



**Chairman of the Board of  
Directors,  
Teodor Minodor Chirica**

## **NOTE**

**on approving the result of the analysis of the cases that led to the making of payments as compensation and expenses to an SNN employee based on a final civil sentence in a labor dispute**

### **I. Introduction**

During 06.09.2021 – 17.12.2021, the Romanian Court of Accounts (Division IV, Department 2) carried out a verification at SNN with the theme “*Control of the situation, evolution and manner of managing the public and private patrimony of the state, and the legality of the revenues and expenses*”.

On 14.12.2021, the external public auditors completed the control and submitted to Societatea Nationala Nuclearelectrica SA (“SNN”) the Control Report Draft concluded as a result of the action on “Control of the situation, evolution and manner of managing the public and private patrimony of the state, and the legality of the revenues and expenses” (“Control report”); this report was submitted in its final form at SNN on 17.12.2021. Point 4.2 of the Report includes the finding that refers to the recovery of the compensations established by the courts for which SNN payments in the amount of RON 142,699.80 have been made. At the same time, the Control Report specifies the following: “*The external public auditors recommend to the management of the entity the disposition of measures in order to analyze the causes that led to the payment of compensation/expenses, in order to identify the persons guilty of causing the registration damage as a result of these payments, the presentation and approval of the analysis result in the Board of Directors and the GMS, after which, their decision will be implemented.*”(the “Recommendation”).

### **II. Implementation of the Recommendation provided by the Control Report**

By the Decision issued by the General Manager, a Commission was set up to analyze the cases that led to the payment of indexed, increased and updated salary rights, social security budget contributions and court costs paid to an SNN employee based on the final civil sentence no. 6406/15.11.2019, case file 6632/3/2019.

By the civil sentence no. 6406/15.11.2019 ruled by the Bucharest Court, Section VIII labor disputes and social insurance, the sentence remained final by the decision no. 3831/28.10.2020 ruled by the Bucharest Court of Appeal, SNN was obliged to pay to the plaintiff Botea Ceciliu Lucian an equal

compensation with the indexed, increased and updated salary rights and with the other rights that the employee would have benefited from in the absence of the dismissal measure, starting with the date of dismissal and until the effective reintegration.

The compensation paid by SNN to Botea Ceciliu Lucian amounted to **RON 145,119.50**, of which **RON 137,955**, the **deductible** amount represents net salaries and the amount of **RON 7,164.50** court costs to which was added the amount of **RON 103,173**, the deductible amount representing the SNN contribution to social insurance budgets.

The commission set up within SNN prepared the report, the conclusions being the following:

*“Following the analysis, the Commission found that, in this case, all the applicable procedures and regulations were observed, as well as the texts of the law and the provisions of the CCM of SNN.*

*Taking into account the context revealed in the previous section, we consider that SNN did not violate the provisions of art. 253, 254 of the Labor Code regarding the patrimonial responsibility of the employees, for the following reasons:*

- 1) the conditions provided by art. 247 par. (1) of the Labor Code, in order to attract the liability of the employees who handled this case, are not fulfilled. Art. 274 par.1 provides that: “The disciplinary misconduct is an act in connection with work and consists of an act or omission committed by the employee, in which he/she violated the law, the internal regulations, the individual employment contract or the applicable collective agreement, orders and the legal provisions of hierarchical leaders.”*

*Thus, for an act to be unlawful and to be classified as a disciplinary offense, it must meet certain **constitutive elements**, similar in structure to those of the crime, namely: the object (social labor relations, order and discipline at work), the natural person who has the quality of employee and the guilt of that employee, the causal connection being presumed.*

*In this case, the misconduct described by the external auditors was not committed, because SNN cannot attract the liability of the employees in the absence of the cumulative existence of all the conditions that the law imposes.*

*Thus, no wrongdoing (misconduct) was committed because there is no guilt of the employees. They followed all the procedures, analyzed the facts, gathered the evidence and a decision was made in good faith and in compliance with the legal provisions, there is no guilty act of the persons involved in making this decision. There is no damage, as defined as a loss caused by the commission of a **tort** by a person with powers in the administration of the patrimony. Although the current wording of the Civil Code does not include an express definition of the notion of “tort”, however, there are certain disparate provisions (e.g., art. 1357 para. 1 - “He/She who causes harm to another by tort, committed with guilt, is obliged to repair it”) in the code that refer to this notion and, very importantly, the judicial practice in the matter led to the configuration of the main features of this notion. Thus: “**Tort** means the action or inaction that results in the violation of the subjective rights or legitimate interests of a person. In order to be considered unlawful, the act must be contrary to the law and the rules of social coexistence or good morals [C. Ap. Târgu-Mureș, civ. s., dec. no. 1000/1999]”. In essence, therefore, the tort generating damage is the act that is contrary to the law*

and the rules of social coexistence or good morals. Or, as we have already shown before, such an act cannot be considered, in any case, a tort and the damage does not exist, as the conditions provided by law are not met.

The amount paid by the company **does not represent prejudice** but represents monetary rights granted based on an executory and final civil sentence. This amount was paid based on a final court decision according to art. 622 para. 2 and 3 NCPC which stipulates that an obligation established by the decision of a court and which is not carried out voluntarily is done by forced execution, until the realization of the right recognized by the enforceable title, payment of interest, penalties or other amounts according to the law by title, as well as the execution expenses. Moreover, according to art. 287 Criminal Code (Non-compliance with court decisions) paragraph 1 point d) of the Criminal Code, the non-execution of the court decision ordering the reinstatement of an employee is punishable by imprisonment from 3 months to 2 years or a fine. Therefore the payment of these amounts was an obligation for the company, not an option.

With regard to the **non-existence of prejudice**, examining an exception of unconstitutionality, the Constitutional Court held in recital 31. of Decision no. 698 of October 6, 2020 regarding the exception of unconstitutionality of the provisions of art. 80 para. (1) of Law no. 53/2003 - Labor Code (OG 1265 of December 21, 2020):

With regard to the contention that the criticized legal provisions do not take into account the situation of the employer, so that his rights and interests may be harmed, **the Court held that the employer does not suffer a loss of assets but performs the financial obligations to which the employee was entitled in the lack of the illegal/unfounded action of the employer.** The obligation to perform the breached contract and the pecuniary obligations arising therefrom do not constitute a loss of assets but constitute the expression of the protection of the principle of security of civil legal relations, a principle inherent in the rule of law. At the same time, the Court stated that the employer's financial situation could not be an argument for exemption from the payment of compensation due to the employee, since, if this hypothesis were accepted, the measure of annulment of the dismissal would be deprived of substance, especially if the employee does not request the reinstatement (Decision No. 1,267 of September 27, 2011).

Or, ***the considerations of the decisions of the Constitutional Court are mandatory*** (art. 31 paragraph 1 of Law no. 147/1992: *The decisions of the Constitutional Court are published in the Official Gazette of Romania. From the date of publication, the decisions are generally binding and have force only for the future*”), so we consider that it cannot be held that there would be a damage resulting from the payment to the dismissed employee of the rights granted by the courts following the annulment of a decision dismissal and reinstatement (salary rights indexed and updated from the date of dismissal until the date of the actual payment).

With regard to the effects of the decisions of the Constitutional Court, as regards both the recitals and their operative part, the Court noted that in its case-law it has consistently held that the power of *res judicata* accompanying the decisions of the Constitutional Court is attached not only to the operative part but also the considerations on which it is based, including the general binding effect of the decisions finding the unconstitutionality (Decision of the Plenum of the Constitutional Court No. 1 of 17 January 1995, published in the Official Gazette of Romania, Part I, no. 16 of January

26, 1995, or Decision no. 414 of April 14, 2010, published in the Official Gazette of Romania, Part I, no. 291 of May 4, 2010).

Therefore, as all the recitals in the preamble to a decision support its operative part, the Court held that the *res judicata* and the binding nature of the solution affect all recitals of the decision (see Decision no 392 of June 6, 2017, published in the Official Gazette of Romania, Part I, no. 504 of June 30, 2017, paragraph 52).

**Consequently, we consider that, as long as the Constitutional Court has ruled in the content of Decision no. 698 of October 6, 2020 regarding the exception of unconstitutionality of the provisions of art. 80 para. (1) of Law no. 53/2003 - Labor Code (MO1265 of December 21, 2020) that the employer does not suffer a loss of assets, can not withhold any damage resulting from the payment of compensation due to the employee at whose request the courts annulled a decision of dismissal, reinstatement and payment of the indexed and updated salaries.**

**Thus, following the analysis of the entire context, of the court decisions, of the texts of the law, of the decisions of the Constitutional Court and of the applicable jurisprudence, we consider that the compensation equal to the indexed, increased and updated salary rights and to the other rights that the employee would have benefited from in the absence of the dismissal measure, in the amount of RON 145,119.50, including court costs, to which the court obliged us, cannot be included in damage category.**

**In conclusion, there is no tort of the company, as an element that would have produced a prejudice nor the other necessary/obligatory conditions for the existence of the patrimonial responsibility.**

- 2) **The imputation of the damages generated by such court decisions can be made only insofar as and in the conditions in which the court decisions in question establish a possible bad faith of the company in performing the dismissal decision, which, in the case of SNN, did not happen.** As long as there is no fault of SNN through its employees regarding the analyzed case, there are objective causes that could not be removed (the interpretation of the courts of certain factual situations) and which fall within a normal risk of the service, there is no justification for which SNN should recover these amounts that were paid on the basis of a final decision in accordance with the legal provisions. The courts are free to judge according to their own conscience and we consider that SNN took a decision in good faith and in compliance with the legal provisions, as there is no culpable act of the persons involved in making this decision.
- 3) **In similar cases, (jurisprudence) - the courts considered that the dismissal decisions were sound, and the fact that the court decision was not favorable to SNN does not automatically lead to the presumption of the existence of a tort, guilt, damage and overall to the automatic attraction and without appeal of the employees' liability. And the doctrine, as I detailed in the Relationship Note, is in the sense that I have made a legal and sound Decision, respecting the arguments and reasoning of labor theorists.**

- 4) Pursuant to art. 254 para. 2 In the Labor Code, employees are not liable for damages caused by force majeure or other unforeseen causes that could not be removed, nor for damages that fall within the normal risk of the job.**

*By Decision no. 17/2016 Case-file no. 1151/1/2016 (Official Gazette, Part I no. 993 of 09/12/2016) The High Court of Cassation and Justice distinguishes between the situations in which the patrimonial liability of the employee occurs as follows:*

*Pursuant to art. 254 of the Labor Code, the employees are liable from the patrimonial point of view, for the material damages caused to the employer through no fault of their own and in connection with their work.*

*However, the employee's fault presupposes that the committed act concerns the non-fulfillment or improper fulfillment of the job tasks - intentionally or through fault - established by the individual employment contract, job description, internal regulations or other decisions of the employer.*

*Or, the employees acted in the performance of some job tasks; in this respect, there is no fault on the part of the employees, each of them fulfilling his duties.*

*It follows from the mere fact that the legislature provided for an appeal against the disciplinary sanction/dismissal decision, it follows that it anticipated/ assumed that it is possible that the decision issued by the employer regarding the investigated person may be wrongly/ unfoundedly issued and considered necessary to submit it to the control of the courts.*

*The liability involves the guilt of the employee, which must be proved by the employer. The employer is required to prove which specific obligation has been violated, and the liability is not jointly and severally as in civil law, but each of the presumed culprits will be held liable to the extent that he/she participated in the damage. However, as long as it is not possible to prove bad faith in the adoption of the dismissal measure due to the lack of evidence in this regard (witnesses, documents), the mere identification of a possible damage caused to the employer by the effects of annulment of the dismissal decision cannot lead without proof of guilt, to the recovery of such possible damage. Therefore, for each employee of SNN SA, it should identify the form of guilt (intent or fault), prove it and, in addition, establish and prove the extent to which it would have contributed to the injury by adopting the dismissal measure, which it is practically impossible, as there is no evidence to that effect.*

*So, considering that:*

- i) the measure of dismissal was taken in good faith, under the law, on the basis of numerous and repeated misconducts,*
- ii) the courts have not identified causes that would remove this good faith of SNN,*
- iii) in similar cases the courts considered that the dismissal decisions are sound*
- iv) no tort of the company is identified as an element generating damage, as well as the other conditions necessary for the existence of the patrimonial liability,*
- v) The Constitutional Court by Decision 698/2020 (O.G.1265 of December 21, 2020) ruled that the employer who pays compensation to the employee pursuant to a court decision does not suffer a loss of assets,*

***the conclusion is that the indexed, increased and updated salary rights and the court costs paid to Botea Ceciliu Lucian following the labor dispute, do not represent a prejudice and, as a result, cannot be the object of a recovery action, these expenses being borne by the company, therefore,***

*it is not necessary to identify persons guilty of causing this alleged damage.”*

### **III. Proposal**

Considering the above mentioned as well as the fact that, according to the provisions of Law no. 94/1992 on the organization and functioning of the Court of Accounts and the Regulation issued by the Romanian Court of Accounts, the recommendations formulated by the external public auditors in the control reports are mandatory for the audited entity, we submit to the approval of the Extraordinary General Meeting of Shareholders the analysis result of the causes that led to the making of payments as compensation and court costs to an SNN employee based on a final civil sentence, as presented in pt. II of this Note.

**Chief Executive Officer**  
**Cosmin Ghita**

**Deputy General Manager**  
**Dan Laurentiu Tudor**

**Chief Financial Officer**  
**Paul Ichim**

**Legal Manager**  
**Laura Constantin**