

## **THE REMUNERATION OF THE PUBLIC SECTOR PERSONNEL THESES AND ANALYSIS POSSIBLE SOLUTIONS**

**Verginia VEDINAS**, PhD. Professor  
Faculty of Law, University of Bucharest  
E-mail: [verginia.vedias@rcc.ro](mailto:verginia.vedias@rcc.ro)

**Ioan Laurentiu VEDINAS**, PhD. Student  
Alexandru Ioan Cuza Police Academy in Bucharest,  
E-mail: [dodo\\_emre9@yahoo.com](mailto:dodo_emre9@yahoo.com)

### **Abstract**

*This study aims to achieve an overall analysis of the personnel who work in the public authorities, in general, and in the administrative ones, in particular. In the context that the life and economy in Romania, as well as in other states, pass through a complex, difficult situation, in which the crisis' effects are prolonged in time, there is no doubt that the future situation of the states must consider both the economic side, the development of the economic sectors able to create added value, to fully exploit their potential and the human resources, the professional and moral quality of those who work within public authorities and institutions of the state in general and, especially, our analysis will cover the personnel salaries in the public sector, the errors that were made in this area and the consequences produced.*

**Keywords:** *public administration, state, financial resources, human resources, development, quality, solutions, professionalization, public authorities, public institutions, personnel.*

### **I. General considerations**

Over 25 years ago, Romania abandoned the totalitarian regime, and by immeasurable human improvement actions, that have amazed in those days, the world, has embarked on the road of building a democratic state.

The road was definitely more difficult than the audacious vision of those who committed the revolutionary act from December 22, 1989. He was full of ups and countless downs, of decisions which proved negative and some of them even harmful on medium and long term. We do not intend to analyze them now. We remember as a milestone, the 1st January 2007<sup>1</sup>, when Romania became a full member of the European Union, which represented, as can be appreciated in the whole doctrine and not only, the public life as a whole in our country, and beyond its borders, along with crucial significance for the Romanian people and state's destiny<sup>2</sup>. The quoted author opines that "*Romania's accession to the European Union drew inevitable changes at all levels of national government aimed to ensure our ability to manage EU affairs and all their complexity.*"

Another milestone is the adoption of the Lisbon Treaty on 13 December 2007, entered into force on 1 December 2009, which also was assessed to be "*the most important event that took place in the European Union in 2009, having consequences for international, universal and regional, European security*<sup>3</sup>".

The membership in the European Union has been acquired following a road through which Romania tried to align to all requirements imposed on legal, institutional and economic level. Such a quality is not however the end, the conclusion of some efforts. The real integration is a complete, lasting process, in which our country still has to solve some problems and continue to be under the control factors and we exemplify the longstanding Mechanism of Cooperation and Verification (MCV)<sup>4</sup> set for Romania and Bulgaria, by which, only these two countries of the 28 states included today in European Union, continue to be monitored and subject to periodic reports in which are summarized the progress made by our country in justice and fight against corruption, which is a real rod faced also by other countries, but who have chosen other procedures to counter it and receive another treatment from the European Union.

The existence of such a mechanism and especially, the extension of its maintenance, in our opinion, affects in a significant extent, the image of our country and how it is perceived and, why not, treated, compared to other Member States.

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<sup>1</sup> MCV is a process of regular inspection of the progress that Romania and Bulgaria have in terms of judicial system reform, corruption and organized crime

<sup>2</sup> **Stefan Deaconu** – *Tratat de aderare la Uniunea Europeana, Prezenta generala* in Curierul Juridic nr. 4/2005, pp.7-13

<sup>3</sup> **Augustin Fuerea** – *Tratatul de la Lisabona*, semnat la 13 decembrie 2007, intrat în vigoare la 1 decembrie 2009, in Revista de Drept Public nr. 4/2009, p. 62

<sup>4</sup> MCV is a process of regular inspection of the progress that Romania and Bulgaria have in terms of judicial system reform, corruption and organized crime.

Therefore, we consider in the meaning in which the authorities of the two countries should make efforts on the governmental level, to require rethinking the decision to create the MCV and giving up to this instrument of surveillance and control that places us, we must have the dignity to recognize it, in a position of inferiority to other Member States. And we welcome, from this perspective, some of the positions taken in this spirit that have been expressed by some officials of Romania.

In such a context it is obvious that the way in which we meet expectations, how do we integrate in the legal, institutional and judicial system, the spirit and the letter of all categories of decisions, regardless their legal nature, taken by European bodies, depends substantially from those working in state authorities and institutions, for their moral and professional quality.

## **II. Human resources, categories, status**

Within the authorities and public institutions operates more categories of personnel in terms of their legal status. They can be identified as follows:

- **personnel** with has the status of employees or contractual personnel, which is subject to the labor law provisions, in the center of which is located the Labour Code<sup>1</sup>;
- **civil servants** whose general status is regulated by Law no. 188/1999<sup>2</sup>, which has undergone many changes and additions;
- **civil servants** who are subject to special statutes<sup>3</sup>
- officials from **central** or **local** level, whose status is found enshrined, in part, in the Constitution for certain categories (eg parliamentarians, Government members), or in different laws with organic character<sup>4</sup>.

## **III. Elements of the legal status**

All these categories are, what we call the title of this study, "**human resources" of the state and territorial administrative units**, or more succinctly expressed, "**the human resources in the public sector**".

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<sup>1</sup> Approved by Law no. 53/2003, republished in the Official Gazette of Romania, Part I no. 345 of 18 May 2011.

<sup>2</sup> Republished in the Official Gazette of Romania, Part I no. 365 of 29 May 2007.

<sup>3</sup> Such as policemen whose status is regulated by Law no. 360/2002 on the Statute of policeman, published in the Official Gazette of Romania, Part I no. 440 of June 24, 2002.

<sup>4</sup> Example: Law no. 96/2006 on the Statute of Deputies and Senators, republished in the Official Gazette of Romania, Part I no. 49 of January 22, 2016.

Between the categories of personnel who work in the public sector there are both elements that differentiate them and commonalities in terms of their legal status.

Regarding **the differences**, their source is found mainly in their own **legal status of each category**. They can be expressed in the thesis that, the contractual personnel has a legal status that is mainly **negotiated**, the rights and obligations being established through negotiation that occurs between **employer and employee**, whose limits are set out by the Constitution and by law. For example, the negotiation may not concern the duration of the day and working week, leading to the upper limits set by law<sup>1</sup>.

Thus, the working day is on average 8 hours a day and "the maximum legal duration of the working time may not exceed 48 hours per week, including overtime. As an exception, the working hours including overtime, may be extended beyond 48 hours per week, with the condition that the average working hours, calculated over a reference period of 3 calendar months, to not exceed 48 hours per week<sup>2</sup>". These rules apply to employees and also to civil servants.

As regards the civil servants, whether they obey the general law, represented by Law no. 188/1999, or the special laws regulating special statutes, have as distinctive feature that their status is predetermined by the legislator, the statutory regime being of the essence of each public office, general, specific or special. Identifying public function is given by the fact that its holder is invested with the exercise of public powers, the activities that materializes these prerogatives being, in turn, expressly and exhaustively provided by law<sup>3</sup>.

One of the elements that connect all staff in the public sector is that **their remuneration is established by law, being included in the state budget law** and governed by a unitary pay law for the budget personnel.

Moreover, the expression "**budgetary personnel**" used in the legislation, **supports** this common state denominator of those working in the public sector, with the consequence of exclusion from negotiation of the component elements of salary, in its fixed or variable part.

In practice of the last 10 years and above, there were procedures that have departed from this principle, which were identified in the control activity of a public authority, and we consider the Romanian Court of Accounts, as the supreme body for the control of the legality of public spending. Among its frequent findings are found substantial amounts of

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<sup>1</sup> According to Article 1, para. (3) of the Constitution "*the normal daily work is, on average, no more than 8 hours*"

<sup>2</sup> **Andrei Popescu** în I. Moraru, E.S. Tanasescu (coord.) – Constitutia Romaniei. Comentariu pe articole, Editura CH Bock, Bucuresti, 2008, p.380

<sup>3</sup> By Article 2 para. (3) of Law no. 188/1999.

money granted unlawfully for wages, which attracts their treatment **as damages and ordering the entity subject to the specific activity of the Court of Accounts to order measures to recover them.** Such a situation was caused by **an acute lack of concern, from the legislature and government to solve, in a legal way, this issue.**

They preferred **surrogate solutions** instead of those leading to the creation of a coherent legal framework, clear and sustainable in terms of state possibilities to ensure the effective payment.

We call "**surrogate solutions**" both in the practice until 2009, of adopting annually special regulations, laws or ordinances of the Government, on wages of different categories of budgetary personnel and the one after 2009 when, formally, there were adopted "**unitary laws**" on personnel wages in the public sector, but they have not been applied<sup>1</sup> or amended before entering into force. All these have created a mess which severely damaged the public budget, put in a position to not support the amount of wages established by other means, such as contracts or collective agreements, court orders or administrative measures adopted by different public authorities (local council or county council). It was necessary to adopt normative acts that staggered the payment of various salary rights<sup>2</sup>, or where applicable, to exempt those forced to pay, illegal salary rights granted to the obligation to return them<sup>3</sup>. Not least, we signal also the adopting of some increase regulations and the adoption of certain categories, of which the dignitaries exercise important state positions<sup>4</sup>.

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<sup>1</sup> Example: Law no. 284/28 December 2010 on the unitary remuneration of personnel paid from public funds, published in the Official Gazette of Romania, Part I no. 877/28 December 2010, which even today is not applied.

<sup>2</sup> Example: The Government Emergency Ordinance no. 71/2009 concerning the payment of sums mentioned in writs of execution having as object granting of public sector personnel with salary rights, published in the Official Gazette of Romania, Part I no. 416 of 18 June 2009.

<sup>3</sup> Example: Law no. 84/2012 on certain measures relating to the wages of the personnel paid from public funds, published in the Official Gazette of Romania, Part I no. 401 of 15 June 2012; Law no. 124/2014 on some measures relating to the wages of the personnel paid from public funds, published in the Official Gazette of Romania, Part I no. 700 of 24 September 2014.

<sup>4</sup> See the Government Emergency Ordinance no.14/2015 amending the Government Emergency Ordinance no. 83/2014 regarding the salaries of the personnel paid from public funds in 2015 and other measures in public spending, published in the Official Gazette of Romania, Part I no. 506 of 8 July 2015 by which wages were increased for the most major functions: President of Romania, Presidents of the Chambers, President of the Romanian Court of Accounts

#### **IV. Conclusions. Possible solutions**

All of this demonstrates, firstly, **the mess that exists in the remuneration of public sector employees** and which requires, in the future, to be removed.

Secondly, demonstrates **the serious misunderstanding lacking of responsibility of the fact that salary is an essential element of the work, regardless of title under which it is performed**, that influences the life of "provider" employee, civil servant or dignitary, **the results of his work, the overall situation of public authority or institution** in which operates the personnel concerned and ultimately, **the lives of citizens**, as a whole, as beneficiaries of public services. It generates also harmful phenomena for society, such as corruption, because it is easily understood and demonstrated that, **insufficient salary incomes obtained legally arises the need to identify other forms of purchasing them, which may be to the limit of the law illegal or contrary to it.**

Remuneration is a key issue because it influences the attitude that the personnel in the public sector have in relation to individuals or legal entities, in their quality of beneficiaries of public services, in which are involved. At the Romanian society there is a general state of discontent, about how people are treated in their relations with public authorities, with civil servants in the sense of the legal term that includes all classes, civil servants, dignitaries and contractual personnel.

Not lastly, it should be noted the huge imbalances between personnel from various public institutions. There are not rare situations where persons exercising identical or similar functions receive salaries fundamentally different, sometimes double or triple to one another.

Recently it has been adopted an emergency ordinance<sup>1</sup> on the remuneration of the personnel that does nothing more than a "patchwork" that not only does not solve the problem, but violates the fundamental theories of law, such as the theory of rights acquired, creating more damage than good, more dissatisfaction than benefits, exacerbating the general state of dissatisfaction.

Therefore, we believe firmly in the direction of an end to this state of mess regarding the wages in the public sector and to adopt the law on the unitary pay.

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<sup>1</sup> It's about the Government Emergency Ordinance no.20/2016 amending and supplementing the Government Emergency Ordinance no. 57/2015 regarding the salaries of the personnel paid from public funds in 2016, the extension of some deadlines and also fiscal measures and amending and supplementing certain normative acts, published in the Official Gazette of Romania, Part I, no. 434 of June 9, 2016