Jurnalul de Studii Juridice
ISSN: 1841-6195 | e-ISSN: 2067-8509
Covered in: CEEOL, CrossRef, CrossCheck, ICI Master Journal List - Index Copernicus, Ideas RePeC, EconPapers, Socionet, HeinOnline, EBSCO.

2021, Volume 16, Issue 3-4, pages: 74-86 | https://doi.org/10.18662/jls/16.3-4/93
Submitted: March 10th, 2022 | *Accepted for publication:* March 25th, 2022

Presentation: Case No 6816/99/2015, Matter: Labour disputes, Procedural status of the Case: Merits, Subject Matter: Legal Interest, Civil Judgment no.315/2016 Delivered by Iaşi Court - Civil Division I, Complet: Civ. CM10

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Abstract: *By an action registered with the Court of Iasi under no. 6816/99/2015, the plaintiff ANC sued UDG, requesting that it be ordered to pay the transitional compensation (doctorate bonus) from 02.10.2012-present, with interest and penalties; with court costs.*
In support of her action, the applicant submits the following:
"- order the defendant to pay the transitional compensation from 2 October 2012 - present with interest and related penalties;
- order the defendant to pay the costs

Keywords: *plaintiff; defendant; Iaşi Tribunal - Civil Section I; Labour disputes; legal interest; legal interest.*

How to cite: Anitei, N.C. (2021). Presentation: Case No 6816/99/2015, Matter: Labour disputes, Procedural status of the Case: Merits, Subject Matter: Legal Interest, Civil Judgment no.315/2016 Delivered by Iași Court - Civil Division I, Complet: Civ. CM10. *Jurnalul de Studii Juridice, 16*(3-4), 74-86. https://doi.org/10.18662/jls/16.3-4/93

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By an action registered with the Court of Iasi under no. 6816/99/2015, the plaintiff ANC brought an action against UDG requesting that the employer be ordered to pay the transitional compensation (doctorate bonus) from 02.10.2012-present, with interest and penalties; with legal costs.

In support of her action, the applicant submits the following:

"- order the defendant to pay the transitional compensation from 2 October 2012 - present with interest and related penalties;

- order the defendant to pay the costs

The pleas in law and main arguments are as follows:

Pleas in law and main arguments

I, the undersigned ANC, employed by the UDG, from 2 October 2012 to the present, have applied to the university for the award of the doctoral bonus, subsequently called transitional compensation, submitting copies of the following: Methodology for calculating the salary rights to be granted to teaching staff and teaching assistants and after the doctoral degree (obtained in 2008) but the university did not grant me this transitional compensation.

Please note:

1. I was awarded the scientific title of doctor in the field of Law following the submission of my doctoral thesis at the Romanian Academy, "Andrei Radulescu" Legal Research Institute, Bucharest by Order of the MECT no.3439 of 12.03.2008;

2. From 12.03.2008 as a tenured professor at the Faculty of Law, "Petre Andrei" University of Iasi until 2.10.2012 I received the doctoral bonus, later called "transitional compensation" by the Methodology for calculating the salary rights granted to teaching and auxiliary staff (published in the Official Gazette, Part I, no. 323 of 10.05.2011);

3. Since 2.10.2012 I have been employed at the Faculty of Legal, Social and Political Sciences, University "Dunarea de Jos", Galati as a result of the competition held with the teaching degree of lecturer and since October 2014, I hold the title of professor at the same faculty.

4. Since 2 October 2012, although I have applied to the university to obtain the doctorate bonus, later called "transitional compensation", it has not been granted to me;

5. The university teachers who have defended their doctorate before 31 December 2009 receive the doctorate bonus, later called "transitional compensation".

”In law,

I base my claim on the following legal provisions:

- The provisions of Article 8 of the Methodology for calculating the salary entitlements to be granted to teaching and auxiliary staff in education provide that 'Persons who on 31 December 2009 were in receipt of a bonus for the scientific title of doctor shall receive transitional compensation calculated by applying a percentage of 15% to the basic salary laid down in this chapter, calculated as the sum of lit. A, B, C, D, E; of Article 3";

- the provisions of Article 2(2)(a), (b) and (c) (1) of O.G. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished, states "According to the present ordinance, discrimination means any distinction, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, membership of a disadvantaged group, and any other criterion which has the purpose or effect of restricting or nullifying the recognition, use or exercise, on an equal footing, of human rights and fundamental freedoms or rights recognized by law in the political, economic, social, cultural or any other field of public life";

- the provisions of Article 3 lit. (a) of O.G. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished, states "The provisions of this Ordinance shall apply to all natural or legal persons, public or private, and public institutions with powers regarding: a) conditions of employment, criteria and conditions of recruitment, selection and promotion, access to all forms and levels of vocational guidance, training and further training";

- Article 16 of Directive 2000/78/EC provides that 'Member States shall take the necessary measures: (a) to nullify the laws, regulations and administrative provisions contrary to the principle of "equality"; (b) to declare null and void or to amend the provisions contrary to the principle of "equality" contained in contracts or collective agreements, internal rules of undertakings and independent professional and trade organizations';

Article 17 of Directive 2000/78/EC provides that "Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive and shall take all measures necessary to ensure that they are implemented. The penalties thus provided for, which may consist of compensation to the victim, must be effective, proportionate and dissuasive...".

Also, in preparing this petition for writ of summons, we have taken into account:

- the specialist literature which shows that the differentiated award of the bonus also violates the specific principle of labor law of equal pay for work of equal value, a principle which is regulated in detail both nationally and internationally. Originally based on the need to ensure equal pay for women and men, the principle has been extended to cover all cases where an employee's pay may differ from that of other employees. On the other hand, the doctrine emphasizes that wages may be differentiated according to certain objective criteria, such as the function performed, the quantity and quality of work, working conditions and the level of education. However, in the situation we are analyzing, the level of studies is the same (studies completed with the award of the scientific title of doctor), the work performed by teachers employed in the university prior to 2011 and the work performed by teachers who sat competitive examinations in 2012 is the same, so that the salary cannot be different, but only equal;

- judicial practice. In the article entitled On a solution to eliminate discrimination between magistrates in the granting of the salary increase for the scientific title of doctor "Summarizing all the previous arguments, until a future legislative modification, the solution at hand is to formulate a legal action, on the basis of article 27 of O.G. no. 137/2000, according to which the person who considers himself discriminated against may formulate, before the court, a request for the granting of compensation and the restoration of the situation prior to the discrimination or the annulment of the situation created by the discrimination, according to common law";

- the common law principle on the theory of acquired rights.

Evidence: I request that the following evidence be admitted: written submissions.

I attach: copy of the Order of the MECT no.3439 of 12.03.2008; copy of the doctor's diploma; the article "On a solution to eliminate discrimination between magistrates regarding the granting of salary increase for the scientific title of doctor" (Bleoancă & Grecu, 2015).

Alongside this application, the plaintiff submits to the case file documents (pages 7-15 of the case file).

The defendant, having been duly summoned, submits a statement of defence to the case file, by which it requests the dismissal of the application as inadmissible and, in the alternative, the dismissal of the application as a result of the admission of res judicata and, on the merits, the dismissal of the application as unfounded and unlawful.

In support of the plea of inadmissibility of the application for a declaration of inadmissibility, the defendant states to the court that the

applicant was employed as a result of having taken and passed the competition for lecturer. In that regard, the individual employment contract was initialled between the defendant institution and the applicant.

The defendant states that, in accordance with Article 30 of Framework Law No 284/2010 on the unitary remuneration of staff paid from public funds, if the applicant was dissatisfied with the determination of the basic salary, bonuses, bonuses and other rights to be granted in accordance with the provisions of Law No 63/2011, she had to lodge a complaint within 15 working days from the date on which she became aware of the administrative act establishing the salary rights, at the office of the authorising officer.

In support of the objection of res judicata, the respondent also points out that the claim at issue, namely the question of the granting of holiday leave allowance in the event of overlapping of functions, was settled by the Constitutional Court by Decision No 37/2014 and Decision No 389/2015.

On the merits of the case, the defendant states that, since 2010, the bonus for the scientific title of doctor is no longer granted, and in 2011 for teaching staff who on 31.12.2009 benefited from the bonus for the scientific title of doctor, the amount of this bonus was maintained as transitional compensation, in accordance with the provisions of Law No 284/2010 and Law No 63/2011.

In support of her claim, the defendant requested documentary evidence, attaching to the case file: the applicant's individual employment contract, the applicant's doctor's diploma. MECT Order No 3439 of 12.03.2008 (pages 65-88)

Through the Registrar's Office of the Court of Iasi, the applicant submits the following response to the defendant's statement of defence and attached documents (pages 65-88 of the case-file):

1. **Admit the action and settle the labour dispute concerning - payment of unpaid salary rights - 'transitional compensation' equivalent to the doctoral bonus on the basis of the provisions of Article 268(1)(c) of the Labour Code;**

2. The plea of unfounded objection of res judicata;

3. Admit the application as lawful and well-founded on the merits.

1. Admit the action and settle the labor dispute concerning the payment of unpaid salary rights - "transitional compensation" equivalent to the doctoral bonus on the basis of the provisions of

Article 268(1)(c) of the Labor Code which provides: "Claims for the settlement of a labor dispute may be made: ... (c) within 3 years from the date on which the right of action arose, in the case where the subject of the individual labor dispute is the payment of unpaid salary rights or compensation to the employee, and in the case of the employee's financial liability towards the employer; ..."

We note from the provisions of Art. 268 para. 1 lit. (c) of the Labour Code that the 3-year time limit for bringing an action in court applies in this case concerning the statutory interest and monetary rights (transitional compensation for doctorate bonus) from 2 October 2012 to the present with the related interest and penalties.

With regard to the reliance on Article 30 of Law No 284/2010 on the unitary pay of staff paid from public funds, which provides: 'The settlement of appeals in relation to the determination of individual basic salaries, bonuses, bonuses and other rights to be granted in accordance with the provisions of this law is the responsibility of the authorizing officers (para. 1). The appeal may be lodged within 15 working days from the date of taking cognizance of the administrative act establishing the salary rights, at the authorizing officer's office (para. 2). Authorizing officers shall settle appeals within 10 working days (para. 3). Against measures ordered in accordance with the provisions of para. (1), the dissatisfied person may bring the matter before the administrative court or, where appropriate, the court having jurisdiction under the law, within 30 calendar days of the date of notification of the decision on the written appeal" (para. 4) we specify that it is not applicable in the case in question for the following reasons:

The appeal provided for by Art. 30 para. (2) of Law No 284/2010 on the unitary salary of staff paid from public funds referred to in Article 1 (7) of Law No 63/2011 on the classification and salary of teaching and auxiliary teaching staff in 2011 is not a prerequisite for the action in the competent administrative court (court), as in the case of actions brought by civil servants. Such a condition can only be of strict regulation and application (i.e. only for civil servants) and cannot be extended by analogy. Indeed, it is provided for in Law 554/2004, the Administrative Litigation Act, but it is not applicable in this case because I am not a civil servant. In this respect, Art. 6 lit. (d) of Law No 188/1999 on the status of civil servants expressly states that this law does not apply to teachers. Only, for those who are civil servants, according to Article 109 of Law No. 188/1999 on the Status of Civil Servants "Cases concerning the civil servant's employment relationship shall fall within the jurisdiction of the administrative and fiscal

disputes section of the court...".; this implicitly refers to Art. 7 para. (1) of Law 554/2004 on administrative disputes regulates, as we have said, the condition of prior complaint to the administrative disputes court.

Accordingly, Your Honor, I would ask you to take into account the provisions of Article 268(1)(c) of the Labor Code in order to allow the application for legal action and to settle the labor dispute concerning the payment of unpaid salary rights ("transitional compensation" equivalent to the doctoral bonus which I have received since 2008).

My free and direct access to the court, as a contractual employee, is not restricted by any law as it is for civil servants who are obliged to comply with the "prior condition" before going to court.

2. The Legal Department submits that the plea of res judicata is unfounded.

The example given by the Legal Department refers to Constitutional Court Decision No 37/2014, which concerns the granting of holiday leave allowance in the case of overlapping of functions or, in the case in question, to statutory interest (transitional compensation (doctorate bonus) from 2 December 2012 to the present with interest and penalties).

I would like to point out that, in the application, I invoked the judicial practice in the article entitled "On a solution to eliminate discrimination between magistrates in the award of the salary increase for the scientific title of doctor".

Studying the judicial practice and the aforementioned article presented in the application we observe that the court in the respective cases ordered the award of the doctoral bonus also in case of acquiring the title of doctor after 31 December 2009 even though the provisions of Art. 8 of the Methodology for calculating the salary rights to be granted to teaching and auxiliary staff in the education sector provides that "Persons who on 31 December 2009 were receiving a bonus for the scientific title of doctor shall receive transitional compensation calculated by applying a percentage of 15% to the basic salary established in this chapter, calculated as the sum of lit. A, B, C, D, E; of Article 3".

In conclusion, if the court considered as unjust the persons who were not granted the doctoral bonus after 31 December 2009 and by a final and irrevocable decision granted them this bonus, even more so, this doctoral bonus having at present the nature of "transitional compensation" (and received in the period 2008-2012) cannot be withdrawn from me, just

because the Legal Department has determined so in violation and misinterpretation of the legal provisions.

3. Allow the application as lawful and well-founded.

We consider the application to be lawful and admissible on the following grounds:

1. the "transitional compensation" equivalent to the doctorate bonus is included in the salary according to art. 8 of Annex 5 - Methodology for calculating the salary rights granted to teaching and auxiliary teaching staff of 10.05.2011 approved by Law no. 63/2011 on the classification and salary in 2011 of teaching and auxiliary teaching staff in education being exceptions to art. 1 paragraph (4) of the same Law no. 63/2011 on the classification and salary in 2011 of teaching and auxiliary teaching staff in education;

As regards discrimination as it results from: the application of the principle of labour law 'equal pay for work of equal value'; the provisions of the articles of the European Directives: Article 16 of Directive no. 2000/78/EC 'Member States shall take the necessary measures: (a) to nullify the laws, regulations and administrative provisions contrary to the principle of "equality"; (b) to declare null and void or to amend the provisions contrary to the principle of "equality" contained in contracts or collective agreements, in internal rules of undertakings and in independent professional and workers' and employers' organisations. "Article 17 of Directive 2000/78/EC: "Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties thus provided for, which may consist of compensation to the victim, must be effective, proportionate and dissuasive...". but also the provisions of Article 3 lit. (a) of O.G. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished "The provisions of this Ordinance shall apply to all natural or legal persons, public or private, as well as to public institutions with attributions regarding: a) conditions of employment, criteria and conditions of recruitment, selection and promotion, access to all forms and levels of professional orientation, training and further training" exist because the doctoral bonus cannot be granted only to some colleagues and not to others. Thus, colleagues employed in the university who defended their doctorate before 31 December 2009 received the doctorate bonus and still receive it (only because they have been employed in the university since earlier times) and I who was hired on 2 October 2012 do not receive it although I received

it in 2008-2012 from the University "P. Andrei", Iași where I taught. Also, my score obtained in the didactic, academic and professional evaluation during the whole period in which I have carried out teaching and research activities (my Cv, my list of works, the professional prestige I have acquired, the advertisement I make to the university through my participation in conferences, through my published works) concerns the value of my work and so far there is no differentiation of salary in this regard. In conclusion, I consider that there is discrimination on the basis of the provisions of the above-mentioned European Directives, the provisions of Article 3 lit. (a) of O.G. no. 137/2000 but also based on the principle of labour law "equal pay for work of equal value". ;

3. Art. 6 of Law no. 284/2010 is not applicable in our case because according to Art. 1 para. 7 of Law 63/2011 on the classification and salary of teaching and auxiliary teaching staff in 2011 refers to other articles expressly mentioned and does not include Art. 6 of Law 284/2010. Thus, according to Art. 1 para. 7 of Law 63/2011 on the recruitment and salary in 2011 of teaching and auxiliary teaching staff in education "The provisions of Articles 8, 9, 12 and 13 of Law No. 285/2010 on the salary in 2011 of staff paid from public funds, as well as those of Articles 22, 25-30 of Framework Law No. 284/2010 on the unitary salary of staff paid from public funds shall apply accordingly to teaching and auxiliary teaching staff in education, paid according to the provisions of this law.";

4. Article 3(c) of Law 330/2009 on the unitary salary of staff paid from public funds. Framework Law 330/2009 relied on in the application does not contradict the claims made by me in the application. This article states: 'The pay system regulated by this law is based on the following principles: .....(c) the taking into account of bonuses, salary supplements, increases, allowances of a general or special nature, and other rights of a salary nature, recognised or established, up to the date of entry into force of this Act, by court decisions, by collective bargaining acts, and by other means, which shall be included at a level accepted, in accordance with the principles of this Act, in the gross salary or, as the case may be, in the basic salary, in the salary of the basic function or in the monthly employment allowance; ....". This article relied on in the application does not contradict the claims made by me in the application.

In conclusion, I would like to point out that I have applied to the Honourable Court now, before the expiry of the 3-year term, because I have always hoped that the Legal Department will analyse my situation and will see the injustice committed and will recalculate the salary rights due through the "transitional compensation" equivalent to the doctored bonus. My wish

was not to settle the labour dispute in court but by amicable settlement, as I am still employed by this institution (I do not want to be in a state of tension).

In accordance with the provisions of Art. 411 para. (1) pct. (2) of the Code of Civil Procedure, we request that the case be tried in default.

Evidence: I request that the following evidence be admitted: written submissions."

The Defendant at the first hearing submits to the file a set of documents relating to a number of 14 decisions (including Decision No 329/2013, Decision No 28/2015) of the Constitutional Court of Romania.

As there were no other requests to be made and no evidence to be submitted, the Court of the Iași Tribunal - Civil Division I, Complet: civ. CM10, gives the floor on the objections raised and on the merits of the case.

Evidence by written submissions was granted and administered.

The Court of First Instance of Iași - Civil Division I, Civil Division I, Complet. CM10, after analysing the documents and the works of the case file in the light of the legal provisions applicable to the case and all the evidentiary material, held:

Preliminarily, the court examined as a matter of priority the objections of inadmissibility and res judicata, raised in the case by the defendant, pursuant to the provisions of Article 248 NCPC

As regards the plea of inadmissibility raised by the defendant in its application, the court held as follows:

- "according to Article 206 of the Labour Code, the labour jurisdiction has as its object the settlement of labour disputes concerning the conclusion, execution, modification, suspension and termination of individual or, as the case may be, collective labour contracts provided for by this Code, as well as claims concerning the legal relations between the social partners, established according to this Code, the parties in labour disputes may be according to Article 267, para. (1), lit. (a) and (b) of the Labour Code, employees and employers;

- the subject-matter of the present case is the applicant's claim that the defendant be ordered to pay the transitional compensation (award of the doctoral bonus) from 2 October 2012-present, together with interest and related penalties, under the applicant's individual employment contract with the defendant's employing establishment. "

The Court found that the plea of inadmissibility of the application was unfounded, having regard to the subject-matter of the case, the provisions of Article 6 of the ECHR and Article 21 of the Romanian Constitution concerning free access to justice and the right to a fair trial.

With regard to the objection of res judicata, raised by the defendant in its application, the Court held:

- According to the provisions of Article 431 of the New Code of Civil Procedure, no person may be summoned twice, in the same proceedings, on the basis of the same cause of action and for the same purpose,

- in the light of the grounds relied on by the defendant in support of that objection (pages 23 to 24 of the case-file) and the subject-matter of the present case, referred to above, the Court held that, in order to be res judicata, the two claims (the applicant's claim and the claim at issue, relied on by the defendant in its application) must be between the same parties and in the same capacity, have the same subject-matter and the same cause of action.

The Court finds that in the present case those three attributes are not met in order for res judicata to be admissible.

The Court, on the basis of the documents and the case file and all the evidence submitted, and in the light of the considerations set out above and the legal provisions relied on, finds that:

- between the parties to the dispute, the Individual Employment Contract was concluded and registered (files 52-55) for an indefinite period of time, the duration of working time being 8 hours/day, 40 hours per week (files 52-53);

- in the present case, in relation to the claim of the applicant, to the mentions of the employment contract concluded between the parties, the court held that the applicant is employed under an employment contract without the doctorate bonus requested in the present action, and the investigation of the claim of the applicant concerns the investigation of the substance of the individual employment contract (concluded between the parties) which was not the subject of the judgment;

- the Court holds that, since the applicant in the present case signed (took over) the individual employment contract (page 55 of the case-file) without the doctoral bonus, she in fact agreed not to receive that bonus.

Conclusion

In conclusion, the of IASI, Tribunal - Civil Division I, Complet: civ. CM10 dismissed the action brought by the applicant against the defendant on the basis of the considerations set out above.

The applicant lodged an appeal against that decision within the legal time-limit and will submit the remainder in the next issue.

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