

THE LEGAL AND FINANCIAL CONSEQUENCES OF THE IRREGULAR PRACTICES CONCERNING THE REMUNERATION IN THE INSTITUTIONS FINANCED FROM THE LOCAL BUDGETS, REVEALED BY THE EXTERNAL PUBLIC AUDIT

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Abstract:

The multiple legal actions in the last three years, aimed at achieving certain wage differences by the staff employed in the public sector (differences which were not granted by the employer or granted, but whose payment stopped following the Court of Accounts audit), raised at least two categories of problems. First it is the economic aspect, given the considerable additional value of claims in question. Then, the legal approach of the arising implications is a quite difficult one. The executive is required to identify the financial source, without affecting the foreshadowed budget balance and, generally, the original calculation of the macro multiannual financial plan, given the objective of adopting the Euro currency (2014). The solution adopted: regulations on the time grading of payments, by Government Emergency Ordinance: 2012 (34%), 2013 (33%) and 2014 (33%).

Key words: wage system, contractual personnel, promissory notes, public administration, legal framework.

JEL classification: G21

1. Contextual elements previous to the adoption of the law on the unitary remuneration of staff paid by public funds

The ambiguous regulatory system in the public wage sector, maintained until the adoption of unitary law, plus an inadequate control, especially concerning the preventive financial control, has generated an overwhelming number of collective disputes regarding the pecuniary differences for the previous years. Their court settlements, in many cases, in favor of the employees of the public sector, placed the Ministry of Public Finance (MPF) in the situation of not being able to honor the payments stipulated in these final and irrevocable court orders. Sometimes the amounts in question exceeded the budget amount for salaries of the current year in some of the institutions whose staff legitimately required the enforcement procedure.

Including today, according to the latest government data, numerous enforcement actions are established against the MPF by bailiffs offices [1], creating a serious precedent for the introduction of new similar actions. We remember that the total outstanding debt of the MPF, according to promissory notes issued until December, 31st, 2011 [2], is of 215,393 lei. On the other hand, another type of litigations, also related to remuneration rights, is the one concerning the legal arrangement [3] of the Court of Accounts, after carrying out its control / auditing missions according to specific procedures [4], to recover the wrongfully paid amounts to the staff from the public sector. These actions on the execution accounts of the local budgets for 2008, but also for the previous years, conducted by the chambers of accounts revealed, in fact, the phenomenon that has spread in recent years at the local government level on the establishment and provision of pecuniary bonuses and rights outside the legal framework which expressly

governs the remuneration rights and other rights of the staff from the territorial administrative units [5].

The granting of these increments or remuneration rights was conducted based on a contract/ collective labor agreement, the provisions/ decisions of the chief credit accountant (mayors/ presidents of county councils), or the decisions of local/ county councils. A significant effect had the application of judicial decisions which either recognized the legality of the payments for a certain period of time or, sometimes, for the future as well, or recognized the legality of the contracts/ collective labor agreements that provided such rights.

In most cases, the decisions of the Court of Accounts concerning the recovery of the illegal amounts of these payments were canceled in court, considering that the measures taken by the chambers of accounts represent a breach of the competence established by law. Obviously, the judicial practice is inconsistent, because, following the appeal on the decisions of the Court of Accounts, various territorial courts have offered opposite resolutions to the same case and on the same legal principles, with identical background of the causes and contracts with similar forms, leading to unacceptable discrimination between civil servants of the same rank and with the same responsibilities.

We also point out that, in some cases, as a result of appeals on the decisions of the Court of Accounts concerning the ordered measures, the resolution was usually given in favor of the employees, citing the right of the employees to negotiation, and not taking into consideration the obligation of the credit accountants to comply with the law on the remuneration of the staff from the public sector.

Also, for several civil decrees it was considered that the measure ordered by the chambers of accounts on the reconsideration of the contractual clauses included in the contract / collective labor agreement constitutes a breach of competence established by law. There have also been cases where the same panel of judges ruled in similar actions opposite solutions, namely in the case of territorial administrative units they have allowed an appeal on the grounds that payments made under the collective agreement are illegal and in other cases they rejected the action on the grounds that payments made under the collective agreement are legal.

Prior to the adoption of the unitary law on the remuneration of staff from the public sector, but, to a large extent, even today, there has been insufficiency or lack of clarity in certain regulations that leads to different interpretations and approaches in the implementation process. Then, there are activities with insufficient regulations at the level of the entities conducting processes of monitoring, control and compliance assurance of actions and procedures concerning the public offices and the staff from the public institutions.

What remains clear is that the instrument called "collective labor agreement" between the representative of the budgetary employees and their employer has a specific juridical regime [6]. This is determined both by the situation of the budgetary staff, as well as by the particular situation of the income which supports the payment of salaries or similar payments.

Thus, the necessary expenses with the budgetary staff are paid from the state budget or local budgets. In this respect the provisions of art. 137 paragraph 1 of the Romanian Constitution [7], which provides that training, administration, use and control of financial resources of the state, of the territorial - administrative units and public institutions are regulated by law. As such, it is necessary that the salaries or their assimilated rights to be established by law, between precise limits; rights which cannot become subject to negotiation and cannot be granted/ modified by collective agreements.

Trying to prevent complications and institutional obstructions, due to the high level of wage claims of the previously described nature, the Executive, since 2009, adopted the Government Emergency Ordinance no. 71 [8] (supplemented later by other

regulations), which established that the payment of the amounts provided by court orders on granting certain salary rights on behalf of the employees from the public sector, which became enforceable until December 31st, 2011, to be carried out based on a special enforcement procedure.

Then, very important in this context is that the legislation has been modified, by the adoption of the normative framework designed to prevent such future states [9-10]. The new principles introduced in the regulation of remuneration (starting with 2010), are the following:

a) Consistency, in the sense that it covers all categories of staff salaries in the budgetary sector, taking into account the remuneration rights of salary established by special legislation in the wage system referred to by this law;

b) The rule of law, meaning that salary rights are established only by legal rules of the force of law;

c) Equity and coherence, by creating equal opportunities and equal remuneration for labor of equal value, based on unitary principles and rules on the establishment and payment of salaries and other salary rights of the public sector employees;

d) Financial sustainability by establishing wage increments based on special annual laws.

2. The orientation of external public audit towards the objectives related to remuneration management in the budgetary sector

Financial years preceding the adoption of unitary remuneration law [10] have been the subject of audit/ review by the Court of Accounts, in accordance with its legal framework [3], insisting (due to the significant degree) on the legality of salary payments to local government staff.

As a result, today we have an analysis conducted by this institution of the state of law, on the development of personnel expenditures and the number of jobs at the level of local budgets, as well as on the categories of increments granted to employees of local government, at a synthetic level referring to the assembly of counties throughout the years 2005-2008 [5].

A summary of the evolution of staff costs and the number of jobs funded from local budgets is shown in Figure 1 (a, b).

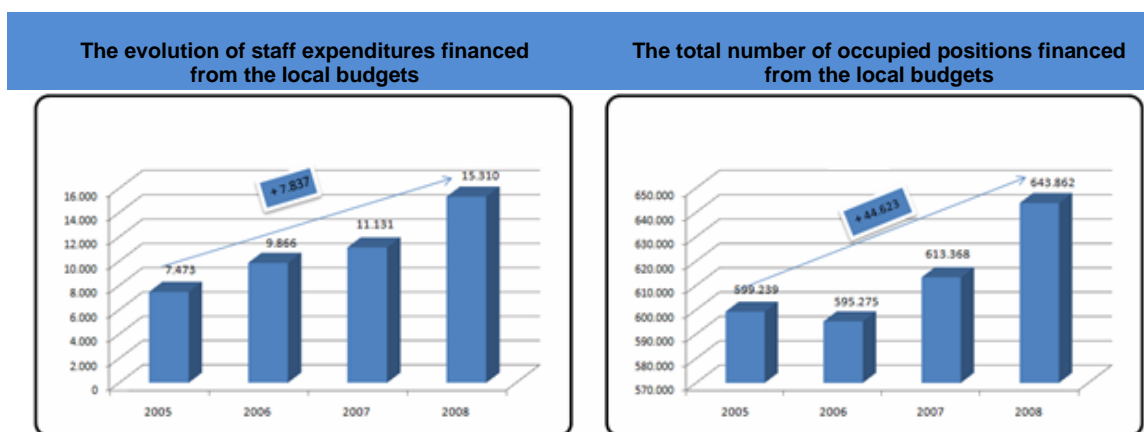


Figure 1. (a) The evolution of staff expenditures and (b) the number of jobs financed from the local budgets

Source: The Romanian Court of Accounts, Report on the staff expenditures and the number of jobs at local budgets level (2009)

Following the evolution of personnel expenditure it is found that they doubled in 2008 compared to 2005, both at the level of the general consolidated budget (an increase

of 102.3%) and at the level of the local budgets (up to 104.9%). It is not insignificant that, in 2008, salary expenses (various bonuses and rights) had been added to staff costs granted from the title '*goods and services*', their share climbing to 3.1% of GDP.

By analyzing the structure of local budget expenditures we can notice that personnel costs have the largest share, over one third (32-39% in the analyzed period), representing, together with goods and services, approx. 60% of the total local budgets [5]. Referring to the structure of personnel costs, the main vulnerability is its high proportion of expenditure representing bonuses, allowances, benefits and other salary rights, increasing from 24% in 2005 to 32% in 2008. This ratio acts to the detriment of basic salaries, which have evolved in reverse - from 50% in 2005 to 46% in 2008.

However, throughout the analyzed period can also be noted an increase of the basic salaries, with 88.7%, following a systematic wage increase each year, while increments, bonuses, allowances and other salary rights increased by 174.4 %. The nominal amount of increase is, in 2008 compared to 2005, of more than 3 billion lei, for the basic salaries and the bonuses, allowances, benefits and other remuneration rights.

This can be explained, on the one hand, because there have been approved and granted a variety of bonuses and benefits settled by collective labor agreements or administrative actions at local level and, on the other, there has been the impact created by the payment of salary rights annually suspended by the budget law or other regulations and won in court (the holiday bonus for civil servants, payment of salary differences of October 2001 - September 2004 for teachers in public schools according to Government Emergency Ordinance nr.17/2006 [11]).

Referring to the staff expenditure structured on expenditure chapters, the education chapter holds the largest share, with over 60% of the total, followed by the public authorities and external actions, respective, insurance and social assistance, with similar weights, ranging from 12-18% and the other chapters (together) - below 8%.

3. The quantification of the payments considered illegal

Following the actions of control/ audit of the execution accounts of the local budgets for 2008, but also for the previous years, conducted according to the law [3] by the chambers of accounts found, it has been found that there have been paid financial benefits to local government staff outside the provisions found in the legislation. To a lesser extent, with such findings have been completed the internal audit missions, with competences in this managerial sector of remuneration at the level of each public institution [12].

External public audit revealed that the salaries in question were granted to both civil servants and contractual personnel, but also to the persons holding elected public offices - mayors and deputy mayors. In 2008 [5], the amount of illegal increments stood at 259 million EUR, of which 99.7 million EUR were granted to civil servants and 159.4 million EUR to contractual staff at local government level.

These amounts have been paid from the title of personnel expenses (representing 3.9% of them), but also from the title of goods and services (3.8%). The most common of these special rights are reflected by Figures 1-2.

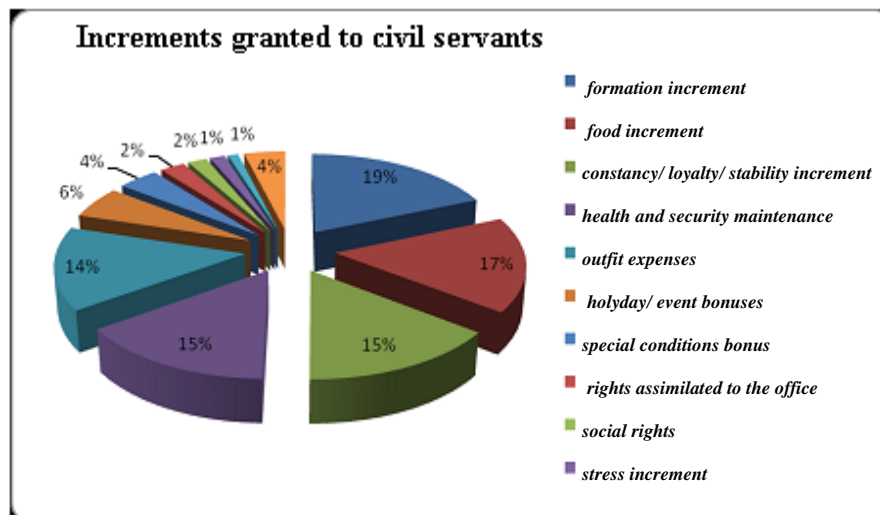


Figure 1. Increments granted to civil servants
Source: Ibid.

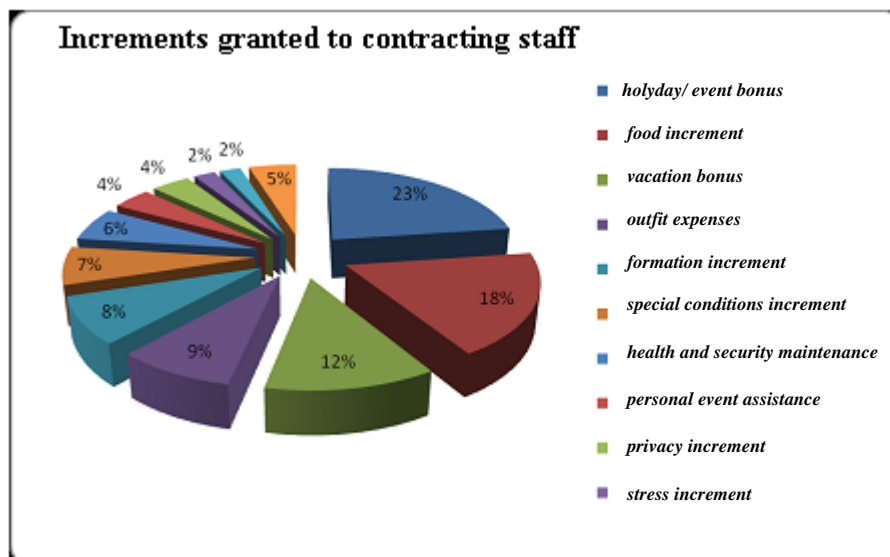


Figure 2. Increments granted to contracting staff
Source: Ibid.

The data processed by the Court of Accounts (2009) showed that such rights were granted outside the legal framework in 2008 in 4488 public entities, respectively for 234,029 persons employed in the local government, representing 36.4% of the jobs financed from local budgets.

4. Conclusions and perspectives

The phenomenon of granting rights and bonuses approved outside the legal framework, which only in 2008 reached 259 million EUR (0.18% of GDP) expanded after 2005. Mainly, it was due to insufficient regulations on wages and standardization of the territorial administrative units. It was also possible due to the lack of monitoring systems and performance evaluation of local government and local public services, and lack of institutional performance measurement systems (which would not have allowed the discretionary allocation of both financial and human resources).

While external public audit of the Court of Accounts envisaged the observance of law in the matter of salary rights granting and the recovery of the prejudices created in the budget, the reports and findings demanding practical measures and actions in this respect, the inconsistent practice of administrative courts in judging actions dealing with the legality of granting various financial claims (as opposed to the resolutions of the Constitutional Court) led, in most cases, to a situation in which the audit in question did not succeed in correcting the situation.

What is actually meant to bring efficiency to the full scope of analysis is the recently completed enactment concerning the (unitary) remuneration of the staff paid from public funds. We believe that the adherence to the principles which apply to the remuneration system elaborated in this manner can guarantee that the states described in this paper will not relapse.

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