

The status of civil servants - between aspirations towards professional excellence and political interference

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Abstract

The Romanian society has, as a national objective, a public administration outside the political influence and the recruitment of competent and performant public servants. One of the instruments to realize this objective is, no doubt, the legal status of the public servants. This study is aimed to identify and analyse the elements of vulnerability witch the Law 188/1999 concerning the public servants and the project of the Administrative Code contain, from the perspective of the political influences. The main issue of the study is to be aware of the institutions, procedures and factors witch make fragile the legal status of the public servants, allowing, by example, the political parties membership of the public servants or their recruitment in absense of a national competition, organised by an entity specialised in the development of the public function in Romania. The project of the Administrative Code brings remedies only in part for the existing problems, while amplifies others. O very difficult, actual and vulnerable matter is the policy of salaries of public servants, in the context of the Decision n. 794/2016 of the Constitutional Court. The research has an explicative, but also a critic character. Also, solutions are offered in order to increase the degree of accomplishment of a competent, transparent and political neutral administration.

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1. Analysis from the perspective of Law no. 188/1999 on the Civil Servants' Statute

The civil servant is the main human resource in the central and local public administration. "If the official is weak, incompetent, bad faith, poorly remunerated, the result of his work will be worthless, of quality." If the official is competent, fair, professional, responsible in relation to his work, the result will be successful, beneficial for the official, but also for the citizens who benefit from his services."²

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² Verginia Vedinaş, *Cât de drept este cu funcționarii publici statul de drept?*, „Revista de Drept Public”, no. 3/2012 p. 13.

Civil servants benefit in Romania from their own legal status, represented by Law 188/1999³. According to art. 73 par. (3) lit. j of the Constitution, the statute of civil servants belongs to the *organic* field of regulation and adoption. This status should ensure the professionalism of those exercising public functions and provide them with sufficient legal guarantees against interference of any kind in their activities⁴. The finality of the legal status of civil servants should be "a high-performing, professional, transparent, neutral, equitable, stable public administration capable of meeting new challenges."⁵

In particular, however, this socio-professional category is located in the immediate vicinity of political decision-makers. Political incitement is thus favored, all the more so since the worship of a competent and politically non-implicit civil servant is rather an ideal in societies that have seen totalitarian political regimes.

As stated in Law 188/1999, the Romanian legislator was concerned with the good classification of public functions, the statement of civil servants' rights and duties, as well as the modification, suspension or termination of their employment relationships. *However, by allowing civil servants, except for senior civil servants, to hold membership of a political party, the lawmaker opened wide the doors of political interference.* According to art. 44 of Law 188/1999, "civil servants are forbidden to occupy managerial positions in the elected or appointed governing bodies or bodies of political parties, defined according to their statutes, of the organizations to which the same legal regime applies as to the parties political or foundations or associations working alongside political parties." Instead, civil servants may be party members and even they can become messengers or bearers of political interests within the public administration before any interference occurs. The only exception to the possibility of cumulating the public function as a party member is the high-ranking civil servants to whom they are forbidden to be part of political parties, organizations to which the same legal regime applies as to political parties or foundations or associations it works alongside political parties."⁶ In trying to balance the situation in favor of the neutrality of the administration, the legislator set out in the same article the obligation of civil servants to refrain from publicly expressing their political beliefs and preferences and favoring political parties⁷. But the imbalance in favor of the

³ Law no. 188/1999 on the Statute of civil servants, republished in the Official Gazette, Part I no. 365 of 29/05/2007, amended and completed by Government Emergency Ordinance no. 37/2009. Regarding civil servants with special status, specific normative acts were enacted, which are applied with the *lex specialis* title (Law no. 293/2004 on the Statute of civil servants with special status from the National Administration of Penitentiaries, Law no. 360/2002 on Police status, etc.)

⁴ For a history of the status of civil servants in Romanian law, see Valentin I. Prisăcaru, *Funcționarii publici*, *Studii Juridice*, All Beck, Bucharest, 2004, p. 61-79.

⁵ Irina Alexe, *Reforma funcției publice după 10 ani de la aderarea României la Uniunea Europeană. Cazul înalților funcționari publici*, „Revista de Drept Public”, no. 2/2017, p. 12.

⁶ Article 44 para. 2 of Law 188/1999.

⁷ In the doctrine, this duty of civil servants was called a reserve requirement (see Verginia Vedinaș, *Deontologia vieții publice*, Universul Juridic, Bucharest, 2007, p. 135).

political factor has already occurred. *By these provisions of the statute of civil servants, the Romanian legislature did not opt, in reality, for a politically impregnated administration, to the detriment of a technocrat? If this is the case, why are such reasons not recognized openly, but on the contrary proclaim the objective of general interest in the depoliticization of the administration? How do you depoliticize a populated administration of civil servants who can be party members?*

According to art. 67 of the Statute, the employment of public positions is done through promotion, transfer, redistribution, recruitment or other means provided by law. A job is usually held through an exam or competition. Not only does the legislator not establish the exam or contest as a way of occupying the public office, but it does not even mention it. The more technical *recruitment* term was preferred. We appreciate that promotion and transfer are more of a career civil servant's career, not of access to public office. The recruitment for entry into the civil service body is made through competition, within the limits of the vacant public positions, reserved for this purpose through the civil service plan. The legislator declared the competition's call to be an open, transparent competition, based on professional merits, competence and equal access to public functions. The organization of the contest is announced through the Official Monitor and a wide-circulation daily, at least 30 days before the date of the contest.

The rules governing the organization of the competition differ according to the public authority or institution in which the civil service is to be occupied, as well as the category of civil servants. Thus, for the vacant public positions in *the central public authorities and institutions*, the competition is organized by a permanent, independent, seven-member committee, appointed by decision of the Prime Minister for a ten-and-a-half year term in the case of *high civil servants*⁸; by the National Agency of Civil Servants for the occupation of general and specific management positions; by the public authorities and institutions, with the approval of the National Agency of Civil Servants, for the general and specific execution of public functions.

The recruitment contest for vacant public positions within *public authorities and institutions in the local public administration* is organized by the National Civil Servants' Agency for a limited series of *public management positions* in areas of special interest⁹, while for the occupation of the other public

⁸ Irina Alexe points out that, as a result of the lack of application of the rules by political decision-makers, these committees are not functioning for longer. (Irina Alexe, *Reforma funcției publice după 10 ani de la aderarea României la Uniunea Europeană. Cazul înalților funcționari publici*, op. cit., p. 18). The author makes this finding regarding the commissions for the evaluation of the activity, respectively for the discipline of high civil servants, but by reading Law 188/1999, it is clear that the evaluation and disciplinary sanctioning of senior civil servants is also done by their recruitment committee.

⁹ Child protection, computerized evidence of the person, internal public audit, financial accounting, urbanism and architecture, human resources, European integration, for the secretaries of the administrative-territorial units, as well as for the public execution functions in the field of public internal audit.

positions, the contest is organized by that authority or public institution, therefore at the local level. And this time the legislator tried to balance the situation "deviated locally" by imposing the obligation of the public authority or institution to inform the National Civil Servants Agency regarding the start of the procedure of organizing and conducting the contest; as well as the possibility for the Agency to postpone or suspend the organization of the contest. Another derogation from the rule of organizing the competition for senior civil service positions through the Agency, both for central and local public authorities and institutions, seems to confirm the legislator's choice for recruitment at the institution or at local level of officials by *bodies not specialized in the recruitment of civil servants*.¹⁰

In the context illustrated above, *the establishment of unitary rules on access to the public office suffers*. This disparate way to regulate the recruitment of civil servants induces a strong hierarchy of public functions in the collective mind, implicitly conveying the message that there are more public authorities and institutions than other public authorities and institutions; very important civil servants, less important civil servants, and even less important. In our opinion, the only institution specializing in the recruitment of civil servants is (or may become) the National Agency of Civil Servants. The Agency was created to "create and develop a professional, stable and impartial body of civil servants" (Article 21 paragraph 1 of the Statute). In a not very happy way, the Agency is *subordinated* to the Ministry of Interior and Administrative Reform and is headed by a president, appointed by the Prime Minister. The competencies of the institution concern exclusively the public function, from the drafting of normative acts to the application of contravention sanctions. These competencies facilitate a good knowledge of the human resources in the public administration, but also what should become the civil servant in Romania, in which context the Agency becomes the most well-known organizer of the recruitment of civil servants. "When this authority was created by law, there were practically two possibilities, in terms of the status of the Agency: to establish a subordinate public authority, the subordination being possible either to the Government or to a ministry; set up an autonomous central authority, a status which we supported and promoted in our work on the grounds that it best met its purpose, which was to contribute to the creation of a body of professional and non-governmental civil servants politically depoliticated, capable of satisfying the requirements of a modern European administration. However, the legislator opted for the second variant, a subordinate structure with a pronounced political character, which explains many imbalances that continue to happen in the civil service Romania, as well as the inability of this institution to militate for professionalism, competence and stability in the civil service plan in Romania, materialized mainly in the many mutations that take place in the civil service when the governments change (...)"¹¹

¹⁰ "The National Agency of Civil Servants may delegate to the public authorities or institutions, under the law, the competence to organize recruitment competitions for the occupation of general and specific general public positions" (Article 58, paragraph 4).

¹¹ Verginia Vedinaş, *Statutul funcționarilor publici*, Universul Juridic, Bucharest, 2009, p. 93.

Recruitment is not equivalent to the contest or exam. Recruitment, even in the context of a competition announced, means primarily redistribution of civil servants. Unless the Agency finds civil servants meeting the conditions to be redistributed, the Agency shall communicate to the public authorities and institutions the appointment of a procedure officer, a public official who will represent the Agency in the competition commission. As we have already been accustomed to, the Prosecutor's Office may also be appointed from the prefect's institution, based on prefects' proposals¹². *The "slippage" to the local, a space where political interference is easier to accomplish and harder to monitor and sanction, is encouraged by the possibility of departing from the apparent edict rules in recruitment of civil servants.*

Unlike the recruitment of civil servants, an institution on which the legislator has unsuccessfully attempted to organize competitions organized at national level, *the promotion of civil servants was explicitly left to the discretion of public authorities and institutions.* "The competition or the promotion exam in the professional degree is organized by the public authority or institution, within the limits of the public functions reserved for the promotion, with the allocation in the allocated budgetary funds".¹³ Only in the case of rapid promotion the legislator regulated the organization of the competition by the National Agency of Civil Servants.

Mobility of civil servants is an element of fragility in their status¹⁴. It is interesting to note that mobility is regulated in the case of the only category of civil servants who can not be party members - senior civil servants. *The other civil servants who enjoy working in office, and their transfer in the interests of the service and the move are regulated rigorously by the legislator.* The sanction of the high civil servant's refusal to present availability for appointment to another public office is draconian. It consists in liberation from the public office. The former high civil servant enters the civil servants reserve and enjoys the right to be redistributed to a vacant management or vacancy office. This right is limited in time to 2 years because, according to art. 105 para. 2 lit. of the Statute, the civil servants leave the reserve body and lose the status of civil servant after the 2 year term after the date of transfer to the reserve body. The quality of civil servant is also lost if the National Agency of Civil Servants redistributes in a public office a holiday corresponding to graduated education and professional training, and the civil servant refuses it.

2. Analysis from the perspective of the Administrative Code draft

The Administrative Code, to the extent that it will be adopted in the form of the current draft, will bring about a number of important changes in the status of

¹² Article 58 last paragraph of Law no. 188/1999.

¹³ Article 65 para. 1.

¹⁴ Irina Alexe, *Mobilitatea înalților funcționari publici – modalitate de modificare sau de încetare a raporturilor de serviciu?*, „Revista de drept public”, no. 4/2009, p. 43-51.

civil servants¹⁵. First of all, it is worth mentioning the introduction of new principles underlying the exercise of public office, namely *competence, performance and good faith* in the sense of respecting the rights and fulfillment of the service obligations. The new principles, correlated with the corresponding duties¹⁶, illustrate the aspirations for professional excellence in regulating the status of civil servants. Instead, the Code provides expressly *the right for civil servants*, except senior civil servants, *to be party members*, as well as a series of interdictions related to their political involvement. Civil servants may not hold senior positions in the governing bodies or governing bodies of political parties; have an obligation not to manifest their political preferences; not to participate in the collection of funds for the activity of political parties and not to provide logistical support to candidates for positions of public dignity. An element of novelty is *the ethics adviser*, appointed by the heads of public authorities and institutions, for the purpose of applying the provisions of the Code on the conduct of civil servants.

It clarifies the legal status of some professional categories by excluding them from civil servants: healthcare personnel, staff of autonomous administrations, national companies and companies as well as public sector companies as well as military staff. Contract staff who exercise public power prerogatives, in the sense of art. 426 par. (1) - (3) of the project is to be placed in public positions.

A novelty provision establishes the right of civil servants to carry out *remunerated activities in the public sector and the private sector*, in compliance with the legal provisions on incompatibilities and conflict of interest (Article 481 of the draft). Unlike Law 188/1999, the draft Code regulates *the regime of incompatibilities and conflict of interest in the exercise of public functions*, a regime which can not, indeed, be removed from the civil servant status¹⁷. The rule is that the status of civil servant is incompatible with other public functions and public dignity, as well as situations where the civil servant is not incompatible. Under the incompatibility regime, the situation of direct hierarchical relations with family members was regulated, it being noted that *only* (!) Hierarchical relationships in which persons are spouses or relatives of first degree are prohibited. With a series of limitations that are absolutely necessary to ensure their impartiality¹⁸, civil servants, parliamentary civil servants and civil servants with

¹⁵ We considered the text of the project, as it can be found on the website of the Ministry of Regional Development and Public Administration.

¹⁶ Ensuring a high-quality public service, responsible use of public resources, conduct in relations with citizens; objectivity and responsibility in decision-making.

¹⁷ At present, this regime is regulated in the Law no. 161/19.04.2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, prevention and sanctioning of corruption.

¹⁸ Activities identical to those provided in the civil servant post; activities related to the running of projects funded by programs for which the structure within which it was appointed ensures the development, management, technical and financial monitoring and evaluation of projects or programs as appropriate; activities carried out in those legally recognized entities for which, depending on their field of activity, the public authority or institution in which the civil servant was appointed performs control activities; activities carried out at those legally recognized entities for

special status may carry out activities in the private sector either within legally recognized entities or individually. It is interesting to note that most of the limitations are of a *temporary* nature, depending on the ratio in which the civil servant's institution is with the private-sector structure in which it performs a particular activity. In the case of conflict of interest, we notice *only* (!) When it is nominated to participate in the same commission with civil servants who have the status of a first degree spouse or relative, or to make decisions that lead to the obtaining of a patrimonial benefit for herself, her husband, wife or relatives up to grade I¹⁹. *It is thus penalized only to obtain benefits for the closest relatives, and the hypothesis of the interpersonal existence is not even regulated.* The obligation to complete the declaration of wealth by civil servants, an institution related to the incompatibility regime and conflict of interest, is no longer found in the project.

According to art. 513 par. 1 lit. from the project, the quality of civil servant is acquired through *competition*. There are two new conditions to be met by persons wishing to gain public office, ie they have not been denied the right to take up a public position or to exercise the profession or activity in the execution of which they committed the act by a final court decision and have not been dismissed from a public position or have not terminated their individual employment contract for disciplinary reasons in the last 3 years. Instead, access to public functions takes place in several ways: competition, promotion, transfer or definitive move, redistribution to a vacant public position, other ways expressly provided by this Code.

The competition for a public office is organized differently depending on the public authority or institution. Thus, in order to hold a public position within the public authorities and institutions of the central public administration, the autonomous administrative authorities and the specialized structures of the courts and prosecutors' offices, the competition involves a *recruitment stage* consisting in the verification of the general knowledge and general competencies needed to occupy a post public, conducted through a national competition and a *selection stage* which consists in verifying the specialized knowledge and the specific competencies necessary for the occupation of a vacant public position, carried out by contest on the job. The recruitment stage is organized at national level, while the job contest is organized within the public authority or institution. Occupation of public functions within the public authorities and institutions of local public administration is carried out through a competition organized at a local level, structured in two stages: the recruitment stage consisting in verifying the general knowledge and general competencies necessary for the occupation of a public

which the public authority or institution in which the civil servant was appointed has the task of recognizing certain qualities or granting rights; activities carried out on those legally recognized entities with which the institution or authority in which it has been appointed has a commitment relationship, whatever its nature; activities carried out at those legally recognized entities of the litigation of any kind with the authority or public institution in which it was appointed; other activities provided by special regulations as being incompatible with the public office.

¹⁹ The cases are more numerous, provided by art. 512 of the Project.

function and the stage of a selection consisting of the verification of the specialized knowledge and the specific competencies required to fill a vacant public position.

It is to be welcomed the recognition of the competence of the National Agency of Civil Servants to organize the recruitment phase for public service competitions within the public authorities and institutions of the central public administration, the autonomous administrative authorities and specialized structures of the courts and prosecutor's offices. Instead, the Agency's involvement in organizing public service competitions within public authorities and institutions of local public administration was very limited. The Agency does not organize such competitions, being only represented in the competition commission, and representation can be provided by the prefect or county council institution. The Agency is informed about the contests, may suspend the procedure for organizing / conducting competitions, check the irregularities in organizing the competitions in connection with which it has been notified and may appeal in court the acts concerning the organization and conduct of the competitions. These latter tasks are rather monitoring and observing compliance with legal rules rather than decision-making. *The decision is left at the level of the public authority or institution, a finding that is also confirmed in the case of central public authorities and institutions, as the Agency does not organize the selection phase. Promotion in public office is left, as in the current regulation, at the discretion of public authorities and institutions.*

An important change is the narrowing of the sphere of high civil servants. Currently, according to art. 12 of Law 188/1999, have the capacity of senior civil servants, the Secretary General of the Government, the Deputy Secretary General of the Government, the General Secretaries of Ministries and other specialized bodies of the central public administration, the prefects, the Deputy General Secretaries of Ministries and other bodies specialty of the central public administration; sub-prefects and government inspectors. In the regulation of the Administrative Code, they will have the status of senior civil servants, secretaries-general and deputy general secretaries within the public authorities and institutions of the central public administration, autonomous administrative authorities provided by the Constitution or established by organic law and specialized structures of the Romanian Parliament (article 441). The prefect, the sub-prefect and the government inspector will no longer be senior civil servants.

Access to this public function is done through competition; promotion, mobility, redeployment from civil servants and temporary employment. The choice of the way of occupying the position belongs to the person who has the power to appoint in the public position, at the proposal of the head of the public authority or institution in which the vacant public office is located. *Through this regulation, the way in which the most important functions in the public administration are occupied becomes uncertain and variable on a case-by-case basis.* We welcome, on the other hand, the exclusion of the alternative variant consisting in the exercise of a full parliamentary mandate, of the conditions for the occupation of this public office. The selection and promotion contest for the public office of the senior civil

servants is organized by an independent selection committee, consisting of 5 members, appointed by decision of the Prime Minister at the proposal of the minister with attributions in the field of public administration and the president of the Agency National Civil Servants. The way of organization and functioning of this commission is to be established by Government decision. Unlike Art. 18 of Law 188/1999, the *mandate* of the members of the commission is no longer foreseen, which allows their change according to the will of the person entitled to appoint them²⁰.

The draft Code provides for a more detailed regulation of the institution of high civil servant mobility, designed to function both in the public interest, for the performance of the public authorities and institutions, and for the professional development of the senior civil servants. It may be ordered more than once in a calendar year only with the consent of the civil servant, and it may oppose the decision on mobility in case of pregnancy, single parental growth of a minor child, health status, family reasons justifying refusal.

New disciplinary misconduct (unjustified refusal to submit to the control of occupational medicine and medical expertise following the recommendations of the occupational health physician, according to the legal provisions) is introduced and other deviations are known to be different²¹. Critical is the maintenance of the exhaustive list of disciplinary deviations, amplified by a wider formulation, namely "other facts foreseen as disciplinary deviations in normative acts in the field of civil service and civil servants or applicable to them". The applicability of such an act in the field of civil service must result from an express provision contained in the normative act governing the deed. At the same time, *new disciplinary sanctions* are introduced, such as a written warning, a 10-15% reduction in wage rights over a period of up to 1 year, and the project reduces the margin of decision of the person called to apply the sanction by expressly providing for sanctions for each category of disciplinary misconduct. The period within which the disciplinary sanction can be applied has been reduced from 1 year from the date of notification of the Disciplinary Board to 4 months, the limitation period of 2 years from the date of the disciplinary misconduct was maintained. It is noted that the composition of the disciplinary commissions is distinctly different for the different categories of civil servants. Also, the deadlines after the expiration of which the sanctions for minor offenses are abolished are changed, being reduced.

In the framework of the amendments to the civil servant's service report, the institution of the suspension of the civil servants' service reports is introduced with the novelty by agreement between the parties. Another amendment concerns the possibility of maintaining the civil servant over the standard retirement age for

²⁰ According to art. 18 of Law 188/1999, the mandate of the members of the commission is 10 and a half years.

²¹ The refusal to perform the duties of the service would be regulated as a written refusal to perform the duties of the service; violation of legal provisions regarding duties, incompatibilities, conflicts of interest and prohibitions becomes a violation of the provisions on prohibitions laid down by law for civil servants and conflicts of interest and incompatibilities if the civil servant does not act to terminate it within 10 days calendar days from the date of the incompatibility case.

a period of maximum 3 years, with the possibility of extending the service relationship yearly. There is also a new case of termination of the civil servant's service relationship, namely as a result of the finding that the public office was occupied by the non-observance of the legal provisions by a person who was a Securitate worker or his collaborator, the basis of the decision of the National Council for the Study of Securitate Archives or of the final court decision, insofar as the decision of the National Council for Studying Security Archives was appealed in court.

Of particular importance is the regulation of *administrative acts regarding the birth, modification, suspension, sanctioning and termination of civil servants' service relationships*. Under this title, the draft Administrative Code contains important elements for the security of the civil servants' legal relations, such as the obligation to communicate the administrative acts within a maximum of 3 working days from the issuance, the detailed regulation of their content and the sanction of the nullity of the law for the edict with violation of the issuance and content provisions.

3. The remuneration of civil servants - element of uncertainty

Salary is an essential component of the civil servants' service relationship. The succession of legal regulations regarding the remuneration of the staff paid out of public funds, the lack of clarity of the normative acts in the matter, and the intervention of the Constitutional Court, uninfluenced by the intervention of the legislative power, created a situation of uncertainty for several categories of civil servants and paradoxically, the task of setting salaries to the judiciary. More and more often, civil servants bring actions to the administrative litigation courts, requesting that the judgments handed down be given the basic salary to the maximum payable for other categories of civil servants in the country, exercising identical or similar functions and having the same grades, grades payroll and gradations.

By Law no. 71/2015 for the approval of Government Emergency Ordinance no. 83/2014 on the remuneration of staff paid out of public funds in 2015 and other measures in the field of public expenditures, it has created the possibility for the staff of public institutions and public authorities with a basic salary level of the increases that are lower than the one set at the maximum level within the same institution or public authorities for each function/grade/step and gradation, be paid to the maximum if they operate under the same conditions.

On December 15, 2016, the Constitutional Court pronounced Decision no. 794 on the objection of unconstitutionality of the provisions of art. 31 (11) - (14) of the Government Emergency Ordinance no. 57/2015 on the remuneration of staff paid from public funds in 2016, the extension of some deadlines, as well as some fiscal-budgetary measures, a decision which was published in Official Gazette no. 1029 of 21.12.2016. In paragraph 34 of the recitals of this decision, the Court stated that "for the purpose of the equalization provided for in Article 31 (1) of the

Government Emergency Ordinance no. 57/2015, "the maximum level of basic salary/severance allowance", which must include the rights established or recognized by final and irrevocable/final judgments, are to be determined by reference to the same function, degree, gradation, seniority and specialty, the same conditions of study within the whole occupational category, respectively occupational families, irrespective of the institution or public authority.

Therefore, the Constitutional Court found that, for the purpose of the equalization provided by art. 3 index 1 par. (1) of GEO no. 57/2015, the maximum basic salary/severance allowance, which must also include the rights established or recognized by final and irrevocable/final judgments, is to be determined by reference to the same function, grade, graduation, seniority and specialty, the same study conditions, within the whole occupational category, respectively occupational families, irrespective of the institution or public authority.

Decision 794/2016 is part of the category of interpretative decisions, also referred to as reserve interpretation decisions²². "The Court avoids to declare the unconstitutionality of the provisions of the law criticized and seeks to establish a meaning of the norm in accordance with the Constitution, to pronounce a simple or extreme decision constituting a last resort. It is important to understand the effects of these decisions, under a reservation of interpretation that establishes the constitutionality of the text to a certain extent is a growing proportion in the case-law of the Constitutional Court ... Such reasoning takes into account that, for this category of decisions, the degree of complexity of the effects which it produces is even greater than pure and simple decisions, since the text that has been the object of constitutional control is not removed from the active fund of law, but will find its application in the interpretation established by the constitutional court." Therefore, since its publication in the Official Gazette, RCC Decision no. 794/2016 obliges the interpretation and application of Government Emergency Ordinance no. 57/2015 to be done in its spirit and its letter.

Judicial practice shows that the RCC Decision no. 794/2016 was not such as to bring coherence of court rulings on civil servants' salary rights. On the one hand, common law judges interpreted this decision in the sense of the unconstitutionality of art. 3¹ par. 1² of Government Emergency Ordinance no. 57/2015, as it contravenes the principle of equality before the law, enshrined in art. 16 of the Constitution, as they establish that persons in identical professional situations but who have not obtained judicial decisions by which they have been granted salary increases have different (lower) remuneration indemnities than those who have been recognized as such of salary rights, by court decisions, generating differences in determining the basic salary/severance allowance. According to this reasoning, civil servants are entitled, from the moment when the Law no. 71/2015, be paid to the maximum level of basic salary within the institution or public authority where they operate, according to their position, professional grade and

²² See S. M. Costinescu, K. Benké, *Efectele Deciziilor Curții Constituționale în dinamica aplicării lor*, <https://www.ccr.ro/uploads/RelatiiExterne/2012/CB.pdf>, consulted on 10.04.2018, consulted on 10.04.2018.

gradation²³. On the other hand, it has been appreciated that art. 3¹ par. (1) of Government Emergency Ordinance no. 57/2015 is constitutional insofar as it is interpreted that all civil servants having the same functions, degrees, gradations, length of service and specialty, the same study conditions, within the whole occupational category, respectively occupational families, must not be remunerated at the same level only within the same institution, but across the country²⁴. The problem is also that at the national level, the basic salaries or the indemnities related to the occupational category, namely the occupational family, have not been centralized, so that Government Emergency Ordinance no. 57/2015 may be applied in the light of the RCC Decision no. 794/2016.

In times when public sector is facing increasing demand on its output coming along with a smaller headcount, a motivated workforce becomes even more a critical success factor²⁵.

4. Conclusions

The Romanian society has proposed as a national interest objective, the depoliticization of the public administration. Such a desideratum is paradoxical in the context in which civil servants, with the exception of high civil servants, have the right to be part of political parties. Another objective is the professional excellence, competence and efficiency of civil servants. In order to achieve it, we need a recruitment of civil servants based on these rules and out of the influence of political factors and other interests. At present, the recruitment of civil servants is not actually done on the basis of a national competition, organized by a specialized authority or institution in the field of public policy strategy development. The rules are often accompanied by exceptions, whereby the recruitment of civil servants is left *de facto* at the discretion of the public authorities and institutions in which they are to work. The impartiality and objectivity of the civil servant are at least challenged by the draft Administrative Code, with the possibility of carrying out activities in the public and private sector. The professional training of civil servants is a guarantee of an efficient administration, but it remains at the level of a statement in the Civil Servants' Statute, in the absence of the development of specialized programs and institutions to implement them. Payroll, an essential part of the civil servant's service relationship, once again frightens the situation of this budget, which is confronted with legislative inconsistency and with the concrete implementation difficulties of decisions to correct this incoherence. The author did not intend to write a pessimistic article, although we recognize that the pessimist is the note that characterizes him. The article is intended to be a means of determining the main human resources through which the state works by

²³ Sentence no. 5872/15.12. 2017 issued by Dolj Court in the case xx23/63/2017.

²⁴ Sentence no. 5638/5. 12. 2017 issued by Dolj Court in the case xx27/63/2017.

²⁵ See in this regard Utz Helmuth, *Revising the fundamentals: insights of neuroeconomics for economic foundations of performance-related pay in public management*, „Transformations in Business & Economics”, vol. 8, no. 1(16)/2009, p. 32.

paraphrasing Mrs. Vedinaş, whose quote I started the article. Awareness, reflection, analysis are precursors to finding solutions, and solutions are the most important weapon against pessimism.

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