

The Basque guaranteed living income and social inclusion scheme as a model for a universal labour guarantee

El régimen Vasco de renta vital garantizada e inclusión social como modelo de una garantía laboral universal

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RESUMEN: El presente estudio define, en primer lugar, el alcance del concepto de Garantía Laboral Universal para incluir la protección social. Para ello, considera las directrices proporcionadas tanto por la Organización Internacional del Trabajo como por la Unión Europea. A continuación, se analiza el Régimen Vasco de Renta Vital Garantizada e Inclusión Social como expresión e ilustración práctica del concepto de Garantía Laboral Universal.

PALABRAS CLAVE: Garantía laboral universal, protección social, asistencia social, renta vital garantizada vasca y modelo de inclusión social.

ABSTRACT: This study first defines the scope of the concept of a Universal Labour Guarantee to include social protection. To do so, it considers the guidelines provided by both the International Labour Organisation and the European Union. The Basque Guaranteed Living Income and Social Inclusion Scheme is then analysed as a practical expression and illustration of the concept of a Universal Labour Guarantee.

KEY WORDS: Universal labour guarantee, social protection, social assistance, Basque guaranteed living income and social inclusion scheme.

I. AN APPROACH TO THE CONCEPT OF A UNIVERSAL LABOUR GUARANTEE

The ILO Centenary Declaration for the Future of Work, adopted on 21 June 2019, stated that one of the means to end poverty and leave no one behind is to build a fair, inclusive and secure future of work that provides full, productive and freely chosen employment and decent work for all (Part I, sections B and C). It established that the ILO must direct its efforts to ensuring equal opportunities and treatment for persons in vulnerable situations, as well as to adopting and expanding social protection systems that are adequate and sustainable, and are adapted to the evolution of the world of work (Part II, section A, subsections viii and xv). To this end, the ILO called upon all member States to work collectively by specifically focusing on a number of issues, while taking into account national circumstances. Their collaborative effort should be directed at:

- (a) Strengthening the capacities of all people to benefit from the opportunities of a changing world of work through universal access to comprehensive and sustainable social protection; and implementing effective measures to support people through the transitions they will face throughout their working lives (Part III, section A, subsections iii and iv).

- (b) Enabling all workers to enjoy adequate protection in accordance with the Decent Work Agenda, taking into consideration (Part III, end of section B):
 - (i) respect for their fundamental rights;
 - (ii) an adequate minimum wage, statutory or negotiated;
 - (iii) maximum limits on working time; and
 - (iv) safety and health at work.

In the light of the provisions of the Declaration, it is worth enquiring how to move forward towards fair, inclusive, and freely chosen employment when there are people who have precarious jobs that keep them on the poverty line and who are used to experiencing periods without employment.

The ILO seemed to provide a solution to this by invoking social protection as a mechanism that allows the transition to decent work, thus ensuring equal opportunities and treatment in the world of work for people in vulnerable situations. In other words, the transitions within working life that may involve shifting to decent jobs from precarious jobs, as happens with the so-called 'working poor', or simply, from non-work situations, can be covered through comprehensive and sustainable social protection, which can be supplemented at the same time by certain effective measures to help people cope with these transitions.¹

The reference made by the ILO to ensuring adequate protection for all workers, which expressly

¹ The Opinion of the European Economic and Social Committee on 'For a European Framework Directive on a Minimum Income', of 20 February 2019 (2019/C190/01), referred to the increase in the poverty rate since the outbreak of the economic crisis in the wake of the 2008 financial crisis, and differentiated between the long-term unemployed and the working poor (section 1.2). This is a clear example of the need to offer social protection to both population groups.

includes four major indicators, should be linked to the idea of establishing a Universal Labour Guarantee, as contained in the Global Commission report on the Future of Work *Working for a brighter future* (2019).

While the ILO Centenary Declaration did not expressly refer to this guarantee, it included its four major indicators. However, the Global Commission on the Future of Work introduced an important nuance, as it stated that *'the Universal Labour Guarantee provides a protection floor which can be raised through collective agreements or laws and regulations. It offered a starting point from which to build inclusive labour market institutions'*.² Put another way, social protection can be seamlessly integrated into the major indicators to be considered for the adequate protection that should be afforded to all workers according to the ILO Centenary Declaration.³

Furthermore, the ILO Global Commission on the Future of Work offered some corroborating evidence. When referring to the notion of a Universal Labour Guarantee, they noted that *'the employment relationship remains the centrepiece of labour protection'*.⁴ This highlighted the importance of work in providing the resources that every person requires for a decent life.

Nevertheless, since employment is a scarce commodity, the statement by the Global Commission that *'social protection is a human right and essential to enable workers and their families to navigate future transitions (...), provides workers with freedom from fear and insecurity, and helps them to participate in labour markets (...), [and] is a productive factor helping people and economies prosper'*⁵ takes on full meaning.

It is therefore not surprising that the Commission concluded that social protection systems must be strong and responsive, in order to provide support to meet people's needs over the life cycle.⁶

This is precisely the reason why the ILO Report declared that *'governments need to guarantee universal social protection from birth to old age,'* as the aim is to offer *'a basic level of protection to all in need'*.⁷

In light of the above, with regard to the idea of transitions, it has been specifically noted that social protection systems should crucially be able to articulate economic and welfare support, as well as training for people without employment or with precarious jobs that are below the threshold of poverty, in order to ensure their entry into the job market and obtain and maintain decent work. In other words, to enable them to be independent without having to depend on public benefits to survive.

² ILO (2019), p. 39.

³ In this sense, Vega Ruiz stated that *'the proposed list may be debatable at the national level, since, for example, the Guarantee does not include issues such as social protection (...)'*. VEGA RUIZ (2019), p. 98.

⁴ ILO (2019), p. 38.

⁵ ILO (2019), p. 35.

⁶ ILO (2019), p. 35.

⁷ ILO (2019), p. 35.

These measures should be temporary, transitory and short term, as their ultimate objective is decent work for recipients.

This undoubtedly requires giving meaning and scope to the social protection required. ILO Recommendation No. 202, on social protection floors, of 14 June 2012, is an essential instrument to achieve this aim.

However, it should be noted that this Recommendation referred to social protection floors as part of comprehensive Social Security systems (Preamble). In other words, the Recommendation did not differentiate between social protection and Social Security, since it aimed to extend the traditional scope of application of Social Security Systems to include everything that can be considered social protection.

Whereas this broad conception of Social Security clashes with the Spanish constitutional model of Social Security, to be discussed later (see section 2.1 below), ILO Recommendation No. 202 serves as grounds to move towards to the proposed objective and establish how the Basque Guaranteed Living Income and Social Inclusion Scheme can be deemed to be in accordance with the Spanish Constitution.

Even the Preamble of ILO Recommendation No. 202 provided a link between social protection and employment promotion, considering both of them to be '*an economic and social necessity for development and progress*'. Likewise, the principles that should inspire social protection notably include '*coherence with social, economic and employment policies*' (paragraph 3, section 1).

In accordance with this link, firstly social protection should materialise into nationally defined sets of basic social security guarantees to ensure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion (paragraph 2). One of these guarantees involves ensuring effective access to goods and services defined as basic, through benefits in cash or in kind (paragraph 9), with the aim that recipients can live in dignity (paragraph 8, section b).⁸ In addition, this should be a perfect subjective right and, therefore, it is enforceable whenever the circumstances prescribed by national law concur (paragraph 3, section b) rather than being a mere prospect that depends on whether there is sufficient budgetary provision for that right to be delivered.

Secondly, social protection should be complemented by active labour market policies, including vo-

⁸ This was also included in point 14 of Commission Recommendation (EU) 2017/761 of 26 April 2017 on the European Pillar of Social Rights (OJ L 113, 29.4.2017).

In accordance with the Opinion of the European Economic and Social Committee (EESC) on 'For a European Framework Directive on a Minimum Income' of 20 February 2019 (2019/C 190/01), benefits in kind could be implemented in the form of 'access to health care, housing, mobility, family support and utilities'. This is based on the understanding that the decent minimum income 'must fit into a comprehensive approach to people's various needs that is not limited to mere subsistence or to a poverty rate calculated from the median income and which in reality does not, in certain countries, reflect essential needs'. Hence, such minimum income 'must therefore incorporate all needs in terms of standard of living, housing, education, health and culture so that people who are excluded from the labour market and trapped in poverty are given the best conditions for integration/reintegration' (paragraphs 3.2.1 and 3.2.2).

cational training or other measures aimed at employability (ILO Recommendation No. 202, paragraph 14, section d, in relation to paragraph 10, sections b and c).

A universal labour guarantee results from bringing both aspects together, that is, social protection and the promotion of employment. The next section analyses how this can take place by using the Basque Guaranteed Living Income and Social Inclusion Scheme as a model. It should be clarified, however, that the Universal Labour Guarantee advocated in this study is intended both for people with precarious jobs –or working poor– and for unemployed people, provided that they are below the poverty threshold. This is aimed to cover their basic needs for a decent life and, based on this, to ensure that they are given true options for their incorporation into the labour market within decent jobs, with a view to their personal fulfilment and growth, and to their independence from any public support.⁹

II. THE BASQUE GUARANTEED MINIMUM INCOME AND SOCIAL INCLUSION SCHEME

A. Legal framework and jurisdictional authority within the Spanish Constitution

The Basque Guaranteed Living Income and Social Inclusion Scheme draws on the full authority that the Autonomous Region of the Basque Country has in matters of Social Assistance, pursuant to Article 10.12 of Organic Law 3/1979, of 18 December, of the Statute of Autonomy for the Basque Country, commonly known as the Statute of Gernika.¹⁰ This allocation of full authority has its *raison d'être* in Article 148.1.20 of the Spanish Constitution, which establishes that Autonomous Regions have authority over Social Assistance matters.

In this regard, Ruling 146/1986 of the Spanish Constitutional Court, issued on 25 November 1986, established that *'following the guidelines of some international instruments such as the European Social Charter, what should be understood by social assistance, in the abstract sense, includes protection procedures outside the Social Security System, with its own characteristics (...)'* (Point of Law 2).

Such social assistance is characterised by potentially encompassing all members of the population and by a tendency to protect various social needs of the economically weak.

Referring to its own characteristics takes on meaning when the constitutional model of Social Security is considered: *'the public authorities will maintain a public Social Security scheme for all citizens, which guarantees sufficient social assistance and benefits in situations of need, especially in case of unemployment'* (Article 41).

⁹ This is also an idea contained in the Opinion of the European Economic and Social Committee (EESC) on 'For a European framework Directive on minimum income', of 20 February 2019 (2019/C 190/01).

¹⁰ Official Journal of the Basque Country (BOPV) of 22 December 1979, no. 306.

This provision tacitly mentions the welfare-based nature that is partly the role of the Social Security, by establishing the mandate that Social Security must be ‘for all citizens’. In other words, it is stated that, in addition to contributory protection such as has been applied since the inception of Social Security schemes in Spain, forms of non-contributory protection must also be articulated. This is how non-contributory benefits¹¹ were established in Spain, pursuant to Law 26/1990, of 20 December.

Moreover, the fact that ‘*sufficient social assistance and benefits must be guaranteed in situations of need*’ entails explicitly recognising that social assistance is also internal to the Social Security system. The different characteristics of the form of social assistance which is external to Social Security are: that coverage is limited to those subjects protected by the public Social Security scheme, that is, both subjects protected on a contributory and a non-contributory basis; and that structurally it complements the benefits included in the two branches of protection of the public Social Security system.

In short, social assistance is included in the Spanish Social Security System both through non-contributory benefits that are alternative to those previously determined contingencies protected by contributory benefits; and through a form of Social Assistance that is called internal or inherent to the Social Security, on the terms set out above.

Both forms of Social Assistance are characterised by having need status as their object of protection, namely subjective, real and effective lack of financial resources;¹² and by the fact that protection is subject to the interested party providing evidence of need and meeting the requirements laid down in applicable laws and regulations. However, there is an important difference between the two: while non-contributory benefits are a subjective right, enforceable by those who fulfil the eligibility requirements, internal social assistance is discretionary (see Article 64.2 of Royal Legislative Decree 8/2015, of 30 October, which approved the revised text of the General Social Security Act).¹³

It has also been considered that the form of social assistance that is internal to Social Security currently plays a limited role, due to the lack of budget provision and to the devolution of powers over social assistance and social services matters to the Autonomous Regions, based on Article 148.1.20 of the Spanish Constitution.¹⁴

On the contrary, non-contributory benefits have become the preferred route of assistance benefits granted by Social Security, to the extent that, due to the regulation of the Guaranteed Minimum Income (GMI) under Royal Decree-Law 20/2020, of 29 May,¹⁵ ‘*the provision of assistance benefits by the Social Security cannot be questioned and the possible functional meaning of social assistance in the Autonomous Regions should be rethought and become subsidiary and complementary to Social Security*’.

¹¹ SPANISH OFFICIAL JOURNAL (BOE) no. 306 of 22 December 1990.

¹² MANRIQUE LÓPEZ (1984), p. 300.

¹³ SPANISH OFFICIAL JOURNAL (BOE) of 31 October 2015, no. 261.

¹⁴ AGUILERA et al (2005), p. 83.

¹⁵ SPANISH OFFICIAL JOURNAL (BOE) no. 154, of 1 June 2020.

This is based on the understanding that the form of social assistance that is external to the Social Security System and is under the authority of the Autonomous Regions *'will cover those excluded marginalised sectors of rescaled Social Security assistance and shall grant cash benefits to compensate for social needs not covered by Social Security (subsidiarity) and to complement or improve the cash benefits granted by Social Security (complementarity)'*.¹⁶

The GMI was created with the aim of ensuring a certain level of income for all households in a situation of vulnerability (section II of the Foreword to Royal Decree-Law 20/2020), in order to ultimately reduce poverty, especially extreme poverty (section V of the Foreword to Royal Decree-Law 20/2020). The Guaranteed Minimum Income is a non-contributory benefit (pursuant to Article 2.2 of Royal Decree-Law 20/2020).

Given the regulation of the GMI, the question arises as to how it can be made compatible with the Basque Guaranteed Living Income and Social Inclusion Scheme.

This question has been resolved by making the GMI compatible with Basque Guaranteed Living Income benefits (Section V of the Foreword, Article 7.1.c, Article 8.2 and Article 18.1.e.1st of Royal Decree-law 20/2020).

Having clarified any doubts that may arise after the entry into force of the GMI regarding the legal framework and jurisdictional authority of the Basque Guaranteed Living Income and Social Inclusion Scheme, this Scheme will be analysed below.

B. The characteristics of the Basque Guaranteed Living Income and Social Inclusion Scheme

The starting point of the Basque Guaranteed Living Income and Social Inclusion Scheme can be found in Law 10/2000, of 27 December, on the Charter of Social Rights.¹⁷ As set out in its Foreword, the Charter of Social Rights was adopted in order to develop the provisions of Article 9.2 of the Statute of Gernika, namely, that the Basque public institutions, within the scope of their authority, must guarantee the proper exercise of the fundamental rights and duties of citizenship established in the Spanish Constitution; further a policy aimed at improving living and working conditions; work towards increased employment and economic stability; promote conditions and remove obstacles to ensure that the effective and real freedom and equality of the people and the groups to which they belong; and facilitate the participation of all citizens in the political, economic and cultural life of the Basque Country.

With this objective in mind, the Charter of Social Rights sets out universal rights to be effectively enforced and guaranteed by the competent Basque authorities.

¹⁶ SALA FRANCO AND MARTÍN-POZUELO LÓPEZ (2020), p. 22.

¹⁷ OFFICIAL JOURNAL OF THE BASQUE COUNTRY (BOPV) of 30 December 2000, no. 249.

More specifically, as established in Article 1 of the Charter of Social Rights, referred to its purpose, two aims are sought by the declaration of these rights: to enable all citizens to access the labour market and to guarantee a basic income so that they can exercise their citizenship rights. The Charter clarifies that these rights will be developed and exercised as laid down in the specific provisions applicable to each of them.

The 'guiding principles' regulate the link between the two aims outlined above in such a way that they cannot be conceived separately. According to Article 2 of the Charter of Social Rights: "*The effective exercise of citizenship rights involves having sufficient financial resources for people to be able to lead an autonomous, decent, quality life, which in turn depends on their access to the labour market in order to achieve full social integration*". It is further emphasised that "*taking into account that there are people who have been excluded from the labour market for multiple reasons, in addition to the measures aimed at facilitating their entry into work, it is deemed necessary to establish a basic income as an additional mechanism for the redistribution of wealth*". Furthermore, a principle is established whereby employment policies must promote "*access to decent employment for all citizens*".

The basic social rights recognised for all citizens of the Basque Country include the right to sufficient social protection (Article 3.a).

It is precisely through the right to sufficient social protection that a basic income is intended to be guaranteed for people who are in a situation of social exclusion. However, eligible applicants will receive the guaranteed basic income subject to their participation in social and labour market inclusion programmes.

The open and flexible nature of the Charter of Social Rights means that the scope of the applicable regulations can be modulated at any time to provide sufficient social protection. This can be done by combining social and labour market inclusion and basic income programmes, and even by incorporating additional social protection means to guarantee other rights considered basic in the Charter, such as the right to decent and adequate housing.

Based on the full authority vested in the Autonomous Region of the Basque Country in matters of social assistance external to Social Security, the Basque Guaranteed Living Income and Social Inclusion Scheme has been formally recognised "*as an autonomous scheme forming a coherent and integrated whole, capable of using different management procedures which are presently included within social services and employment services, but may be partly or fully covered by other areas in the future, if deemed appropriate*",¹⁸ as set out in section II of the Foreword to Law 18/2008, of 23 November, for Guaranteed Income and Social Inclusion.

The starting point for the implementation of the Scheme was the verification that "*the source of most of the problems related to poverty and lack of well-being are associated with precarious employment,*

¹⁸ OFFICIAL JOURNAL OF THE BASQUE COUNTRY (BOPV) no. 17, of 26 January 2009.

manifested not only in the high rates of job insecurity but also in a substantial body of people with low earnings” (section I of the Foreword).

For this reason, two significant new features were incorporated that differed from the previous model, which was regulated by Law 12/1998, of 22 May, against social exclusion.^{19 20}

Firstly, the Guaranteed Living Income was articulated into two different types based on two basic criteria: whether there is household income from employment;²¹ and the kind of connection that each of the types has with the active inclusion programme. Therefore, the two types of Guaranteed Living Income are:

(a) Basic income for social inclusion and protection, which is fundamentally aimed at people and households who lack economic resources of their own from employment, and whose monthly income is below the basic income amount for inclusion and social protection. This benefit or basic income is accompanied by support for social and/or labour market inclusion within specific programmes, unless the appropriate social service, after carrying out a needs assessment, decides otherwise.

(b) Income to supplement earnings from employment, which is intended for people who have income from their job whose monthly income is below the basic income amount for inclusion and social protection. This supplementary benefit or income is also associated with the provision of specific support aimed at improving the recipients’ work situation through employment services and of other support targeted at social inclusion, if the service deems it appropriate or necessary.

As established in Article 18, the shift from one type of income to the other resulting from a change of status of the recipient takes place automatically, without it being necessary to specifically terminate the first type to access the second. It should be noted that both types of income are mutually incompatible (Article 58.1), and they are also incompatible with the emergency social benefit provided to cover rental costs (Article 58.2).

Additionally, a supplementary housing benefit was introduced²² to provide access to housing for people who are most in need, that is, recipients of the Guaranteed Living Income (in either of its two forms). Therefore, this benefit is compatible with the Guaranteed Living Income.

The two types of Guaranteed Living Income and the supplementary housing benefit were set out as subsidiary benefits, which are additional and complementary to any statutorily provided cash sup-

¹⁹ OFFICIAL JOURNAL OF THE BASQUE COUNTRY (BOPV) no. 105, of 8 June 1998.

²⁰ For a detailed study of this rule, see HERNÁNDEZ MANRIQUE (1999), pp. 736-751.

²¹ The definition of household is that contained in Article 9.

²² The applicable definition of housing or accommodation is that contained in Article 10.

port and benefits for which the recipient or any household member may be eligible. For this reason, these benefits are regarded as 'the last social safety net and, consequently, cannot be supplemented by other benefits or support' (section III of the Foreword).

Likewise, both are de jure cash benefits, without prejudice to the fact that the Scheme also includes subsidised financial support through the so-called emergency social benefits, which are intended for those people whose resources are insufficient to meet specific ordinary or extraordinary expenses that are necessary to prevent, avoid or alleviate situations of social exclusion (Article 6.3).

Article 3 of the Scheme, referring to the basic governing principles, is a key element to the Scheme, as it explains its philosophical and conceptual foundations and its basic guidelines.

The main principles notably include the 'double right' principle, which involves recognising both the right to have economic means to meet the basic needs of life when a sufficient amount cannot be obtained from employment or from various social protection and assistance schemes; and the right to receive personalised support for labour market and social inclusion through compulsory participation in an active inclusion programme. This differentiation of rights entails the assumption that only people who have a problem related to insufficient economic resources and income level for reasons beyond their control are entitled to cash benefits or basic income, even if they are not in a situation of social exclusion and therefore do not require support for inclusion.

Another central principle is considering employment as a tool for social inclusion, on the understanding that it is necessary to reduce unemployment rates among the most disadvantaged groups and the high inactivity rates among certain population sectors. Therefore, while it must be recognised that for some people the objective of labour market inclusion is very remote, and that these people deserve appropriate services and benefits, the general underlying objective for the regulation is to facilitate the entry into the labour market of the greatest possible number of people and to restore the applicant's capacity for suitable employment in the labour market as a factor of social inclusion.

In line with these principles, the basic components of the Scheme are defined as follows (section IV of the Foreword, in relation to Articles 5, 6 and 7):

(a) Cash benefits, which include de jure cash benefits related to the two forms of Guaranteed Living Income and supplementary housing benefit, but also financial support in the form of the so-called emergency social benefits.

(b) Instruments aimed at social and labour market inclusion, which include, on the one hand, an active inclusion programme as a basic device for articulating a broad range of actions, with special emphasis on training and preparation for labour market inclusion; and, on the other hand, specific intervention measures, whether schemes, services or centres, organised by the different social protection areas, in particular, social services, employment services, health services and housing services, which can be applied together within an active inclusion programme.

The following sections will analyse the main characteristics of each of the components of the Basque Guaranteed Living Income and Social Inclusion Scheme.

C. Cash benefits

1. Guaranteed Living Income

This is regulated in Law 18/2008 and developed in Decree 147/2010, of 25 May, on the Income Guarantee Income.²³

This benefit is a subjective right that is aimed at members of a household who do not have sufficient income to meet those expenses associated with their basic needs and derived from a process of social or labour market inclusion (Article 11 of Law 18/2008).

The same legal rules apply to the two types of benefits described above, namely, the basic income for inclusion and social protection and the income that supplements earnings from employment. This takes place under the umbrella of the so-called Guaranteed Living Income.

Initially, eligibility for the Guaranteed Living Income is linked to the applicant being party to an active inclusion programme, in order to facilitate their social and labour market inclusion. But this is not required of households made up exclusively of beneficiaries of retirement pensions and of permanent disability, severe disability, and non-contributory disability pensions (Article 15.1 of Law 18/2008).

In addition, when the beneficiary or other members of their household require actions aimed at social inclusion that must be provided by the social services, housing, health or education systems, the active inclusion programme must contain both the commitment on the part of the beneficiary that they will comply with the social inclusion actions designed by the different systems and their right to access these actions (Article 15.2 of Law 18/2008).

To be eligible for the Guaranteed Living Income, the following requirements must be met (pursuant to Article 16 of Law 18/2008):

- (a) Be a household on the terms of Articles 5 and 9.1 of Decree 147/2010.

- (b) Be registered and an actual resident in any municipality of the Autonomous Region of the Basque Country at the time of filing the Guaranteed Living Income application, in either of its two forms, and having been registered and having been an actual resident in any municipality of the Autonomous Region of the Basque Country for at least one year before the date of submission of the application. If the applicant does not fulfil the requirement of having been registered for one year before the application date, they will be required to have been regis-

²³ OFFICIAL JOURNAL OF THE BASQUE COUNTRY (BOPV) no. 114, of 17 June 2010.

tered and to have been an actual resident in any municipality of the Autonomous Region of the Basque Country for five consecutive years within the immediately preceding ten-year period.

(c) If prior to the application date the applicant has not been registered in any municipality of the Autonomous Region of the Basque Country for at least three years, they must provide evidence of having been in paid employment for at least five years, except for those people who receive a public retirement pension or have been victims of domestic violence.

(d) Not have sufficient resources, according to whether they meet the following requirements:

(d.1) Have a monthly income that is lower than the applicable monthly basic income for inclusion and social protection based on the number of members of the household.

(d.2) Not have any real property except for the regular dwelling, provided that it does not have an exceptional value on the terms established by Article 9.3.b) of Decree 147/2010.

(d.3) Have money and/or securities worth up to four times the annual amount of the Guaranteed Living Income they would be eligible for in the event of total lack of resources, based on the total number of household members.

(e) Be over 23 years old. The age requirement is not applicable to those people over 18 years old who meet the rest of the requirements and are in any of the situations specified in the applicable regulations.

(f) Not be permanent users of a publicly funded social, healthcare or hospice residential service.

(g) If the applicant has income from work under an employment contract, not have reduced working hours or a similar situation, except in exceptional circumstances.

Once the applicant's eligibility for the Guaranteed Living Income has been confirmed, the beneficiary must comply with the following obligations:

(a) Apply the cash benefits to cover the basic needs of all members of the household and, where appropriate, to cover expenses derived from their social and/or labour market inclusion process.

(b) Exercise any rights to any cash benefits to which the beneficiary and the members of their household are entitled while receiving the Guaranteed Living Income.

(c) Responsibly manage the available resources in order to avoid aggravating the economic situation or the situation of exclusion.

(d) Provide schooling for, and the means to ensure the effective attendance to school of, minors in their charge.

(e) Not engage in begging, allow other members of the household to beg, or force them to beg.

(f) Notify the authorities of any events that may result in the modification, suspension or termination of their right to receive the benefit, on the terms established in Article 12.1.f) of Decree 147/2010.

(g) Notify the authorities of any change of address, on the terms established in Article 12.1.g) of Decree 147/2010.

(h) Return any undue amounts and/or any benefits unduly received.

(i) Appear before the authorities and collaborate with them when required to do so, without prejudice to the specific criteria provided for in the active inclusion programme.

(j) Both the beneficiary and the members of their household who are of working age must be available to carry out work for the community when this may be extraordinarily required by the authorities through volunteering organisations within the region; this shall not apply to persons with total disability pensions; to people under 23 years of age who are in formal education; or to people who, in the opinion of LANBIDE (the Basque Employment Service), are not in a position to carry out work for the community.

In addition to these obligations, all beneficiaries of the inclusion and social protection form of the Guaranteed Living Income must comply with the following obligations (Article 19 of Law 18/2008):

(a) Negotiate, participate in and comply with an active inclusion programme, including signing an agreement to that effect. Households composed only of people who are not capable of entering the labour market are exempt from this obligation, although they may be provided with support aimed at their social inclusion when it is deemed appropriate based on the needs assessment conducted by the corresponding social service.

(b) Both the beneficiary and the members of their household who are of working age must be available for employment.

This availability includes a commitment to remain continuously registered as job seekers; not to reject a suitable job in accordance with current legislation; not to voluntarily withdraw permanently or temporarily from employment and not to take work leave unless with extreme just cause.

Likewise, all beneficiaries of the Guaranteed Living Income in the form of income to supplement earnings from work must comply with the obligation to negotiate, sign and comply with an active inclusion agreement aimed at improving employment. Consequently, they cannot voluntarily leave

employment, whether permanently or temporarily, or take a leave of absence unless with external just cause.

The amount of the Guaranteed Living Income is set according to different criteria, depending on whether it is basic income for inclusion and social protection or income to supplement earnings from work (Article 20 of Law 18/2008).

Regarding the basic income for inclusion and social protection, the following criteria must be considered:

(a) The beneficiary and all the members of the household will be taken into account in terms of setting the amount applicable to each household.

(b) The benefit monthly amount applicable to each household will be the difference between the amount of the minimum income guaranteed by the benefit for households such as that of the applicant and the income available in their household. For this purpose, the guaranteed minimum income will be defined as percentages of the minimum wage in force at the time of application; the amount of the guaranteed minimum income shall not exceed 125% of the minimum wage.

In order to determine the disposable income of the household, the income of all its members will be taken into consideration, in accordance with Article 52 and following of Law 18/2008.

(c) There is a cash subsidy to complement the basic income for social inclusion and protection aimed at single-parent households; for this purpose, single-parent households are those composed of the mother or the father with one or more dependent children, where the mother or the father does not have a marital or similar relationship at the time of application.

As regards the income to supplement earnings from work, in addition to the criteria set for the basic income for inclusion and social protection, the following criteria must be considered: in order to increase the incentive for employment, some percentages of income from self-employment or employment earned by the beneficiary or by the members of the household will be excluded from the calculation. This incentive will be temporary, unless there is an explicit opinion from the employment services recommending an extension.

The beneficiary of the Guaranteed Living Income will be entitled to it for as long as they remain eligible and the aforementioned requirements are fulfilled. Thus, in principle, they are entitled to the benefit for a 2-year period, but this can be extended on a 2-year basis as long as the beneficiary remains eligible and the conditions for access to the benefit (be they economic or otherwise) continue to be met (Article 23.1 of Law 18/2008).

2. Supplementary housing benefit

This is regulated by Law 18/2008 and developed by Decree 2/2010, of 12 January, on supplementary housing benefit.²⁴

The supplementary housing benefit is a subjective right consisting in a cash benefit to complement the Guaranteed Living Income, which is aimed to cover usual housing or accommodation needs. These needs are rental expenses in any of its forms, such as leasing, subletting, co-renting, lodging and renting rooms (Articles 29 and 30 of Law 18/2008, in relation to Article 4 of Decree 2/2010).

This benefit is subsidiary and complementary to any types of economic resources and cash benefits related to the use and maintenance of the regular housing or accommodation needs of the beneficiary and their household members, according to the applicable law (Article 31.2 of Law 18/2008).

In addition, those people who have a rental or property deemed to be social housing on the terms provided in the legislation in force at the time of application, and those who already owned property are not eligible for supplementary housing benefit, except for those people who have been forced to leave their usual home due to separation or divorce or other causes, such as eviction (Article 32 of Law 18/2008, in relation to Article 5.2 of Decree 2/2010).

All beneficiaries of this housing benefit must comply with the following obligations (pursuant to Article 34 of Law 18/2008):

- (a) Apply the benefit received to the purpose for which it was granted.
- (b) Assert any economic right and claim any cash benefit for which they are eligible before submitting the application and while receiving the benefit.
- (c) Notify the authorities of any events occurred in relation to the fulfilment of the requirements for benefit eligibility, on the terms established in Article 7.1.c) of Decree 2/2010.
- (d) Notify the authorities of any change of address, on the terms established in Article 7.1.c) of Decree 2/2010.
- (e) Return any undue amounts and any benefits unduly received.
- (f) Appear before the authorities and collaborate with them as required.
- (g) Fulfil any obligations arising from their status of beneficiaries of the relevant type of the Guaranteed Living Income.

²⁴ OFFICIAL JOURNAL OF THE BASQUE COUNTRY (BOPV) no. 11, of 19 January 2010.

Regarding the setting of the maximum amount payable to each beneficiary of this right, the applicable rules are those established by Articles 8 and following of Decree 2/2010. The maximum amount payable to each applicant for each of the expenses provided by the law is limited by the purposes for which the benefit was claimed, which must be appropriately substantiated (Article 35.2 of Law 18/2008).

In addition, LANBIDE (the Basque Employment Service) will verify the existence of a real need in relation to housing expenses before granting the benefit (Article 36 of Law 18/2008).

3. Emergency social benefits

These are regulated by Law 18/2008 and developed by Decree 4/2011, of 18 January, on Emergency Social Emergency Benefits.²⁵

These are non-periodic, subsidiary, cash benefits intended for those people who are part of a household whose resources are insufficient to meet specific ordinary or extraordinary expenses, which are necessary to prevent, avoid or alleviate social marginalisation situations (Article 44.1 of Law 18/2008). More specifically, these expenses include (Article 44.2 of Law 18/2008):

- (a) Expenses necessary for the use and maintenance of the regular home or accommodation.
- (b) Expenses related to the primary needs of one or more people in the household, such as clothing, education and training, and health care not covered by the different public systems.
- (c) Expenses related to prior debts resulting from any of the expense items indicated in sections a) and b) or from incurring expenses necessary to meet basic living needs.

These benefits must be used only for the purpose for which they have been granted. They are also additional and complementary to other types of cash resources and social benefits set out in applicable legislation that the beneficiary, any members of their household or other people residing in the same home or accommodation may be eligible for. These subsidies are subject to the availability of sufficient funds in the General Budget of the Autonomous Region of the Basque Country. However, the Basque public authorities must annually allocate sufficient amounts to meet the expenses related to these benefits (Article 45 of Law 18/2008).

These benefits are incompatible with the Guaranteed Living Income.

To be eligible for these benefits, the following requirements must be met (Article 46 of Law 18/2008):

- (a) Be registered and an actual resident in any municipality of the Autonomous Region of the Basque Country at the time of submitting the application and having been registered and hav-

²⁵ OFFICIAL JOURNAL OF THE BASQUE COUNTRY (BOPV) of 9 February 2011, No. 27.

ing been an actual resident in any municipality of the Autonomous Region of the Basque Country for at least six months before the date of submission of the application. If the applicant does not fulfil the requirement of having been registered for six months before the application date, they will be required to have been registered and have been an actual resident of any municipality of the Autonomous Region of the Basque Country for five consecutive years within the immediately preceding ten-year period.

(b) Be a household on the terms established in Article 5.1.b) of Decree 4/2011.

(c) Not be a recipient of the supplementary housing benefit, but only in relation to the emergency social benefits to cover the aforementioned housing expenses.

(d) Be 18 years of age or older. This age requirement is not applicable to those people over 18 years old who meet the rest of the requirements and are in any of the situations specified in the applicable regulations.

(e) Not having sufficient resources with which to meet the aforementioned expenses related to the members of their household. As a general rule, it is considered that sufficient resources are not available when the following conditions are met:

Not having obtained income higher than 150% of the maximum amount of the basic income for inclusion and social protection that the applicant would have been eligible for based on the number of household members in the previous year or in the period of time for which the benefits are applied for, according to Articles 52 and following of Law 18/2008. Without prejudice to the foregoing, in the cases set out by the applicable regulations, the income of other people who share a home or accommodation with the applicant may also be considered for the purpose of this benefit.

(f) Not having assets whose value is greater than four times the annual amount of the basic income for inclusion and social protection that they may be eligible for in the event of total lack of resources, based on the total number of related persons. The value of the assets will be determined in accordance with the provisions of Article 52 and following of Law 18/2008.

(g) Be registered as housing applicants in the Etxebide service of the Basque Housing Department in cases where the emergency social benefit is used to cover rental expenses.

Once the emergency social benefits have been granted, the beneficiaries have the following obligations (pursuant to Article 48 of Law 18/2008):

(a) Apply the benefits received to the purpose for which they were granted.

(b) Assert any right or claim any cash benefit they may be eligible for, both prior to the application and while they receive the benefits.

(c) Notify the authorities of any events occurred in relation to the fulfilment of the requirements for eligibility for benefits, on the terms set out in Article 7.1.c) of Decree 4/2011.

(d) Notify the authorities of any change of address, on the terms established in Article 7.1.c) of Decree 4/2011.

(e) Return any undue amounts and any benefits unduly received.

(f) Appear before the authorities and collaborate with them as required.

In order to set the amount applicable to each applicant for each of the specific expenses mentioned above, the following criteria are taken into account (see Article 49 of Law 18/2008):

(a) The maximum amount applicable to each applicant for each of the specific expenses foreseen will be determined by:

(a.1) The level of resources of the applicant, of the other members of their household and of any other people who could also be eligible for these benefits.

(a.2) The amount of the specific expenses incurred or to be incurred.

(b) The maximum applicable amount will be set based on:

(b.1) The budget availability.

(b.2) The assessment made by social services regarding the actual need for the expense, its importance to contribute to the inclusion of people in need, and its level of priority.

In addition, the maximum amounts established in Articles 8 and following of Decree 4/2011 must be met and cannot be exceeded for each of the specific expenses.

Emergency social benefits will be granted after the social services have confirmed that there is a genuine need and when there is funding available for that purpose (Article 50.1 of Law 18/2008). The competent body must also carry out reviews every six months to verify if the reasons that resulted in the need for benefits persist. For this purpose, the beneficiaries may be required to appear before the authorities and collaborate with them (Article 51 of Law 18/2008).

D. Social and labour market inclusion instruments

1. Specific social inclusion schemes

These are programme documents in which the parties establish which specific social and labour market actions are necessary to prevent the risk or the situation of exclusion of the beneficiary and of all

the members of their household, and to facilitate their social and labour market inclusion (Article 65 of Law 18/2008).

The parties to these documents are the Basque Government, through LANBIDE (the Basque Employment Service), in collaboration and in consultation with local government social services; and the people who are eligible because they are at risk or in a situation of exclusion (Article 66 of Law 18/2008).

Specifically, according to Article 66 of Law 18/2008, active inclusion agreements can be entered into with:

(a) Persons who apply and are eligible for the Guaranteed Living Income, in any of its forms, when the beneficiary or one of the members of their household is of working age, unless they are beneficiaries of absolute permanent disability, severe disability or non-contributory disability pensions.

(b) Persons who, despite not being eligible for, or beneficiaries of, any type of the Guaranteed Living Income, require a specific intervention or action aimed at their entry in the labour market and so request; they may be persons entitled to unemployment benefit or who do not have access to any type of cash benefit.

2. Social and labour market inclusion programmes and services

The objective of social and labour inclusion of people who are at risk or in a situation of exclusion within the Basque Guaranteed Living Income and Social Inclusion Scheme entails the development of employment-related programmes, services or centres which make it possible to implement actions aimed at labour market inclusion under active inclusion agreements; this also involves establishing programmes, services and centres in other areas of social protection, particularly in social services, health services, the education system and housing services (Article 75 of Law 18/2008).

In this way, pursuant to Article 77 of Law 18/2008, it is considered that the measures aimed at promoting and facilitating the entry into the labour market of people or groups who, due to their characteristics, cannot access it on equal terms or have difficulties in entering the labour market, may include: occupational training; labour market intermediation; support in the process of entering the labour market; supported employment; support for the creation and maintenance of social inclusion businesses; support for the opening of special employment centres to people at risk or in a situation of exclusion; promoting the hiring of people in a situation of exclusion from the ordinary labour market; introduction of social clauses in public contracts that give priority to businesses that hire people in a situation of exclusion or in process of entering the labour market; support measures within family and work life balance policies; and promotion of financing instrument plans aimed at facilitating labour market entry.

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