

**DECREE-LAW NO. 42/2011
OF 21 SEPTEMBER**

**FOURTH AMENDMENT TO DECREE-LAW NO. 15/2008
OF 4 JUNE (REGULATES THE PENSIONS FOR
COMBATANTS AND MARTYRS OF NATIONAL
LIBERATION)**

Decree-Law no. 15/2008 of 4 June, which regulates the pensions for National Liberation Combatants and relatives of National Liberation Martyrs, established in its initial version that acquisition of the right to such pensions would be effective as from 1 January 2008 irrespective of the time they were applied for. However, the Decree-Law failed to also establish any deadline within which such applications were to take place.

The combination of these two factors raised major difficulties in terms of anticipation of costs to be borne by the State to pay such pensions. This fact originated the revision of that Decree-Law.

In this connection, Decree-Law no. 35/2009 of 2 December introduced deadlines for the application of such pensions. The time of submission of such application coincided with the time of acquisition of the right to pension.

Such amendment, combined with the general rules on temporal enforcement of laws and on safeguarding of acquired rights, prompted the payment of pensions to National Liberation Combatants and Martyrs whose registration was completed in 2008, to be made as follows: a) those whose complete

application processes were submitted up to 31 December 2009, the payments made were effective 1 January 2008; b) for all the others, payment made were effective from the month immediately after the month in which they submitted their respective processes.

Recently, at the time of the discussion of the State Budget for Fiscal Year 2011, this issue was discussed by the National Parliament, which increased the budget of the Transfer Funds for payment of pensions to the Combatants and relatives of the Martyrs of National Liberation in order to ensure the retroactive payments.

To that effect, the Government hereby amends the regime presently in force, thereby attempting to respond simultaneously to concerns raised by the National Parliament and to those that lie at the origin of the afore-mentioned revision.

On the other hand, the Survival Pension provided for in Law no. 3/2006 of 12 April intended for relatives of Martyrs and deceased Combatants did not ensure the livelihood of minor children in case of death of the preferential pension holder, i.e., the survival spouse.

In February of this year, the National Parliament approved Law no. 2/2011 of 23 March, which amends the said regime.

In this connection, it is incumbent upon the Government to adapt the existing regulation in such a manner as to accommodate the new drafting of article 27 of the Statute.

Thus, in developing the legal regime established by Law no. 3/2006 of 12 April, as amended by Law no. 9/2009 of 29 July and by Law no. 2/2011 of 23 March, and pursuant to subparagraphs j) and p) of article 115.1, and of subparagraph d) of article 116 of the Constitution, the Government enacts the following to have the force of law:

Article 1 **Amendments**

Articles 7, 28 and 29 of Decree-Law no. 15/2008 of 4 June shall now read as follows:

Article 7 **(...)**

The right to pensions provided for in the present statute shall be acquired with reference to the month of January of the year in which the recognition referred to in article 3.1 of the present statute occurs, provided that the application is made pursuant to article 36.4 and the conditions for granting the respective pension are met at the time of the application.

Article 28 **(...)**

1. The survival pension shall cease with the death of the sole beneficiary or with the death of all the beneficiaries belonging to the same preferential category.

2. Without prejudice to the provisions of the preceding paragraph, where the holder of the pension referred to in subparagraph a) of paragraph 5 dies and is survived by children of the National Liberation Martyr or Combatant, the pension shall be granted to them until such time as they complete 21 years of age or until they complete their tertiary education.

3. The proceedings referred to in the preceding paragraph shall observe the regime provided for in the present statute for of the remaining processes for survival pension.

Article 29 (...)

Without prejudice to the provisions of the preceding paragraph, the survival pension shall not be liable to succession after the death of the beneficiary.

Article 31 **Request of survival pension**

1. (...)

2. (...)

3. (...)

4. Where the pension applicant is one of the individuals referred to in article 28.2, the following shall be certified:

a) Filiation, by submitting a birth or baptismal certificate; and

b) Where the individual has completed 21 years of age, by submitting his or her registration with an accredited tertiary education institution, with effective attendance, as well as by submitting, on an annual basis, a document bearing proof of registration and presenting, whenever so requested, a document bearing proof of regular school attendance.

Article 2

Production of effects

The regime established in the present statute shall apply retroactively to the legal relations established previously and which are in force insofar as the acquired rights are concerned.

Article 3

Entry into force

The present statute shall enter into force on the day immediately after its publication.

Approved by the Council of Ministers on 17 August 2011.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister for Social Solidarity,

Maria Domingas Fernandes Alves

Enacted on 19 / 9 / 2011

For publication

The President of the Republic,

José Ramos-Horta