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An Analysis of Public Pay Policy from the Perspective of Ethical and Legal Principles. Case Study: Draft Law on Public Employees' Pay

Viorel ROTILĂ^{1*}, Traian PALADE²

Abstract

In this article, we analyze the public pay policy of Romanian public employees from the perspective of certain mandatory principles in this respect. Thus, we consider that a few relevant methodological aspects should be considered in the elaboration of the bill on the salaries of the public employees, in order to minimize the potential negative social impact; these aspects are: a) Through pilot studies, the bill should avoid the effects such as the law of unintended consequences. The unitary wage law of budgetary staff has a public policy nature. Any public policy assumes the risk of confronting the law of unintended consequences, in particular the Cobra effect (governors' good intention has a contrary effect); b) Evidence-based action. Interventions must be based on prior studies and the political decision must be preceded by technical analysis. The absence of technical analyses is one of the major drawbacks of this political initiative, and evidence of inadequacy is already visible; c) The rules for the construction of the entire project must be defined beforehand. In other words, the construction must be based on clear principles and rules, capable of generating reasonable predictions on its consequences. We reviewed the bill from these perspectives. The study includes short impact assessments both on the medical staff – doctors, nurses and nursing staff – and on the non-medical staff. In this way, we have demonstrated some of the problems faced by this initiative regarding public employee pay policy.

Keywords: Law on unintended consequences, public policy, payroll, impact analysis, discrimination.

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1. Introduction

The discussion on the theme of ethical principles applicable to pay tends to be interpreted from a political perspective, slipping towards one of the two fundamental perspectives: meritocracy or egalitarianism. We believe that this type of reductionism tends to cancel out the science-based approach to this issue.

In order to support our critical statements on the public pay bill, which we have made in this study, we will use examples of situations, some of the anticipated effects and evidence of deviations from existing principles in the bill.

The critical approach must also be understood from the perspective of our appreciation of the fact that human resources management is a concept lacking in content in the Romanian budgetary sector. The problem becomes even more serious given that there is an entire operational program (POCA) whose fundamental objective is precisely to develop the management of human resources in the public sector, but whose results are far from expected.

2. Theoretical Background

To meet the methodological requirements, we can show that there are studies that address the impact of the law of unintended consequences on labor legislation, such an approach being recommended by other authors: “Whether governments seek to shift the balance of labour-employer power, end work stoppages or prevent them in the first place, policymakers should weigh the unintended consequences before acting” [1].

Most studies addressing the law of unintended consequences in relation to specific wage legislation are centered on the theme of minimum wages. The most common approach is the fact that the increase in the minimum wage does not have the expected impact on the increase of the poor’s income, this counter-intuitive result being determined by the demographic characteristics of the employees with the minimum wage [2]. The most important unintended effect in this type of approach is the decrease in the number of employees and even the dismissal of some of those who receive the minimum wage [2, p. 37]. Even if this interpretation tends to be the rule in the field, there is no unanimity, one of the studies indicating even opposite effects: “Put simply, our findings indicate that minimum wage increases – in the range that have been implemented in the United States – do not reduce employment among teens” [3].

In the previous paragraph, we can notice a scientific concern about the impact of the law of intentional consequences on one of the intervention directions in the wage area, namely the minimum wage, as an impact analysis that precedes a public policy, the example being eloquent for the second perspective we focus on: the lack of an impact analysis on the draft bill on wages and its potential consequences.

3. Argument of the paper

Through pilot studies, the draft bill on public employees' wages must avoid effects such as the law of unintended consequences. The unitary wage law of the budgetary staff has a public policy nature. Any public policy assumes the risk of confronting the law of unintended consequences (governors' good intention – if it exists – has a contrary effect). Any public policy assumes the risk of confronting the law of unintended consequences (the good intention of the governors – as long as it exists – has a contrary effect).

Evidence-based action is the second fundamental requirement, and interventions in this area must be grounded in prior studies and the political decision must be preceded by technical analysis. The absence of technical analyses is one of the major shortcomings of this political initiative, and aspects of inadequacy when put into practice are already visible.

The rules for the construction of the entire project must be defined beforehand. In other words, the construction must be based on clear principles and rules, capable of generating reasonable predictions about its consequences.

The bill has some major structural weaknesses: it violates a few legal provisions in force, including the U.E. legislation, and is inconsistent with its own principles.

4. Arguments to support the thesis

The risk of unintended consequences in the field of public policy on pay is indicated by the literature, especially when such interventions lack the necessary public debate, motivated by the urgency of the intervention: "Emergency legislation has significant side-effects that should be considered before such legislation is passed" [2, p. 18].

HL Mencken once said that "A wealthy man is one who earns \$100 a year more than his wife's sister's husband" [4], suggesting one of the conditions for the construction of any pay system: the level of earnings is

also valued by additional elements, apparently unrelated with its pecuniary value. The quote makes a funny (and true) note about what should be human resources management in the budgetary sector: employee satisfaction with their own salary depends not only on the size of the salary but also on a whole range of other variables, among the most important of which is the place they occupy in the wage hierarchy. In other words, the idea of building a salary law only on the principle of wage increases is considered erroneous, and such approaches are bound to take into account as many of the variables as possible that are essential to the quality of an employee's working life.

Studies show that in the field of pay, perception generates reality [5], with a whole range of aspects that could give employees feelings that are different than expected. Compared to the employees in the health sector, the most obvious example is that of bonuses, whose reduction can generate the feeling of wage losses. The reduction in the percentages representing the bonuses (especially if the bonuses are not visibly transferred into the basic salaries, in which case the visibility can only be ensured by differentiating basic salaries by sections or specializations) will be perceived by employees as a loss. The anticipation of such an effect is based on the principle of aversion to loss [6]: losses weigh more than earnings (when it comes to what makes us happy or sad, losses weigh about 2.5 times more than similar gains; the compliance with this principle while drafting the bill would mean an increase of 2.5 times compared to the loss). Even Prospect Theory was criticized and re-evaluated; its updated variants retained the basic idea [7], making the theory relevant to the problem of designing a pay system.

The problem is the discrepancy between the amount of pay that employees perceive they should receive and the perceived amount of pay they actually receive, although a meta-analysis of Williams, McDaniel, and Nguyen's research on this issue indicates that the issue is not sufficiently clear [8].

Considering the Regulation for bonuses in the health system, one of the fundamental principles that it introduces into the gross income is the differentiation of bonus-related incomes according to the working conditions. The practical effect is a high level of wage diversification by types of department / compartment, which generated the image of wage differentiation according to the difficulty and complexity of work, which, in the employees' mentality, is a major criterion in the hierarchical classification of salaries. We believe that a prudent approach to the significance of working conditions is necessary because we consider that the period of approximately 12 years since the appearance of this normative act is characterized by its gradual transformation into a wage differentiation tool, taking into account additional variables of working conditions. In addition, since the normality of a salary system based on staff evaluation, which

existed until 2009, was annulled by Law no. 330/2009, the Regulation for bonuses has become the main tool for mediating wage differentials, i.e. the main tool by which a reasonable degree of fairness in the hierarchical classification of employees' incomes has been maintained. The reference to the Regulation for bonuses emphasizes in fact the role of bonuses; in other words, in the formal discussion, the Regulation for bonuses is a symbol of the multiple roles of bonuses. In these circumstances, we estimate that the intention of the bill to limit the effects of increases to a maximum of 30% and not to increase the degree of specificity to the level of sections or at least of basic salary specializations will result in a severe disruption of the salary hierarchy, generating dissatisfaction with salary increases. If we take into account the fact that the above-mentioned figure of 30% includes a whole range of other wage costs (meal allowance, gross salaries related to the on-call time, etc.), the real percentage for the bonuses related to the working conditions tends in many cases to be close to 0, increasing the probability of dissatisfaction. The example offered by this problem indicates either that the project is not based on a minimum of simulations that would highlight the major risks related to the impact, or that such effects are known and assumed, the expectations being related to the possibility that the political marketing on this subject could generate a different perception of the reality.

5. Arguments to argue the thesis

In principle, we can assume that our arguments are contradicted by the Note underlying the draft bill, and we can presume that the statements made in them are based on extensive impact analyses. However, there is no evidence to confirm such a hypothesis, especially since the authors are currently involved in negotiations on this issue. Additionally, it is sufficient to note that the section on the socio-economic impact contains only two ideas that have the character of optimistic expectations, and not of objective, evidence-based assessments.

In order to stick to the recommended framework, we will consider that the elements that are fundamental for the construction of the bill, more precisely, the principles stated in the draft bill and the statements in the note underlying the bill, are arguments against our theses, while trying to prove the errors they contain.

6. Dismantling the arguments against

Breaking the rules of the construction based on principles is obvious in the case of doctors' on-call work, the increase in basic salaries being doubled by both the drastic decrease of other incomes and the increase of the working time of the basic norm with approximately 60 hours / month. Our simulations indicate a small increase in the gross salary, yet combined with the introduction of two categories of on-call time, both being mandatory: on-call time as part of the basic norm (extended to overtime – up to 48 hours / week) and additional on-call time (which becomes additional only after the 48 hours / week of the basic norm). At this point, it becomes obvious that the draft bill violates some of the fundamental legal provisions regulating working time, starting with Directive 2003/88 / EC and ending with the Labor Code, plus the reintroduction of forced labor for doctors. We note that a clarification of the legal situation of doctors' on-call time has been made by us in the study entitled On-call time carried out by physicians is working time and must be paid accordingly [9].

The principle of wage hierarchy according to the social importance of work (Article 6 of the bill, sections f and d) is also infringed, the most obvious being the case of nurses: the difference between a senior doctor and a primary-grade nurse with superior studies increases very much (from the current 1.63 to 2.87), while the difference between the same type of nurse and the positions requiring only secondary education decreases (for example, the first medical registrar: currently 1.54, becomes 1.16 in the draft bill).

7. Conclusions

As we have shown in the article, the draft law on the public employees' pay violates some of the prerequisites of any public policy: it is subjected to the law of unintentional consequences (demonstrated by a few impact examples), does not respect the condition of the evidence-based action (the approach is not preceded by technical and impact analyses), and the principles underlying it are purely formal (the text of the draft law is not consistent with its own principles assumed under Article 6). Moreover, the draft law violates certain provisions of the U.E. legislation (Directive 2003/88 / EC) on working time.

Given that the draft law assumes the intention to drastically reduce the differences between the salaries of employees in the health sector mainly on the basis of the difference between working conditions, and based on the results obtained from the previous studies, we can anticipate a high degree of

employee dissatisfaction with such a measure, which tends to outweigh the potential satisfaction with the individual salary resulting from salary increases.

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