature of the referral.

In order to be an **administrative act**, we should deal, in the spirit of Article 2 c) of Law no. 554/2004 of the administrative litigation¹⁵, with an express and unilateral manifestation of legal will, expressed under the regime of public power, through which rights and obligations or legal relationships are born, modified or extinguished¹⁶, that is, to produce a change in the existing reality.

We do not believe that the notification submitted by the secretary general of the administrative-territorial unit or the person delegated by him meets such a feature. It does not produce, by itself, legal effects. The effects are produced only after the succession procedure has been carried out and the heir certificate has been issued.

We appreciate that the *notification* submitted by the secretary general or the person delegated by the mayor's order is, by legal nature, **an administrative operation that produces effects in terms of civil or succession law**. We say this because we believe that **administrative operations, like administrative acts, can produce effects both in terms of administrative law and in terms of other branches of law, such as labor law, civil law, financial law etc.** In the doctrine¹⁷ it is argued, with full reason, that, in terms of the extent of the legal effects they produce, „*administrative acts give rise to reports of administrative law, but also to other categories of reports*”¹⁸.

Mutatis mutandis, we also appreciate that **administrative operations can produce effects for administrative law, but also for other branches of law**, in the present case **civil or succession law**.

VI. Conclusions.

The presented subject is of interest, given the fact that it concerns an important attribution of the secretary general of the administrative-territorial unit, which consistently loads his work agenda, which is already full of responsibilities. It is important due to the effects it produces, but also due to the fact that both the content and the forms in which it is carried out place it on the border between public and private law. I pointed out the attention given to it by the legislator and I was able to ascertain the involvement of the mayor who, as the head of the specialized apparatus, controls the manner of its exercise, as well as the fact that the defective way of fulfilling this attribution attracts the legal responsibility of the secretary general or the person exercising this attribution.

We want the criticisms that we have signaled and the proposals that we have formulated to be taken into account, in order to improve the normative content of the provisions that regulate it and to eliminate the risk of dysfunctions in its exercise.

¹⁵ Published in The Official Gazette of Romania no. 1154/7 December 2004.

¹⁶ Anton Trăilescu, Alin. A Trăilescu, *Administrative litigation law. Comments and explanations.*, 4th Ed., C H Beck Publishing House, Bucharest, 2018, p. 32.

¹⁷ Antonie Iorgovan, *Administrative law Treatise, op. cit.*, vol. I, 4th Ed., p. 261.

¹⁸ Dana Apostol Tofan, *Administrative law*, vol. II, ed. 5, C.H. Beck Publishing House, Bucharest, 2020, p. 45.

SOME CONSIDERATIONS REGARDING THE SURVIVOR'S PENSION

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Abstract

The survivor's pension belongs the children and the surviving spouse, if the deceased supporter was retired or met the conditions for obtaining a pension. In this way, the fulfillment of the eligibility criteria by the beneficiaries of the right to a survivor's pension activates the obligation of the Romanian state, as a debtor, to pay a periodic benefit, in cash, in an amount subject to specific establishment rules according to a general calculation algorithm., pre-established by law.

The determination of the beneficiaries of the survivor's pension and the conditions for granting the survivor's pension is the exclusive competence of the legislator, exercised by regulating the conditions for granting social insurance rights taking into account both the protected social values and the available financial resources.

Keywords: *survivor's pension, deceased supporter, beneficiaries, conditions for granting*

1. Introductory remarks

The phrase „survivor's pension”, distinct and main category [1], species of pension (as a genus), together with the other categories shown by art. 51 para. (1) of Law no. 263/2010 on the unitary public pension system, with subsequent amendments and completions, is so strongly rooted in the social mind that it seems that even the legislator is no longer bothered by the somewhat imperfect association of the two terms: pension and successor.

The imperfection is due to the specific premises underlying the granting of pensions. On the one hand, old-age pensions, early retirement pensions, partial early retirement pensions and invalidity pensions, require them to be granted to the holder, to the person entitled to whom the right to a pension has been opened, as long as he is alive and the survivor's pension is conditioned by the death of the holder, due to the descendants [2], i.e. those who, by law, acquire a vocation to receive it: children of the deceased, regarded as descendants, offspring of the family, successors of the family considered in relation to generations his predecessor, and the surviving spouse of the deceased. On the other hand, the beneficiaries of the survivor's pension, belonging to the category of persons against whom the deceased had, during his lifetime, the legal maintenance obligation and who are part of the category of legal heirs of the deceased, with a vocation to inherit it, are those who they receive the survivor's pension, without having contributed, in any way, to the acquisition of this right.

This study aims to address the issues related to the survivor's pension in relation to the notion and legal nature of the survivor's pension, the categories of survivor's pension, the specific features of the right to a survivor's pension, and the categories of survivor's pension beneficiaries.

2. The notion of survivor's pension. Legal nature

In doctrine, the pension was defined as „the replacement income granted for the total or partial loss of professional income due to old age or reaching the age, disability or death of the insured person [3]”.

Survivor's pension means the monetary rights granted to the children and the surviving spouse, if the deceased supporter was retired or met the conditions for obtaining a pension, in order to ensure their social protection.

Understanding the legal nature of survivor's pension requires a complex analysis, with implications for both private law (family law and inheritance law), as well as public law (social security law). In other words, the premises of the legal regulation of this category of pensions are found in the positive obligation of the state of protection of the small family consisting of their spouse and children, by reference to the duties and legal obligations imposed on them during their life in close correlation with the quality of legal heirs recognized to these persons. In this sense, art. 258 para. (2) of The Civil Code stipulates that „The family has the right to protection from society and the state”.

From the point of view of social security legislation, the claimant must have been retired or have met the conditions for obtaining a pension at the time of death. The claimant's own right to a pension, regardless of the category of pension he receives or could benefit from, is taken over and administered for the benefit of his descendants, under the conditions and within the limits of the law, through social insurance that assumes their role of supporter. In this way, „the wife and children succeed to the deceased person's right to pension, the granting of the survivor's pension being subject to the condition that the deceased had the quality of pensioner or to have fulfilled the conditions for obtaining a pension [4]”. The survivor's pension due to the children and the surviving spouse is quantitatively dimensioned according to the author's own pension contribution and the number of descendants.

In the doctrine, it was judiciously held that „the survivor's pension specifically illustrates the legal transfer of the legal maintenance obligation from the predecessor to the state social insurance [5]” and that „the holder (beneficiary) of the survivor's pension is not only a creditor of a maintenance obligation, but also the legal successor of the deceased, in the degree of kinship or as a result of marriage relations, defined by a series of legal conditionalities of access and detailed descriptions of legal content [6] ,”.

It is therefore observed that the mechanism of descent which underlies the natural kinship is not sufficient, in itself, to make explicit the legal nature of the survivor's pension, as it neither covers the entire sphere of beneficiaries nor allows the understanding of the time limit within which the survivor's pension is granted to beneficiaries in certain cases.

Consequently, the legal basis of the survivor's pension is found in the cumulative conditions of the creditor of the legal maintenance obligation and, at the same time, of the legal heir of the deceased, necessary to be fulfilled by the beneficiary of the survivor's pension themselves. The specificity of the kinship relations, natural or civil, and of the marriage relations, existing between the spouses and their children, is transposed by the legislator in the content of the legal maintenance obligation regulated by art. 513 Civil Code, in correlation with the quality of legal heir of the deceased recognized to the surviving spouse and children of the deceased, pursuant to art. 963 para. (1) Civil Code, corresponding to the rules governing legal inheritance. Thus, not all persons provided by law between which the legal maintenance obligation is imperatively established and who

have the quality of legal heir of the deceased, can acquire the quality of beneficiary (holder) of the survivor's pension. We are talking here about the ascendants of the deceased, as well as his brothers and sisters.

The naturalness of the above solution on which the legislator stopped is legitimized in the social security legislation by the preference for the notion of family supporter (instead of the deceased one), this demonstrating that the legislator's concern focuses on the principle of supporting and helping the family. relatively similar material conditions for raising, caring for and educating minor children and maintaining a state of financial comfort, a standard of living as close as possible to the pre-death period for the deceased supporter's family members, corresponding to the available financial resources of the Romanian state.

In judicial practice [7] it was decided that „the survivor's pension must be used for the upbringing and education of the minor, therefore it is inferred that it is an included condition for the person to whom the pension is paid to take care of the minor”. Thus, parental authority over children must be exercised by the guardian / guardian insofar as it requires the establishment and payment of the survivor's pension for minors, because „only in this case is the purpose of the legal norm giving the right to a child survivor's pension respected”. Similarly, the person to whom the children have been entrusted must exercise parental authority over the children, because „they take care of the upbringing and education of minors”.

The legal maintenance obligation of the deceased supporter is not transferred to the public social insurance system *mutatis mutandis*, but it is metamorphosed at the time of taking over in terms of conditions (the deceased supporter was retired or met the conditions for obtaining a pension); of the method of establishment (percentage of the average annual score earned by the claimant, related to the pension in payment or to which the claimant was entitled); of the manner of execution (since it is always executed in money); of the amount (it is established according to the number of entitled descendants); of the period of time during which she is active, in a differentiated manner (for the surviving spouse, corresponding to the period of widowhood, first or second degree disability, lifelong etc. or for children, until the acquisition of the studies, but not more than 26 years or for the entire period of disability). In this way, the state will be required to fulfill a new obligation to pay the survivor's pension, born through the novation of the legal maintenance obligation due by the deceased supporter during his lifetime. The purpose of the legal maintenance obligation, consisting in ensuring the financial resources necessary for the existence and needs of the creditor of the obligation in terms of family relations with the deceased, is assumed by the public pension system in the form of survivor's pension, at the date of death of the insured.

The taking over of the survivor's pension by the public social insurance system takes place under the law, *ope legis*, in the sense that it is not left to the legislator at the discretion and appreciation of the debtor's obligation to pay. Noting the fulfillment of the conditions for granting the survivor's pension, based on the documents shown in Annex no. 8 to the Methodological Norms for the application of Law no. 263/2010, the state is obliged to respond positively and immediately to the application for enrollment in the survivor's pension made by the beneficiary of the survivor's pension.

3. Categories of survivor's pensions

The survivor's pension can be considered as an survivor's *ordinary* pension, whose methods of establishment, payment, as well as those related to the modification, suspension,

resumption, termination and recovery of amounts unduly collected, jurisdiction are subject to the general rules of Law no. 263/2010, or as a special survivor's pension, the regulation of which is subject to the special laws that provide for it.

In other words, the grounds of Section 5 of Law no. 263/2010 legislates the survivor's pension in consideration of the common law (death of the author due to natural conditions, accident, common illness etc.), unlike the other normative acts that regulate particular conditions relative to the survivor's pension.

It has been noted in judicial practice [8] that „when the legislator wanted to grant the survivor's pension as a special pension, he did so explicitly. *Per a contrario*, when this is not regulated by the special law (...) the general rules regarding the survivor's pension remain applicable, as it cannot be calculated by reference to the amount of the special pension '.

By way of example, the special survivor's pension is due to the surviving spouse, minor children, older children until the end of their studies, but not more than 26 years, under the conditions provided by the legislation on the public pension system, calculated from the service pension in payment or to which the claimant was entitled at the date of death, updated, as appropriate, for the following categories of persons:

- the specialized personnel of the courts and of the prosecutor's offices attached to them, the specialized forensic personnel, the personnel holding auxiliary functions of forensic specialty and of the forensic technician within the prosecutor's offices, pursuant to art. 68⁵ para. (9) of Law no. 567/2004 regarding the status of the specialized auxiliary personnel of the courts and of the prosecutor's offices attached to them and of the personnel functioning within the National Institute of Forensic Expertise, with the subsequent modifications and completions;

- the external public auditors within the Court of Accounts, based on art. 16¹ of Law no. 94/1992 on the organization and functioning of the Court of Accounts, with subsequent amendments and completions;

- judges or prosecutors, pursuant to art. 84 para. (1) and (2) of Law no. 303/2004, with subsequent amendments and completions;

- the professional navigating civil aeronautical personnel from the Romanian civil aviation, based on art. 42⁷ of Law no. 223/2007 on the Status of professional civil aviation personnel in civil aviation in Romania, with subsequent amendments and completions;

- members of the Romanian Diplomatic and Consular Corps, pursuant to art. 2 of Law no. 216/2015 regarding the granting of the service pension to the members of the Romanian Diplomatic and Consular Corps, with the subsequent modifications and completions;

- the descendants of the medical staff who died as a result of the medical complications caused by the COVID-19 coronavirus infection, pursuant to art. 4 of Law no. 56/2020 for the recognition of the merits of the medical staff participating in medical actions against COVID-19, with subsequent amendments and completions etc.

As special pensions are an exception to the general law on the granting of pensions in the state public system, their granting taking place under a specific calculation algorithm, taking into account a special status of its beneficiaries, means that, by the will of the legislator, survivor pensions special derogations, in turn, from the principle of contributivity, and the beneficiaries of the special survivor's pension are successors to the special status of their beneficiaries.