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Liability of civil servants

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Abstract. This study of the liability of civil servants aims to analyze the applicable regulations and principles in order to clarify the notions that constitute this system for the proper performance of public administration activities, as well as the appropriate behavior of those administered. Public administration, from a material point of view, is achieved through a multitude of organizational forms, which make up the public administration system. This system is linked, functionally and organizationally, to the legislative power and the executive power. As an activity, public administration represents the organization of the execution and execution of the law in the most diverse areas of social action and in relation to certain human communities that make up the global social system. The main purpose of this paper is to present and analyze the civil, criminal and administrative liability of public officials, as forms of legal liability and, in the alternative, to establish the limits of this liability. The topicality of the legislation in the field makes the research topic conditioned by the need to study and analyze in detail the existing national normative framework. For a more rigorous regulation and in correlation with the obligations assumed towards the European Union institutions, Romania adopts the Administrative Code in 2019. I also emphasize that the information is updated until the moment of completion of the writing of the paper, being exposed according to the available information. From the point of view of the chronological framework, the work focuses on a long period of time, from the emergence of the concept of public function and the notion of civil servant to the present day. Analysing, we can say that this institution has hardly been outlined in the Romanian literature, the opinions expressed in the specialized doctrine being diversified, from the justification of its presence, to the contestation of the existence of the types of liability or the applicable legal regulations.

Keywords. civil service, administrative liability, civil liability, criminal liability, public service

The notion of civil servant has had various forms over the years, but it was defined, for the first time, in the Law for the Status of the Civil Servant of 1923, as follows: "Civil servants are Romanian citizens, without distinction of sex, who perform a permanent public service, civil or ecclesiastical, at the state, county, commune or institutions whose budget is subject to the approval of the Parliament, to the Government or to the County and Communal Councils".

Following the main provisions regarding the status of civil servant, as well as regarding the concept of civil service, different branches of law that have aimed at reform measures in

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this field are highlighted. In this regard, we mention constitutional law, labor law, criminal law and last but not least, administrative law [1].

The Romanian Constitution "is appreciated domestically and internationally as a democratic constitution, as a modern political-legal document, created according to the requirements of the democratic organization of society"[2] and has the obligation to legislate both access to public offices and equality (art.16 para. (3) and art.54 para. (2)). Moreover, the civil service constitutes a significant component for the interest of the Fundamental Law since "the constitutional principles express the truth that the public function has an objective foundation in all its elements, since the investiture in office is carried out in accordance with the provisions of the law, and its content is also regulated by law"[3].

In the constitutional provisions, there are identified some references or references regarding public functions, public dignities, the military[4], the quality of deputy or senator, public office of authority, prefect, mayors, and the examples can go on.

Analyzing art.16 para. (3) of the Constitution, we can say that a distinction is made between public functions and dignities, in the first instance, and between civil and military ones. Such a landmark should not be neglected in such a study, even if we are talking about a simple enumerative procedure.

The constitutional considerations regarding the notion of "public official" are non-descriptive and purely evocative because no definition or minimum description of what it represents is given.

In the specific doctrine[5] There have been and still are different opinions regarding the classification of the civil servant statute, either in administrative law or in labor law, a controversy with predominantly theoretical application. It is clear that the official carries out his activity on the basis of a service relationship and not on the basis of an individual contract of employment. In other words, the administrative act of appointment represents the manifestation of the will of a party to conclude the contractual legal relationship. Therefore, it is the consequence of combining the act of appointment with the acceptance of the post of civil servant.

Moreover, some authors who classify this status in labor law consider that it is an unnamed, complex contract, with a pecuniary title since each party seeks an advantage in exchange for the obligations assumed[6], solemnly in the sense that its validity is conditioned by the written form of the act of appointment, with successive execution and concluded intuitu personae.

Like the other employees, the civil servants carry out their activity according to a work schedule of 8 hours per day and 40 hours per week[7], having a salary, the right to annual leave[8], disciplinary liability and can be seconded, transferred or delegated under the conditions of the law.

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[1] https://sindicatmts.ro/functia-publica-sub-imperiul-noului-cod-administrativ/
[2] Genoveva Vrabie, Marius Bălan, The Political-State Organization of Romania, European Institute, Iași, 2004
[3] Mihai Oroveanu, Treatise on Administrative Law, second edition revised and added, Cerma Publishing House, Bucharest, 1998
[4] Ivan Anane, *Elements of Theory and Tactics of the Criminal Prosecution Bodies*, Pro Universitaria Publishing House, Bucharest, 2014
[5] Anton Trăilescu, Another point of view on the legal nature of the service relationship, 2000, Juridica no.6
[6] art.1172 of the Civil Code
[7] Art.112 para. (1) of the Labor Code
[8] Art.30 para. (1) letters a) and c) of the Labor Code

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In addition, they have the right to strike, the right to resign, the right to associate in trade unions, which makes them very similar to employees. On the other hand, the service relationships are undeniably individualized from the labor relationships in that they are bearers of public power and carry it out within the limits of the position, on the other hand, the employees are not invested with such power, being seen according to their attributions.

Taking into account the characteristic and powers conferred in the activity, it goes without saying that it requires a special regulation with respect to employees whose activity is legislated by the Labor Code. At present, the status of civil servants is regulated by the Administrative Code, which is combined with other provisions of the specific legislation, as well as with the provisions of the labour legislation, only if the latter does not contravene the specific legislation.

In conclusion, we can say that it is difficult to explain and clarify why within an administrative authority or institution we can speak of civil servants, on the one hand, and employees, on the other hand, if their duties are similar, even identical in certain situations. That is why we observe a blurring of the differences between the legal relationship of the employee and that of the civil servant by adopting measures that refer to both categories. The most significant, from my point of view, was the establishment of a unitary salary system for staff paid from the state budget, established by Framework Law[9] no. 153 of 28 June 2017 on the remuneration of staff paid from public funds.

The civil servant leads to the fulfillment of specific duties in a serious, prompt and responsible manner, leading to the resolution of citizens' problems, but without claiming any benefit in his own interest.

In the sense of the criminal law, the concept of public official is different from that of administrative law and we can argue that it has an autonomous meaning, and for a person to fall under the incriminating norm or to be removed as a circumstantial active subject, there must be certain standards of evaluation[10].

According to the regulations of the Criminal Code, more specifically in Title X entitled "Meaning of some terms or expressions in the criminal law", art. 175 para. (1), a public official is understood to be "a person who, on a permanent or temporary basis, with or without remuneration:

a) exercises attributions and responsibilities, established under the law, in order to achieve the prerogatives of the legislative, executive or judicial power;

b) exercises a function of public dignity or a public function of any nature;

c) exercises, alone or together with other persons, within an autonomous company, another economic operator or a legal person with full or majority state capital, duties related to the achievement of its activity objective."

The definition given to the notion of "public official" is relevant because it is used by the legislator to nominate the specific active subject of a crime, such as: the facts provided for in the chapter dedicated to corruption crimes mentioned in Articles 289-294, torture (Article 282), abusive investigation (Article 280), failure to notify (Article 267), as well as to designate the passive subject of crimes, for example: the outrage provided for in art. 257, as well as the judicial contempt art. 279.

[9] M.Of. no.492 of 28 June 2017

[10] Gheorghe Bîrdău, Reflections on the notion of public servant in the new Criminal Code, in Universul Juridic Magazine no.6/2019

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Taking into account the quality of the active or passive subject, we can identify the existence or absence of the aforementioned crimes, which would lead to a change in the legal classification of the act, to a different criminal participation[11], because the lack of quality required by law changes the quality of the perpetrator[12].

Moreover, the quality of public servant may mean, in some situations, a circumstantial element of aggravation, such as: theft or destruction of documents (art. 259 para. 2), facilitation of illegal stay in Romania (art. 264 para. 2 lit. b), violation of the secrecy of correspondence (art. 302 para. 3).

As we have presented, the status of this category was regulated until 2019 by Law no. 188/1999 on the Statute of Civil Servants, when the Administrative Code enters into force[13].

In the 1999 Statute of Civil Servants, the civil service was defined in Art. 2 para. 1 as "the set of attributions and responsibilities, established under the law, for the purpose of achieving the prerogatives of public power by the central and local public administration", and para. 2 briefly defines the notion of public official, being "the person appointed, under the conditions of this law, to a public office".

In the current Administrative Code, the regulations on the civil service are contained in Part VI of the Code: "Statute of civil servants, provisions applicable to contractual staff in the public administration and record of personnel paid from public funds". The part includes both provisions previously regulated by a series of normative acts: the Statute of Civil Servants, the Code of Conduct for Civil Servants[14], the Code of Conduct for Contractual Staff in Public Authorities and Institutions[15], but also provisions that did not enjoy any regulation prior to the Code.

The Administrative Code retains, for the most part, the content of the definition from the previous regulation in art. 5 letter y, and the public function represents "the set of attributions and responsibilities, established under the law, for the purpose of exercising the prerogatives of public power by public authorities and institutions". We can highlight the fact that the new regulation has a more generic approach without making a list of authorities, calling them public authorities and institutions.

The classification made under the old regulation, art. 7 of the Statute of Civil Servants, is also maintained in the new legislation in the field. Thus, public functions are classified into:[16]

1. general public functions and specific public functions;
2. civil servants of class I, civil servants of class II, civil servants of class III;
3. state public functions, territorial public functions and local public functions.

To better understand the notions, the Code comes and provides a definition, explaining each element of the classification. General public functions[17] are provided for the performance

[11] Ivan Anane, *Management of Criminal Prosecution Bodies*, Pro Universitaria Publishing House, Bucharest, 2014
[12] Ibid
[13] GEO no.57 of July 3, 2019 on the Administrative Code, published in the Official Gazette. no.555 of 5 July 2019
[14] Law no. 7/2004 on the Code of Conduct for Civil Servants, republished in the Official Gazette. no.525 of 02.08.2007, repealed by GEO no.57/2019
[15] Law no. 477/2004 on the Code of Conduct for Contractual Staff in Public Authorities and Institutions, republished in the Official Gazette. no.1105 of 26.11.2004, repealed by GEO no.57/2019
[16] art.383 of the Administrative Code
[17] The general public functions represent the set of attributions and responsibilities of a general nature and common to all public authorities and institutions, in order to achieve their general competences

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of general competences, and specific public functions[18] for the fulfilment of those specific competences and responsibilities. Under the new provision, the state public function is the function within the ministries, the specialized bodies of the central public administration, the specialized structures of the Presidential Administration, the specialized structures of the Romanian Parliament, the autonomous public authorities provided for in the Romanian Constitution and other autonomous administrative authorities, as well as within the structures of the judicial authority. Territorial public functions are the public functions established, according to the law, within the prefect's institution, the decentralized public services of the ministries and of the other bodies of the central public administration in the administrative-territorial units, as well as the public institutions in the territory, subordinated/coordinated/authorized by the Government, ministries and other bodies of the central public administration. Local public functions are the public functions established, according to the law, within the apparatus of the local public administration authorities and the public institutions subordinated to them.

Art. 386 makes a classification of public functions according to the level of necessary studies, thus providing a clarification of the notions presented in the above classification, as follows:

a) "class I includes public offices for which a bachelor's degree or equivalent is required;

b) the second class includes the public functions for which short-term higher education is required, graduated with a diploma, in the period prior to the application of the three Bologna-type cycles;

c) the third grade includes the public offices for which high school studies are required, respectively high school studies, completed with a baccalaureate diploma."

Art. 387 divides the public functions according to the level of attributions into:

a) public functions corresponding to the category of senior civil servants;

b) public functions corresponding to the category of senior civil servants;

c) public functions corresponding to the category of executive civil servants.

And with the following mentions: civil servants appointed to public offices in the second and third classes can only hold executive public positions[19]; In the category of executive civil servants, the civil servants are classified in relation to the level of complexity of the duties according to the professional grades[20].

The Administrative Code divides civil servants into two categories, namely beginners and permanent civil servants. Those in the first category have passed the entrance exam for a public function of a beginner professional grade or have been appointed, by changing the contractual positions into positions related to public functions, but do not meet the seniority conditions for a permanent position. Permanent civil servants are civil servants who have completed the internship period with an appropriate result, or occupy a position by the means provided by law and at the same time fulfill the necessary seniority in the specialty of studies, which is at least one year.

The provisions of Article 389 of the Administrative Code with reference to Senior Civil Servants are purely enumerative, thus the Secretary General and the Deputy Secretary

[18] Specific public functions represent the set of attributions and responsibilities of a specific nature of public authorities and institutions, in order to achieve their specific competences, or which require specific competences and responsibilities

[19] Art.387 para. (2) of the Administrative Code

[20] Art.387 para. (3) of the Administrative Code

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General within the public authorities and institutions provided for in Article 369 letter a and the Government Inspector are the persons who can have this capacity. It is worth mentioning that the prefect and the sub-prefect were considered public servants, but by G.E.O. no. 4/2021 for amending and supplementing the Government Emergency Ordinance no. 57/2019 on the Administrative Code, amendments were made to the effect that "the positions of prefect and sub-prefect are functions of public dignity".

The category of senior civil servants includes: the Director General, the Deputy Director General, the Director, the Deputy Director, the Executive Director, the Deputy Executive Director, the Head of Service and the Head of Office within the public authorities and institutions provided for by law, as well as in the specific public functions equivalent to them. (art. 390 of the Administrative Code).

An amendment brought by the Administrative Code is the equivalence of public functions. In the old regulation, "the equivalence of specific public functions with general public functions is made through the special statutes provided for or at the proposal of public authorities and institutions, by the National Agency[21] of Civil Servants",[22] while the new legislation specifies in the content of art. 384 that this procedure is carried out by law and "refers to the cumulative equivalence of the following conditions: the level of the public function, the level of studies necessary for the exercise of the public function, the seniority in the specialty necessary for the exercise of the public function".

Analysing, we could say that the new provisions of the Administrative Code retain the basis of the old regulation, but additions are made to them. As regards the notion of civil service, the Administrative Code extends its meaning, without any limitations and references only to the staff in the sector of the executive power. The classification of public functions and civil servants under the old regulation is also maintained in the current legislation.

The notion of liability does not belong exclusively to law, being used and found in different meanings in most areas of social life, closely related to it. The concepts of social responsibility and legal responsibility coexist because social responsibility is on the moral plane, while legal responsibility belongs to the science of law. It is known that responsibility reflects not only the opinions, attitudes, feelings of the individual, but also the expectations of society, and legal responsibility comes as a response of society to the conduct of the individual, acting in those circumstances in which he has disregarded the norm of conduct of the society to which he [23]belongs.

Without any doubt, we can argue that it is important to prioritize responsibility in the conduct of the public official, "the performance of the function with a conviction that derives from the understanding of his phenomena and tasks, convinced that faithfully serving the public interest is the basis of his professional and moral behavior[24]".

It is known that the public administration is consolidated on the principle of applying the law in its letter and spirit, and any departure from the norms that harms the protected values entails legal liability, in its various forms. Based on the doctrine, the liability of the public

[21] Public institution of the central public administration that ensures the record and management of the civil service and civil servants, developing the competence frameworks, policies and strategies, as well as the draft normative acts in the field. (http://www.anfp.gov.ro/)
[22] Art.7 para. (4) of Law 188/1999 on the Statute of Civil Servants, republished
[23] Verginia Vedinaș, Theoretical and Practical Treatise on Administrative Law, Vol.II, Universul Juridic Publishing House, Bucharest, 2018
[24] Slăniceanu I.P., Teoria Fonction Publice, Ed. Evrika, Brăila, 1999

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official can take various forms, such as: administrative liability, civil liability and criminal liability.

As of July 5, 2019, the Statute of Civil Servants was repealed and replaced by the Administrative Code, which supports the public administration by clarifying, harmonizing and substantiating the rules in this field.

Upon entering the body of civil servants, once the act of appointment is issued and the oath is taken, they are administratively, civilly and criminally liable, under the conditions of the law and the Administrative Code, for the culpable violation of their job duties.

The Administrative Code reserves to the liability of civil servants Chapter VIII of Part VI "Disciplinary sanctions and liability of civil servants", which during Articles 490-501 regulates, starting from the old rule, both the types of liability of public servants and the procedure for the implementation of sanctions.

The phrase "disciplinary sanctions" was kept from the old norm in the title of the chapter, an aspect criticized in the doctrine[25] in the light of the fact that disciplinary sanctions are sanctions specific to a form of liability[26], the disciplinary one, and have no place in the title of a chapter that would be more correct to be simply titled – "Liability of public officials".

"The Administrative Code regulates disciplinary sanctions and the liability of public officials, in four forms of guilt, all forms of liability provided for by the Code being forms of subjective liability, based on fault, so that, in a per a contrario reasoning, the absence of fault excludes the liability of the official".

Article 563 of the Administrative Code provides a clarification of the notion of "legal liability" by which it is agreed to be a "form of social responsibility established by the state, following violations of law through an unlawful act and which determines the bearing of the corresponding consequences by the guilty party, by using the force of coercion of the state in order to restore the order of law thus harmed".

The rules regarding the public official regulate in a rather detailed way the cases, the grounds that can lead to legal liability in such situations. In conclusion, we could say that "officials must show integrity and common sense, in the sense of refraining from acts that could create material and image damage to the public authority or institution[27]".

In the problematic approach to the content of the criminal liability of the public official, we considered the analysis from a legal, jurisprudential and doctrinal point of view to be useful and necessary. We can highlight both provisions of a criminal and criminal procedural nature, as stipulated by the Criminal Code and the Code of Criminal Procedure, as well as the jurisprudence of the national courts that clarified, during criminal trials, the notifications regarding the classification of certain categories of employees in the sphere of public officials.

In the specialized literature there is no unitary opinion regarding the framework and number of principles applicable to the institution of criminal liability[28]. Analyzing the content and structure of criminal liability, we admit the following basic rules that we can appreciate as principles: legality of criminal liability, personality of criminal liability, crime is the only basis

[25] Verginia Vedinaș, The Annotated Administrative Code. News. Comparative examination. Explanatory notes, second ed., Universul Juridic Publishing House, Bucharest, 2020
[26] Ivan Anane, *The Investigation of the Criminal Prosecution Bodies*, Pro Universitaria Publishing House, Bucharest, 2014
[27] A. Dragondan, The Civil Service and the Public Servant: Legal and Doctrinal Aspects. Rights and duties of civil servants, in the Journal of Public Finance and Accounting no.3/2017
[28] Elena.G.S., The Principles of Criminal Liability, in the Annals of the "Constantin Brâncuşi" University of Târgu Jiu, Legal Sciences Series, No. 4/2017

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of criminal liability, humanism, uniqueness of criminal liability, individualization of criminal liability, inevitability and prescription of criminal liability.

The principle of legality is a fundamental one for criminal law and a constitutional principle. It is characterized by two rules, namely: the legality of the criminalization "nullumcrimen sine lege" in the sense that an act is considered a crime only to the extent that it is criminalized by the criminal law, and, on the other hand, "nullapoena sine lege", that is, a sanction or punishment cannot be applied if it is not established by the criminal law. "The crime is the only ground for criminal liability" is the principle enshrined in art. 15 para. 2 of the Criminal Code. Moreover, the criminal liability is personal, incumbent on the person who commits the act provided by the criminal norm with guilt, and has as a consequence the personalization of the punishment, since the punishment must be applied and executed by the active subject of the crime[29]. According to the principle of uniqueness, criminal liability is unique "ne bis in idem", which means that no one can be held criminally liable twice for the same act, and when the punishment is applied, the dangerousness of the offender and the seriousness of the act must be taken into account, representing the principle of individualization enshrined in Article 74 of the Criminal Code.

In relation to the provisions of Article 490 in conjunction with the provisions of Article 501 of the Administrative Code, "the violation by public officials, with guilt, of the duties of office entails liability under the law", and "the liability of the public servant for the crimes committed during the service or in connection with the duties of the public office he occupies is engaged according to the criminal law". Consequently, in order to incur the criminal liability of the public official, he must commit the crime during the service or in connection with the service, and the act must be provided for by the criminal law.

Thus, the scope of crimes in which the public official appears as a circumstantial active subject includes corruption and service crimes (Articles 289-309), forgery crimes (Articles 320-321) in which the litigator designates those facts that harm the public institution and the creation of a state of danger for the rule of law[30] by preventing the application of the law, or by not effectively applying it.

The sanctioning system is cumulative, the penalty of imprisonment or criminal fine with the complementary penalty of prohibiting the exercise of the right to hold the position.

Analyzing the provisions of art. 152-153 of the Criminal Code, we can say that there are two causes that remove criminal liability, in the common law, therefore also of public officials. So we are talking about the effects of amnesty and the statute of limitations of criminal liability.

Civil liability is a form of legal liability, which resides in a legal relationship of obligations in which the liable person must repair the wrongful suffering suffered by another person[31]. The Administrative Code regulates the civil liability of public servants in art. 499 by taking over from the regulatory watch art. 84 of Law no. 188/1999 on the status of civil servants.

In the Civil Code, the legislator uses the general expression of "civil liability" without determining whether it is tort liability (art. 1349 of the Civil Code) or contractual liability (art. 1350 of the Civil Code).

[29] C.Mitrache, Cr.Mitrache, Romanian Criminal Law. General Part, second edition, Universul Juridic Publishing House, Bucharest, 2016
[30] Ivan Anane, *Elements of Criminal Procedural Law*, Pro Universitaria Publishing House, Bucharest, 2015
[31] L.Pop, I-F. Popa, S.I.Vidu, Treatise on Civil Law. Obligations according to the new Civil Code, Universul Juridic Publishing House, Bucharest, 2012

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Based on the legal literature in Romania, we can say that civil liability represents a single legal institution since the existence and conditions of employment are the same for its two forms, namely: the damage caused, the unlawful act, the form of guilt and the causal link seeking, in principle, the reparation of the unjust damage. However, this single institution presents "two different sensitive legal regimes: the legal regime of tort or non-contractual liability, regarded as a regime of ordinary law, and the legal regime of contractual liability, with the value of a special regime, derogating from the common law[32]".

According to the opinion embraced by the legal doctrine, the legislator had to specify that public servants are subject to a service relationship with public authorities or institutions, so we are talking about a contractual civil liability. We note, therefore, that they are not regulated by law, the service relationships of this category of personnel have a contractual source.

Art. 499 of the Administrative Code provides a clarification of the situations for which the civil liability of the civil servant is engaged, namely:

a) for damages caused by guilt to the patrimony of the public authority or institution in which it operates.

This situation regulates the civil liability typical of public officials, and in order to be triggered, it must cumulatively meet the condition of causing a pecuniary damage to the public authority or institution and must occur with a form of guilt. To these are added the condition of committing an unlawful act and the causal relationship between the damage and the act.

Damage is an important element of civil liability, being a necessary and essential condition of it. The damage must be a patrimonial one, i.e. it must concern those material goods with economic value assessable in money that belong to the public unit and contribute to the negative modification of the patrimony by diminishing the asset as a result of committing unjust acts, either by not collecting the value of the services or products offered, or by increasing the liabilities.

As mentioned before, the damage must be committed with one of the two forms of guilt provided by the Criminal Code in art. 16, namely intent or fault. The lack of guilt removes the civil liability of the author of the harmful act. According to the legal provisions, the principle of liability for any fault is established in the sense that "the author of the damage is liable for the slightest fault[33]".

For example, legal advisers do not take legal action to recover sums of money or goods from co-contractors or third parties or bring them after the expiry of the limitation period. Another situation may be the one in which the summons requests do not meet the conditions established by law, and the regularization procedure does not bring the amendments and additions imposed by the judge, under penalty of their annulment.

Moreover, the liability of the public official is triggered in the situation where the act is an action or inaction contrary to the law, thus the unlawful act becomes a sine qua non condition for the existence of civil liability[34].

With regard to the meaning of the phrase "causal relationship", the legislator did not expressly and explicitly indicate this condition in order to be able to engage the civil liability of the civil servant, but the necessity for its existence lies in several provisions of the Civil Code,

[32] L. Pop, Treatise on Civil Law. Obligations, vol. III, Extracontractual Obligatory Relations, Universul Juridic Publishing House, 2020
[33] Art.1357 para. (2) of the Civil Code
[34] Al.Țiclea, Civil Liability of Public Servants. Inconsistencies and legislative and jurisprudential omissions, in Revista Dret (Union of Jurists) no. 11/2020

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namely: art. 1349 para. 2-4, art. 1357 para. 1 and art. 1358-1359. Analyzing this condition and based on the complexity of the phenomena in society and in nature, we can say that determining the causal link "is often difficult, requiring an effort of analysis and selection, in order to establish, in each concrete case, the fact or facts that could have determined the transformation of the possibility of the damage into reality[35]";

b) for not returning within the legal term the amounts that were unduly granted to him.

Regarding the second situation provided for by law, the civil servant may be civilly liable in the event that he does not return the amounts unduly granted within the term provided by law.

Thus, the hypothesis was provided in which, by mistake, the public authority or institution grants certain amounts of money to employees without any right in this regard. We refer, for example, to the amounts that were unduly granted to it, representing: salaries, bonuses, holiday bonuses, social or health insurance, prizes.

According to the doctrinal opinions, this obligation is set out in the Administrative Code, although it is an institution arising from an undue payment regulated by the Civil Code and not a defining component for the civil liability of the civil servant.

Under this contex, two distinct situations may arise for which the civil servant is civilly liable for non-restitution. In the first case, the employees will be liable for the damage created to the extent that the fault of paying the undue amounts belongs to them. The second situation is the one in which the public servant in bad faith is liable according to the rules of the obligation of restitution, as well as the rules of civil liability itself or, as the case may be, those of tort liability.

From the examination of the relevant case-law on the liability of the civil servant it follows that "the employee who has collected from the employer an undue amount is obliged to return it, regardless of whether he is not at fault in collecting these undue sums, since the obligation to repay the accipiens is not based on the idea of guilt on his part, existing regardless of the good or bad faith of the employee who has received undue sums of money, and the liability of the persons to whom the payment to the employee of the undue amounts is attributable is subsidiary to the obligation of restitution incumbent on him[36]".

As it is an undue amount, the public official has the obligation to return it voluntarily by notifying the unit, and if he shows bad faith, the employing public authority or institution will initiate the action for recovery of the damage. According to the legislation, this procedure must be exercised within the general limitation period according to art. 2517 of the Civil Code.

c) for damages paid by the public authority or institution, as principal, to third parties, on the basis of a final court decision.

An essential condition for the civil liability of the civil servant is the loss produced in the patrimony of the public unit as a result of the obligation to pay damages to third parties based on a court decision.

Without any doubt, we can argue that the civil liability of civil servants is contractual in nature as they are in service relations with the public authority or institution in which they carry out their activity based on the agreement of will of the two parties.

[35] Al.Țiclea, Treatise on Labor Law, Liability for Damages in Labor Relations. Legislation. Doctrine. Jurisprudence, Universul Juridic Publishing House, Bucharest, 2019

[36] C.Ap.Bucharest, S.a VII-a civil and for cases regarding labor conflicts and social insurance, Decision no.2384/R/2011, in D.G.Enache, M.Ceaușescu, Labor disputes. Relevant jurisprudence of the Bucharest Court of Appeal on sem. I, 2011, Hamangiu Publishing House, Bucharest, 2011

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After an analysis of the doctrine and legislation, we can say that the provisions of the Administrative Code, more precisely art. 500 para. 1, are imprecise and insufficient as regards the right of recourse of the public unit against the official guilty of creating the damage.

In addition, it involves a difficult and even complicated procedure because it comprises two lawsuits, namely: the first lawsuit is filed by a third party against the public institution or authority, and the other is by the public authority or institution against the guilty public official. For example, there is no question of the existence of a single process that would mean a simpler and much more efficient procedure.

As can be deduced from the provisions of the Administrative Code, the civil servant may also be administratively liable in compliance with the principles governing this institution of law, namely: the principle of legality of liability, the principle of celerity and the principle of proportionality of liability. Based on the regulations[37] of the Administrative Code, we can say that administrative liability can take several forms: administrative-disciplinary liability, administrative-patrimonial liability and administrative-contravention liability.

a). The violation of the duties of service and of the rules of conduct by the public officials, dignitaries or their assimilated persons represents the commission of a disciplinary offense and entails the administrative-disciplinary liability. This type of liability is enshrined in Part VII, Title II of the Administrative Code encompassing the essential characteristics.

According to art. 569 of the Administrative Code, in the sense of the notion of disciplinary misconduct we understand that "the act committed with guilt that consists of an action or inaction by which the obligations incumbent on them from the service relationship, respectively from the exercise of their mandate in relation to it and which affects their socio-professional and moral status" are violated.

According to the provisions of art. 492 para. 2 The facts that are considered disciplinary offences are:

a) systematic delay in carrying out the works;

b) repeated negligence in solving the works;

c) unjustified absence from work;

d) non-compliance with the work schedule;

e) interventions or persistence for the settlement of requests outside the legal framework;

f) failure to respect professional secrecy or confidentiality of works of this nature;

g) manifestations that harm the prestige of the public authority or institution in which the public official carries out his activity;

h) carrying out political activities during working hours;

i) unmotivated refusal to perform job duties;

j) the unmotivated refusal to submit to the occupational medicine control and medical expertise as a result of the recommendations formulated by the occupational medicine doctor, according to the legal provisions;

k) violation of the provisions regarding duties and prohibitions established by law for public officials, other than those relating to conflicts of interest and incompatibilities;

l) violation of the provisions regarding incompatibilities if the civil servant does not act for their termination within 15 calendar days from the date of the occurrence of the case of incompatibility;

m) violation of the provisions regarding conflicts of interest;

[37] art.566 of the Administrative Code

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n) other facts provided for as disciplinary offences in the normative acts in the field of the civil service and civil servants or applicable to them.

The study conducted by the General Secretariat of the Government in collaboration with the Ministry of Justice, in which a number of 106 public authorities and institutions participated, by filling in a questionnaire and interviewing a number of 32 representatives of public units, focused on "the system of administrative sanctions and its[38] implementation". One of the objectives of this study was to analyze the collected data and to establish the ways of implementing the administrative sanctioning system, as well as to formulate recommendations for improving this system.

According to this study[39], out of the 106 public authorities or institutions that responded to the questionnaire, only 43 of them found at least one disciplinary offense for the period 2014-2018, representing only 40.56%.

The most common disciplinary offence recorded was the violation of the legal provisions on the duties of service, with an average of 1880 offences found per year, and the least applied offence is that of non-observance of professional secrecy or confidentiality of works, with an average of 2 offences found per year.

It is worth noting that the Administrative Code[40] provides for the existence of an administrative record in order to discourage the commission of disciplinary offences among civil servants. This provision is specific to civil servants as the disciplinary offences of the accounting staff and civil servants with special status are not recorded in such a criminal record.

In the event of a transfer or promotion of a public official, the administrative record is requested. In this context, disciplinary sanctions can be applied to public servants depending on the circumstances of the act, the seriousness of the disciplinary misconduct, the consequences of the misconduct, the degree of guilt and, last but not least, the conduct of the civil servant and his or her background.

Art. 492 para. 3 and 4 of the Administrative Code indicate the types of disciplinary sanctions that can be applied to public officials. Thus, depending on the mentioned criteria, we mention the written reprimand, the reduction of salary rights by various percentages, the suspension of the right to promote, the demotion from office and the most serious sanction, the dismissal from the public office.

Special laws may establish another sanctioning regime and being expressly provided for by law, they are restrictive. Thus, we can bring into discussion the provisions of Law no. 360/2002 on the Statute of the policeman[41], updated, Regulation of 15.06.2006 on the disciplinary liability of the specialized personnel assimilated to judges and prosecutors within the Ministry of Justice and the National Institute of Criminology of 15.06.2006[42], approved by the Order of the Minister of Justice no. 1483/C of 15 June 2006, Law no. 80/1995 on the status of military personnel[43] updated.

Disciplinary commissions may be set up at the level of public institutions and authorities which have the capacity to examine the facts of the civil servant, to present the

[38] https://sgg.gov.ro/new/wp-content/uploads/2020/12/MJ-Studiu-sistem-sanctiuni-administrative-FINAL-12-feb.pdf
[39] http://www.poca.ro/category/implementare-proiecte/
[40] Art. 496 of the Administrative Code
[41] published in M.Of. no.440 of 24 June 2002
[42] published in M.Of. No.544 of 23 June 2006
[43] published in M.Of. no.155 of July 20, 1995

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applicable sanctions and, where appropriate, to further notify the competent authority for verifications in relation to a possible incompatibility.

They carry out their activity on the basis of a complaint made by the person considered injured by the actions of the civil servant. The notification must be in written form and submitted to the registry of the public unit where the official carries out his activity, or, as the case may be, to the registry of the public unit where the disciplinary commission is constituted, and the stages of the disciplinary investigation will be completed.

It has been established that these professional bodies have the obligation to notify the competent bodies if there are indications that the actions committed by the public official may entail civil, administrative or even criminal liability.

According to the provisions of art. 495 of the Administrative Code, "the civil servant dissatisfied with the sanction applied may address the administrative court, requesting the annulment or modification, as the case may be, of the sanctioning order or provision".

Relevant to the topic under discussion is Decision no. 523 of 9 October 2014 of the Constitutional Court, namely the part in which it calls into question the competence of these commissions in the sense that the provisions of the European Convention on Human Rights, in fact art. 6, must be complied with, and the national legislation "must allow access to a court of law that presents all the guarantees of the right to a fair trial and to the resolution of the case by an independent and impartial court".

In connection with the application of disciplinary sanctions for civil servants and the detailed procedure for finding and applying them, including the administrative investigation procedure, the Government stipulated these important aspects in Government Decision no. 1344/2007.

b). In a general sense, pecuniary liability is seen as a reparatory liability, which represents an obligation to compensate the author of the damage, contributing to the protection of the subjective right violated by the unlawful act.

From the perspective of labor law, pecuniary liability is defined in Article 254 of Law no. 53/2003 on the Labor Code[44]: "Employees are financially liable, under the rules and principles of contractual civil liability, for material damages caused to the employer due to their fault and in connection with their work. Employees shall not be liable for damages caused by force majeure or other unforeseen causes that could not be eliminated, nor for damages that fall within the normal risk of the service." Thus, in the light of the norms of the Labor Code, the patrimonial liability appears as an obligation of the employee, based on the principles applicable to contractual liability, for the material damages created[45].

The notion of pecuniary liability was established from the point of view of the liability of the public official. According to Article 499 of the Administrative Code, pecuniary liability is regarded as that unlawful act generating damages in the patrimony of the public authority or institution within which the official carries out his activity.

In the specialized literature, it is considered that the patrimonial liability of the public official appears as a tort civil liability, with the difference that the damage caused appears against the patrimony of the public institution/authority, either it is directed against a natural or legal person of public or private law.

[44] published in M.Of. No. 72 of 5 February 2003
[45] Al.Țiclea, Treatise on Labor Law. Legislation.Doctrine.Jurisprudence, Tenth Edition, updated, Universul juridic Publishing House, Bucharest, 2016

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In addition to the general principles, applicable to all variations of legal liability, there are also those principles specific to each branch of law. Consequently, in administrative law an essential principle of administrative legal liability is the one that establishes equality "before public tasks, according to which the administrative activity is carried out in the common interest of all citizens, and one of them suffers damage resulting from the performance of the administrative activity means that the particular interest of that person has been sacrificed in favor of the general interest[46]".

The Administrative Code provides for joint and several liability for the damage caused by the administrative act and for damages caused in connection with the enhancement of public services and goods[47].

In this situation, public institutions and authorities are financially liable from their own budget in the event that they cause material or moral damages through administrative acts, by not solving or even refusing to solve a request within the term provided by law.

Moreover, art. 575 of the Administrative Code specifies that in the event that compensation is claimed for the damages caused, the public servant will be liable for property together with the public authority or institution only to the extent that his guilt is confirmed by non-compliance with the legal provisions specific to the duties stipulated in the job description or by law[48].

The analysis of the particularities of the patrimonial liability of public servants highlights the specific aspects of the liability of the civil servant and at the same time establishes and clarifies the characteristics that distinguish the civil servant, whose activity is regulated by the Administrative Code, from the other categories of budgetary personnel or even the civil servant with special status.

In order for the administrative-patrimonial liability to be engaged, a series of conditions must be met, including:

- the administrative act must be issued against the legal provisions;
- this administrative act causes moral or material damages;
- there must be a causal relationship between the damage caused and the illegal act;
- there is guilt of the public unit and/or the public official.

In the event that the civil servant causes damage in connection with his job duties, the pecuniary liability of that official will intervene.

From the simple analysis of the institution of pecuniary liability we could say that in practice it does not raise particular problems, but the reality proves the opposite because it raises problems from various sources, from the lack of organizational framework, to the lack of preparation and negligence of responsibilities.

c). Article 572 of the Administrative Code provides a reference and rather general definition of the notion of "administrative-contravention liability" by which it is consented to be "a form of administrative liability that intervenes in the event of committing a contravention identified according to the specific legislation in the field of contraventions".

In other words, it is a liability that can be engaged only by violating a rule that entails a contravention sanction.

[46] E.E.Ștefan, Legal Liability – Special Regard on Liability in Administrative Law, Prouniversity Publishing House, Bucharest, 2013
[47] http://ionescusava.ro/raspunderea-administrativa-a-functionarilor-publici-conform-noului-cod-administrativ
[48] Ibid

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The civil servant is liable for a contravention in the situation in which "he has committed a contravention during and in connection with the duties of the service[49]". The Administrative Code comes with a clarification of the procedure regarding the contestation of the contravention report in the sense that "against the report of finding the contravention and applying the sanction of the public servant may file a complaint with the court in whose district the public authority or institution in which the public official is appointed is located[50]".

For example[51], the public official is liable for contravention for failing to ensure the protection of "that information that is communicated to him by natural or legal persons on a confidential basis, to the extent that, objectively, the disclosure of the information in question would prejudice the legitimate interests of those persons, including in terms of trade secrets and intellectual property[52]".

Another act considered a contravention and can only be committed by the mayor is "failure to implement, in bad faith, the decisions of the local council[53]".

The notion of "contractual staff" is regulated for the first time by the Administrative Code being a novelty element that brings to the fore an analysis of the categories of personnel in public authorities – civil servants, contract staff, personnel paid from public funds – starting from the common elements, all of which have in common the public service provided by these categories of personnel within public authorities and institutions, Hence, the existence of specific rules and requirements is mainly imposed.

"We note in this regard a similarity in approach of the two categories of personnel in the administration: civil servants and contract staff. The Administrative Code takes another step that confirms our support, regulating, in a similar manner, a series of aspects regarding the two categories of personnel, practically enshrining the importance of the activity carried out by the contractual staff. We observe the similarity of the conditions necessary for occupying the position (except for the method of recruitment) or the establishment of the structure and categories of personnel. The legislator thus gives due importance to the entire activity carried out in a public institution, whether the occupants of the positions are civil servants or contract staff."

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[49] Art.498 para. (1) of the Administrative Code
[50] Art.498 para. (2) of the Administrative Code
[51] https://www.avocatnet.ro/articol_51649/Codul-administrativ-Cum-r%C4%83spund-contraven%C8%9Bional func%C8%9Bionarii-publici.html
[52] art.337 of the Administrative Code
[53] Art.241 para. (1) letter a) of the Administrative Code

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