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Presentation: c Civil Decision no. 42/2017 of 31 January 2017 Delivered by the Court of Appeal Iasi - Labour and Social Insurance Litigation Section; Court of Appeal Iasi - Labour and Social Insurance Litigation Section_2

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Abstract: *Through an action filed with the Iasi Court of Appeal, the appellant ANC appeals against Civil Judgment no. 315/2016 pronounced by the Iasi Court - Civil Section I in case no. 6816/99/2015.*

The appeal is pending the judgment of the case in which the applicant is requested to order the University "Dunărea de Jos", Galați to pay the transitional allowance (doctorate bonus) from 02.10.2012-2016 and the legal interest from 02.10.2012 until the date of implementation of the provisions of the Civil Decision no. 42?2017 of 31 January 2017.

Keywords: *appellant; respondent; legal interest; legal interest; Iasi Court of Appeal, Labour and Social Insurance Litigation Section, Complex: Labour and Social Insurance Litigation_2.*

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The reasoning stated:

1. NCA was employed since 1.10.2000 as a tenured employee at the Faculty of Law, "Petre Andrei" University of Iasi;

2. she was receiving since 12.03.2008 as a tenured employee at the Faculty of Law, "Petre Andrei" University of Iasi the doctorate bonus;

3. the doctoral bonus was subsequently called 'transitional compensation' by Article 8 of the Methodology for calculating the salary rights granted to teaching and auxiliary teaching staff, annexed to Law No 63/2011 (Parliament of Romania, 2011c) on the classification and remuneration of teaching and auxiliary teaching staff in 2011, which states: 'Persons who on 31 December 2009 were receiving a bonus for the scientific title of doctor 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". It is therefore clear from the provisions of this article that persons who have received the doctoral bonus continue to receive it in the form of "transitional compensation";

4. on 2.10.2012, he started working at the University "Dunărea de Jos" Galati, changing employer;

5. Article 8 of the Methodology for calculating the salary entitlements to be granted to teaching and auxiliary staff does not distinguish for the granting of "transitional compensation" according to the employer, so that the change of job does not affect the granting of "transitional compensation";

6. Therefore, "Dunărea de Jos" University of Galati had to pay the "transitional compensation" and the legal interest;

7. The Court of First Instance did not analyse this aspect, even though I pointed it out in the action, in the very first point;

8. The court of first instance erred in finding that my failure to claim the doctoral bonus at the end of the individual employment contract meant that I had waived my right to it (the doctoral bonus referred to as "transitional compensation"), given that this "transitional compensation" is provided for by law. Thus:

- Art. 2 of the Methodology for calculating the salary rights to be granted to teaching and auxiliary teaching staff, annexed to Law No 63/2011 on the classification and remuneration of teaching and auxiliary teaching staff in 2011, provides as follows: 'The gross salary of teaching staff is composed of the basic salary, plus bonuses, allowances and other salary rights provided by law' (para. 1). "The basic salary consists of:

A. the salary of the teaching position as set out in Annexes 1 and 2 to the Law, which includes the stability bonus only for teaching seniority brackets of more than 10 years, as well as the neuropsychological overload bonus existing for all teaching seniority brackets;

B. the management allowance as regulated in Annex No 4 to the Act;

C. special education allowance;

D. merit pay, as regulated by Articles 92, 264 and 311 of the National Education Act No 1/2011;

E. the allowance for teaching staff performing the activity of head teacher, for teachers, nursery teachers, primary school teachers and pre-school and primary school teachers." (paragraph 2)

"In addition to the basic salary defined under para. (2), the allowance for isolated areas, the bonus for teaching practice, the bonus for simultaneous teaching, transitional compensation, the bonus for dangerous or harmful conditions, the bonus for seniority shall be granted, where appropriate" (para. 3).

The tracer compensation referred to in Article 2(2)(a) of the Regulation shall be paid to the Member State concerned. (3) falls under the "statutory part" of the MIF and not the "conventional part" of the MIF. In other words, such transitional compensation is automatically part of the MIF, even in the absence of express provision by the parties/express inclusion in the MIF. Article 38 of the Labour Code - common law in this case - is also in line with this, stating that: 'Employees may not waive the rights granted to them by law. Any transaction aimed at waiving or limiting the rights granted by law to employees is null and void'. This provision is also particularly detailed in relation to salary rights; thus, Article 170 of the Labour Code states: "The unreserved acceptance of part of the salary rights or the signing of payment documents in such situations may not constitute a waiver on the part of the employee of the salary rights to which he is entitled in their entirety, in accordance with the legal or contractual provisions".

In conclusion, the failure expressly to provide in the MIF for a transitional allowance, in the present case, "cannot be construed as a waiver by the employee of his full entitlement to his salary rights", since that allowance is automatically included in the MIF "in accordance with the legal provisions". And, according to Article 57(2)(a) of the Staff Regulations, the (4) of the Labour Code (Parliament of Romania, 2011a), "If a clause is invalid because it establishes rights or obligations for the employee that are contrary to mandatory legal provisions or applicable collective agreements, it

shall be replaced by law by the applicable legal or contractual provisions, and the employee shall be entitled to compensation".

- The transitional compensation due, in this case, is the doctoral bonus which is part of the basic salary (according to Article 11 in conjunction with Article 2(3) of the Methodology) and the legal basis for entitlement to it is Article 8 of the Methodology which provides (imperatively): '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 15% to the basic salary established in accordance with this chapter, calculated as the sum of lit. A, B, C, D, E of Article 3."

9. The lower court erroneously holds that he agreed/agreed his MIP without the doctoral increment. Thus, according to Article 170 of the Labour Code, even if I accepted without reservation part of my salary rights or signed the individual employment contract, it does not mean that I gave up as an employee the doctoral bonus (salary rights to which he is entitled in their entirety;

10. according to Art. 39 para. 1 lit n of the Labour Code "The employee has, in particular, the following rights: n) other rights provided by law ...." Thus, the bonus for the scientific title of doctor called transitional compensation for persons who on 31 December 2009 held the title of doctor constitutes such a right. (Art. 8 of the Methodology for calculating the salary rights granted to teaching and auxiliary teaching staff, Annex to Law No 63/2011 on the classification and salary of teaching and auxiliary teaching staff in 2011) (Ticlea, 2014).

In this context, NCA requested the admission of the appeal and to partially change the judgment in order to admit the action and to oblige the University "Dunărea de Jos" Galati to pay the transitional compensation for the period 2.10.2012 - present and continuing plus the related legal interest.

In law, the appeal was requested on the basis of the provisions of Articles 460, 466, 468, 470, 471 lit. (a) Code of Civil Procedure (Parliament of Romania, 2015).

The respondent University "Dunarea de Jos" of Galati filed an appeal and requested the dismissal of the appeal. In the grounds the following was stated:

1. that there is a legal confusion according to the provisions of Article 57 paragraph (4) of the Labour Code. Thus, if a clause is invalid because it establishes rights or obligations for the employees, which are contrary to the mandatory legal norms or applicable collective labour agreements, it is replaced by law with the legal or contractual provisions applicable to the employee entitled to compensation;

2. by interpreting Art. 57 (4) in conjunction with Art. (7) of the Labour Code it is argued that if the parties do not agree, the nullity is pronounced by the court. In this context, the appellant's assertion that a void clause is automatically replaced by a lawful clause is premature and unfounded because it does not specify which clause in its individual employment contract is alleged to be void and, secondly, because there is no decision of the court on the possible invalidity of any clause in its individual employment contract;

3. starting from 01.01.2011 for the period of litigation, the salary rights are and remain exclusively those provided for by art. 1 paragraph (2) of Law no 284/2010 (Parliament of Romania, 2010) for which the establishment of this bonus was excluded by negotiation at the conclusion of the individual employment contract;

4. Article 3 of Law 330/2009 stipulates as a principle in the system of salaries of personnel paid from public funds that in taking into account the bonuses, salary supplements, increases, general or special allowances and other rights of a salary nature, recognized or established, until the date of entry into force of this law, by court decisions, by collective bargaining, as well as by other means, they shall be included at a level accepted, according to the principles of this law, in the gross salary, or, as the case may be, in the basic salary, in the basic function salary or in the monthly allowance;

5.starting from 2010 the bonus for the scientific title of doctor is no longer granted because the provisions of art. 6 of GEO no. 6/1998 were repealed by GEO no. 1/2010;

6. in 2011 for the teaching staff who on 31.12.2009 benefited from the bonus for the scientific title of doctor, the amount related to this bonus was maintained in the form of transitional compensation according to the provisions of Law no. 285/2010 and Law no. 63/2011;

7. in accordance with the provisions of Article 11 paragraph (2) sentence 1 of Annex No. 5 of the "Methodology for calculating the salary rights to be granted to teaching staff and auxiliary teaching staff in education of 10.05.2011 of Law 63/2011" it is stipulated that "Transitional compensation may be granted only to persons who on 31 December 2010 benefited from the allowances for which such compensation is granted". Considering that the contractual relationship of the applicant with our institution takes effect from 02.10.2012, the mandatory rules of Article 2, sentence II of Annex No. 5 of the "Methodology for calculating the salary rights to be granted to teaching staff and auxiliary teaching staff in education of 10.05.2011 of Law 63/2011" apply. In this context, according to the mentioned provisions and taking into account the fact that Law no. 63/2011

came into force on 13.05.2011 and the individual employment contract took effect on 02.10.2012, the claimant was no longer entitled to transitional compensation;

8. the claim of the appellant NCA invoking art. 39 paragraph (1) letter (n) of the Labour Code is unfounded because the mentioned provisions refer to other rights provided for by law that may accrue to the employee and do not refer to rights of a salary nature in which to include the one that is the subject of this dispute;

9. according to art. 6 paragraph (1) and paragraph (4) of Law no. 284/2010, the court held that the doctor's bonus is no longer granted according to the applicable legislation and was not provided for in the individual employment contract between our institution and the claimant;

10. it is requested the rejection of the appeal formulated by the applicant NCA as unfounded and unlawful and the maintenance of the Civil Judgment no. 315/2016 pronounced by the Iasi Court, Civil Section I, CM10 in the Case no. 6816/99/2015 (Anitei, 2021) as well-founded;

11. the following laws were invoked in law: Law No 284/2010, Law No 285/2011, Law No 63/2011 as well as the legal provisions mentioned in the above paragraphs.

The appellant NCA submitted the following reply to the complaint:

1. Admit the action and settle the labour dispute concerning the payment of unpaid salary rights - "transitional compensation" equivalent to the doctoral bonus on the basis of the provisions of Articles 38, 39 and 268(1)(c) of the Labour Code in conjunction with Articles 2, 8 and 11 of the Methodology for calculating the salary rights to be granted to teaching and auxiliary teaching staff, annexed to Law No 63/2011 on classification and remuneration;
2. It follows from those provisions that the increment for the scientific title of doctor, known as transitional compensation for persons who held a doctorate on 31 December 2009, is part of the basic salary (under Article 11 in conjunction with Article 2(3) of the Methodology) and the legal basis for entitlement to it is Article 8 'The Methodology for calculating salary rights ... is a legal and mandatory provision. These provisions could not be interpreted by the respondent in a restrictive sense, depending on the change of employer, since the granting of 'transitional compensation' takes into account the scientific title of doctor of the person concerned;

3. The evidence that he received this doctoral bonus results both from the doctoral diploma, from the work book and from the certificate no. 268/DA issued on 11.11.2016 by his former employer, namely the "Petre Andrei" University of Iaşi. Therefore, the respondent's granting of the doctorate bonus was a continuation of the doctorate bonus starting from 1.04.2008 and continuing from 1.10.2012 until 1.08.2016 when the O.U.G. no. 20/2016 came into force, article I provides for the introduction of article 31 which in point (8) provides that the doctorate bonus shall be granted to all those who have the title of doctor who do not receive the compensatory amount included in 2010 in the basic salary";
4. The doctoral increment called "traitorous compensation" falls under the "statutory part" of the MTA and not under the "conventional part" of the MTA. In other words, such transitional compensation is automatically part of the MIF, even in the absence of express provision by the parties/express inclusion in the MIF. This is also the case under Article 38 of the Code labour law - common law, in this case - which provides imperatively: "Employees may not waive the rights granted to them by law. Any transaction which seeks to waive or restrict the rights conferred by law on employees is void'. This provision is also particularly detailed in relation to salary rights; thus, Article 170 of the Labour Code states: "The unreserved acceptance of part of the salary rights or the signing of payment documents in such situations may not constitute a waiver on the part of the employee of the salary rights to which he is entitled in their entirety, in accordance with the legal or contractual provisions". Therefore, the grant of the respondent's doctoral bonus represents the continuation of the receipt of the doctoral bonus from 1.10.2012 (when I was employed at the respondent, "Dunărea de Jos" University) until 1 August 2016 when GEO no. 20/2016 came into force.
5. Failure to take into consideration the evidence of the respondent by which it tries to justify the award of the doctoral bonus because:

a. the additional documents submitted by the respondent do not reflect the granting of the doctoral bonus in the form of transitional compensation for the period from 2 October 2012 to 1 August 2016, but reflect salary increases granted either by various legislative acts: law, GEO

increasing salaries in different tranches in the same year or in different years (2012, 2013, 2014, 2015, 2016), or by decisions of the rector, who, from the university budget, within certain limits allowed by law, may grant preferential salaries;

b. the request submitted by NCA on 19.11.2012 was never implemented, although it had the resolution "15% differential salary is approved", it was not implemented, it is also clear from the certificate (received from the respondent, registration no. 24309, date of entry/exit 10. 07.2015) submitted by me at the time of my appeal, by which the respondent justifies why it considers that I should not have received the doctoral increment in my basic salary as "transitional compensation" even though Art. 8 of the "Methodology for calculating salary rights..." imperatively provided for the doctoral bonus. The certificate received from the respondent, registration no. 24309, date of entry/exit 10.07.2015 from a legal point of view is the document of record ad validitatem which by itself cancels the claim considered to be approved but about which I was not informed. The attestation shows that the application deemed to be approved has not been implemented by the Payroll Department. The alleged request deemed to be approved does not therefore meet the conditions of a legally valid legal act at the MIF-the consent of the parties to the MIF has not been formed; for it to have been formed I would have had to have been made aware of the resolution of approval. Indeed this fact is apparent from the certificate itself (received from the Respondent), registration no. 24309 (date of entry/exit) 10.07.2015 acknowledging that the doctoral increment is not granted; indeed, the application to which we refer is not a supporting document for payment (a legally valid act to have been considered for application by the Payroll Department). According to the legislation in force, the salary components must be specified separately, even if a particular increment or allowance is included in the basic salary and is an element of the 'differentiated' salary, in this case transitional compensation. These distinctions must be made known to the employee by means of an individual employment contract or secondary documents such as decisions or additional documents, even the latter taking the form of a request made by the employee and approved by the employer. Notification is evidenced by communication of the legal act to the employee. Also, the fact that I did not receive the doctoral bonus in the form of "transitional compensation" is also apparent from my salary slips. the university issued by the respondent university has a doctoral bonus heading, but nothing is listed under this heading. If the resolution on the application of the undersigned had been applied, the heading "doctor's bonus" would have read "transitional

compensation" and the resolution "15% differentiated salary approved" would have been applied, as stated in the application dated 19.11.2012. If I had received the doctor's bonus as suggested by the undersigned, why would I have taken legal action? Could I, as a university professor in the field of law, appear before the court and ask for a right, i.e. the doctoral increment in the form of "transitional compensation" twice from the same institution where I work? Or, as we know only too well, this doctoral increment in the form of 'transitional compensation' is only granted by one institution. If the respondent had granted the doctoral bonus as transitional compensation in the basic salary, it would have been stated in the certificate no. 24309, dated 10.07.2015 that I receive the doctoral bonus as transitional compensation in the basic salary and it would not have been justified why it did not grant me this bonus. So, the resolution on the undersigned's application dated 19.11.2012 "15% differential pay is approved" should have been implemented immediately.

c. Decision no.137/1635 dated 13.09.2016 issued by the Rector of "Dunarea de Jos" University and submitted as evidence by the respondent proves that the last provisions of "GEO no. 20/2016 and Decision no. 582/2016 of 10 August 2016 for the approval of the Methodological Norms for the application of the provisions of art. 3^1 para. (2), (3) and (8), art. 3^3 and 3^4 of OUG no. 57/2015, which are entitled Chapter III "Establishment of salary rights for teaching, auxiliary teaching and management staff in higher/university education" (in our relevant case art. 19- art. 27). Thus, Annex II of the Decision no. 582/2016 in point (2) regulates "basic salaries for teaching positions in higher/university education" establishing that the position of professor, grade 5, for a seniority of 15-20 years provides as basic salary 4919 lei. Also, since August 2016, O.U.G. no. 20/2016 came into force, which stipulates in art. I that art. 31 is introduced, which in point (8) states that the doctorate bonus is granted to all those who have the title of doctor who do not benefit from the compensatory amount included in 2010 in the basic salary", in the salary slip there is the heading doctorate bonus 15% with the amount of 201 lei. So the decision does not certify that the NCA received the doctoral increment in basic salary as "transitional compensation" as imperatively provided for in Article 8 of the "Methodology for the calculation of salary entitlements...", but that the legal provisions in force regarding the salary for teaching positions in higher/university education apply;

4. It follows from the above that the respondent did not grant the doctoral bonus in the form of transitional compensation from 1 October 2012, when I signed the employment contract registered under No. 4633

until the entry into force of GEO No. 20/2016, i.e. from the signing of the additional act dated 1 August 2016.

5. For all these reasons, it is requested that the appeal be admitted and that the judgment be partially changed in order to admit the action and to oblige the University "Dunărea de Jos" Galati to pay the transitional compensation for the period from 2.10.2012 to the present and thereafter plus the related legal interest.

The Court, by the judgment of the sitting of 16.11.2016, examining the action and the procedural acts carried out during the two procedural phases, found that the basis for the granting of compensation was also OG 137/2000, invoking also by The Court of First Instance, referring to the provisions of Article 16 of Directive 2000/78/EC (European Commision, 2000), the discrimination in relation to the doctoral bonus by the NCA, ordered the case to be brought before the National Council for Combating Discrimination (Bleoancă & Grecu, 2015).

The court of its own motion ordered in evidence that the appellant submit evidence in the case file showing the salary obtained from her former employer before 02.10. 2012, in the sense of whether this transitional compensation was included in the salary obtained from the former employer and whether subsequently this compensation was included in the basic salary, and the respondent, through its legal representative (Georgescu & Cioriciu Ștefănescu, 2010), to submit copies of the documents in the personal file in relation to salary, evidence of income, including the addendum to the individual employment contract concluded in 2014 and a record of a salary for an employee of the respondent institution, employed in a position similar to that occupied by the appellant.

NCA as the appellant submitted the requested evidence and the respondent submitted copies of the documents in the applicant's personal file.

We note that the respondent did not submit "a record of a salary for an employee of the respondent institution, employed in a position similar to that occupied by the appellant applicant" as requested by the court but only "copies of the documents in the applicant's personal file."

The Court of Appeal, having analysed the documents and the file and in the light of the grounds of appeal, considers the appeal to be well founded for the following reasons:

- The first instance, in its decision, only partially and truncatedly analysed the plaintiff's claim in relation to the applicable legislation and the factual and legal grounds of the claim. In that regard, the applicant based its action both on Article 8 of the Methodology for calculating the salary rights

(Parliament of Romania, 2011b) to be granted to teaching and auxiliary staff in the education sector and on the provisions of Legislative Decree No 137/2000 (Government of Romania, 2011) republished and the provisions of Directive 2000/78/EC. However, the first instance evaded any systematic analysis of the applicant's salary, both from a legal point of view and, in particular, from the point of view of the discriminatory situation alleged;

- On the basis of the foregoing, it is necessary to re-examine the factual situation, uncontested by the parties, from the point of view of all the legal grounds of the action. In this regard, the Court of Appeal holds that it is true that between the parties was concluded on 02.10.2012 the individual employment contract of the plaintiff NCA being employed by the defendant for an indefinite period in the position of university associate professor doctor; The conditions for the appointment as a university lecturer doctor are provided for by art. 301 paragraph (4) of Law no. 1/2011, art. 8 and art 5 paragraph (2) of GD no 457/2011, From these provisions it can be seen that the teaching position of university lecturer doctor is filled through an open and public competition in which any person who meets the criteria established by art 301 paragraph (4) of Law no 1/2011 may participate, whether he is already employed by the employing university, or whether he is from another university, as is the case of the applicant in this case;

- Consequently, there is no doubt that if the post of lecturer put out to tender by the University "Dunărea de Jos" had been occupied by one of its employees (comparable situation), there would have been exclusively a modification of the existing employment contract in terms of the "type of work entrusted", and the provisions of Article 8 of the "Methodology for calculating salary rights..." would have been applied with regard to the calculation of salary rights. "persons who on 31 December 2009 were receiving a bonus for the scientific title of doctor shall receive a transitional compensation calculated by applying 15% to the basic salary established in accordance with this chapter, calculated as the sum between lit. A, B, C, D, E of Article 3". This conclusion is based on the fact that in the minimum academic standards required for the teaching position of lecturer include the legal prerequisite of having completed doctoral studies;

- On the contrary, since the applicant had previously worked at "Petre Andrei" University and held the post of lecturer at the defendant, the defendant applied the provisions of Article 11(2) of the same calculation methodology in its employment contract;

- The defendant does not contest the application of a different salary treatment to its employees, treatment established according to the date of their employment at the University, but invokes in its defence the

application of the normative provisions, claiming at the same time that the rights claimed by the action represent only a salary supplement for employment. On the one hand, in view of the legal definition of the national concept of salary, under Article 159 of the Labour Code, the legal title of the sums granted for the scientific title of doctor is irrelevant, since it is unquestionable that they form part of the monetary rights established for the teaching post in question. On the other hand, the application of the legal norm cannot be detached from the causal context and is always subject to interpretation. Given that, according to Article 5(2) of GD No 457/2011, the competition is open to persons who meet the conditions for registration for the competition, without any discrimination, under the law, the same non-discriminatory treatment must be applied consistently after the selection process;

- According to art. 1 paragraph (2) letter € of OG no 137/2000 republished, the principle of equality between citizens, exclusion of privileges and discrimination are guaranteed in particular in the exercise of the following rights: i) the right to work, free choice of occupation, fair and satisfactory working conditions, protection against unemployment, equal pay for equal work, fair and satisfactory remuneration;

- Given that the claimant NCA benefited from the doctorate bonus during the period 01.10.2010-28.09.2012 within the "Petre Andrei" University of Iaşi, the non-granting by the "Dunărea de Jos" University of the compensatory amounts related to the doctorate bonus takes into account exclusively the date of her employment within the university, regardless of her professional qualification, seniority or professional level;

- It is true, as the defendant has argued, that the provisions of Directive 2000/78/EC are not applicable in this case. The Court of Justice of the European Union has ruled, as regards the scope of this Directive: "The Court stated that 'in paragraph 56 of the Chacon Navas judgment (...) having regard to the wording of Art. 13 EC, the scope of Directive 2000/78 could not be extended beyond discrimination based on the grounds listed exhaustively in Article 1 of that Directive (...)" - Case C 303/06, Judgment of the Court (Grand Chamber) of 17 July 2008, S Coleman v Attridge Law and Steve Law, ECLI:EU:C:2008:415, para.46 . However, none of the criteria set out in Article 1, namely "on grounds of religion or belief, disability, age or sexual orientation", applies in this case;

- However, under Art. 2 paragraph (1) OG nr 137/2000 ensures a much higher standard of protection at national level by stipulating that "discrimination means any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category,

beliefs, sex, 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 recognised by law, in the political, economic, social, cultural or any other field of public life". Consequently, the establishment of a different level of salary rights for the same function, based solely on the date of recruitment in the university, represents direct discrimination in relation to the provisions of Article 1(2)(e)(i) and Article 2 of the OG No 137/2000. On the other hand, the High Court of Cassation and Justice also held the same reasoning in the The appeal in the interest of the law solved by Decision No 21/2016 In this regard, it was considered that "the existence of several normative acts, adopted successively in a short period of time, on the basis of which it was intended to establish a single salary for budget employees cannot constitute a legal basis for establishing differential treatment and for disregarding the principle of equal treatment for all employees and which requires equal pay for work of equal value. The criterion of time or of different regulations cannot justify differences in pay between persons who perform the same function and have the same professional qualifications. Therefore, an unfavourable situation cannot be accepted in relation to staff who, since 2011, meet the necessary conditions to be included in their salary the compensatory amount of 15% of the basic salary, compared to staff who, in the previous year, were so paid. for all categories of staff in identical situations, the salary must be paid at the level of pay for similar positions in the institution/public authority where they are employed. When the identical situations between two employees are analysed, the identity of the regulations should not be checked, but the identity of the activity and professional training should be taken into account";

- With regard to the judicial compensation due to the applicant, the Court of Appeal held that, according to Article 27 of the General Order no. 137/2000, "the person who considers himself discriminated against may apply to the court for compensation and restoration of the situation prior to the discrimination or annulment of the situation created by the discrimination, in accordance with ordinary law".

- Although the Constitutional Court decisions no. 818-820 of 3 July 2008, referring to the exception of unconstitutionality of the provisions of art. 1, art.2 paragraph (3) and art. 27 of the OG no. 137/2000 on the prevention and sanctioning of all forms of discrimination found that the provisions of art. 1, art.2, art.2 and art. 27 of the OG no. 137/2000 on the

prevention and sanctioning of all forms of discrimination were unconstitutional. paragraph (3) and art. 27 paragraph (1) of the OG nr 137/2000 on the prevention and sanctioning of all forms of discrimination republished are unconstitutional insofar as they imply that the courts have the competence to annul or refuse the application of normative acts with the force of law, considering that they are discriminatory, and to replace them with judicially created rules or with provisions contained in other normative acts, however, by Decision no. 21/2016 in the interest of the law, previously cited, it was ruled that "In the interpretation and application of the provisions of art. 30 paragraph (6) and art. 48 paragraph (1) item 7 of Law no. 330/2009, art. 4 paragraph (1), art. 6 paragraph (1) of GEO no. 1/2010, art. 1 paragraph (5) of Law no. 285/2010 and art. 8 of Annex no. 5 of Law no. 63/2011 have the right to compensation amounts for persons who acquired the title of doctor after the entry into force of Law no. 330/2009";

- A fortiori, given that the right to those amounts was also recognised for persons who obtained the title of doctor after the entry into force of Law No 330/2009, all the more so as that right must be recognised for the applicant, who held that title on the date of entry into force of Law No 330/2009 and had received the corresponding increase until the date of her appointment at the defendant university in the teaching post of lecturer;

- The signing of the employment contract by the plaintiff cannot legally be considered as a waiver of her legal rights, in accordance with the provisions of Article 38 of the Labour Code, as the appellant correctly argued. Moreover, the amounts awarded are of a reparatory nature in relation to the provisions of Article 27 of the OG no 137/2000, having the legal nature of a patrimonial compensation;

- Consequently, for the reasons set out above, the appeal lodged by the appellant NCA against Civil Judgment no. 315/22.02.2016 pronounced by the Iasi Court is admitted, which will change in part, in the sense that it will admit the action brought by the applicant NCA, in contradiction with the defendant University "Dunărea de Jos" of Galaţi;

- The defendant shall be obliged to pay to the applicant the amounts corresponding to the transitional compensation calculated by applying the percentage of 15% to the basic monthly salary for the period 02.10.2012-01.08.2016 and the related legal civil interest from 02.10.2012 until the date of implementation of the provisions of this decision, taking into account that from 01.08.2016, the defendant granted these amounts by Decision No 137/1635/13.09.2016;

- The rest of the provisions of the appealed civil judgment that do not contradict the present decision, namely those relating to the method of

resolving the exceptions of res judicata and inadmissibility, shall be maintained, as the defendant's procedural defences are not returned by a proper appeal and cannot be subject to analysis in the appeal of the opposing party.

Concessions

The appeal filed by the appellant NCA against the Civil Judgment no. 315/22.02.2016 pronounced by the Iasi Court, which it partially reverses, was admitted in the sense that:

- admits the action formulated by the plaintiff NCA, in contradiction with the defendant University "Dunărea de Jos" of Galați;

- orders the defendant to pay to the plaintiff the amounts corresponding to the transitional compensation calculated by applying the percentage of 15% to the basic monthly salary for the period 02.10.2012-01.08.2016 and the related legal civil interest from 02.10.2012 until the date of implementation of the provisions of this decision;

- upholds the remaining provisions of the civil judgment under appeal which are not contrary to this decision.

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