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FORMS OF LEGAL LIABILITY IN CIVIL SERVICE MATTERS

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SUMMARY

This paper analyzes forms of legal liability in the field of public office. Thus, the legal liability of a public official constitutes the set of sanctions applicable for the violation of official duties and ethical conduct norms. It performs a coercive and preventive function, aiming to ensure integrity, legality and transparency within the public administration. Administrative-disciplinary liability intervenes in the event of deviations from disciplinary norms, being managed through internal disciplinary committees. Civil (property) liability aims at recovering material damages caused by the official to the institution or third parties through culpable actions or inactions. Contraventional liability is incurred when the acts

committed by the official during his service are qualified as contraventions by specific normative acts. Criminal liability is the most serious form of coercion, applicable in the case of corruption offenses or abuse in the exercise of public powers. A fundamental principle of this regime is the accumulation of liability, which allows for the simultaneous sanctioning of an act under multiple legal aspects (e.g. criminal and disciplinary).

Key words: civil servant, legal liability, public administration, civil servant status, disciplinary liability, patrimonial (or civil) liability.

FORME DE RĂSPUNDERE JURIDICĂ ÎN MATERIA FUNCȚIEI PUBLICE

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REZUMAT

Prezenta lucrare analizează forme de răspundere juridică în materia funcției publice. Astfel răspunderea juridică a funcționarului public constituie ansamblul de sancțiuni aplicabile pentru încălcarea îndatoririlor de serviciu și a normelor de conduită etică. Aceasta îndeplinește o funcție coercitivă și preventivă, având ca scop asigurarea integrității, legalității și transparenței în cadrul administrației publice. Răspunderea administrativ-disciplinară intervine în cazul abaterilor de la normele de disciplină, fiind gestionată prin intermediul comisiilor de disciplină interne. Răspunderea civilă (patrimonială) vizează recuperarea prejudiciilor materiale cauzate de funcționar instituției sau terților prin acțiuni sau inacțiuni culpabile. Răspunderea contravențională se angajează atunci când faptele săvârșite de funcționar în timpul serviciului sunt calificate drept contravenții prin acte normative specifice. Răspunderea penală reprezintă forma cea mai gravă de constrângere, aplicabilă în cazul infracțiunilor de corupție sau al abuzului în exercitarea atribuțiilor publice. Un principiu fundamental al acestui regim este cumulul răspunderii, care permite sancționarea simultană a unei fapte sub multiple aspecte juridice (ex: penal și disciplinar).

Cuvinte-cheie: funcționar public, răspundere juridică, administrație publică, statutul funcționarului public, răspundere disciplinară, răspundere patrimonială (sau civilă).

Introduction.

1. Concept and Legal Basis

The legal liability of a civil servant represents an essential component of his legal status, intervening as a reaction of the state to the violation of the rules of law in the exercise of his official duties. It has a dual role: punitive (sanctioning illicit conduct) and preventive (ensuring the integrity and transparency of the administration).

2. Forms of Legal Liability

In contemporary administrative law, the liability of a civil servant is multidimensional and can be classified as follows:

- *Administrative-disciplinary liability:* It is the most frequent form and occurs in the case of deviations from labor discipline or violation of ethical norms. Sanctions are applied by the employing authority following a prior administrative investigation.

- *Civil liability (property):* It aims to repair the damages caused to the public institution or third parties due to the fault of the civil servant. In the case of damages caused to third parties, the state may be jointly and severally liable, subsequently having a right of recourse against the guilty civil servant.

- *Contraventional liability:* It is engaged when the act of the official meets the elements of a contravention provided for by law, committed during the exercise of his/her function.

- *Criminal liability:* It represents the most severe form and intervenes for official offenses or in connection with the service, such as bribery, influence peddling or abuse of office.

3. Application Principles

- *Principle of legality:* No sanction can be applied outside an explicit legal basis.

- *Principle of cumulation:* The commission of a single act can attract, depending on the gravity and consequences, several forms of liability simultaneously (e.g. disciplinary and criminal).

- *Principle of guilt:* Liability is conditioned by the existence of the official's fault or intention in committing the illicit act.

4. Relevant Normative Framework

- *Republic of Moldova:* Law no. 158/2008 on the civil service and the status of civil servants establishes the procedures for holding civil servants accountable and protecting their rights.

• *Romania*: The Administrative Code (GEO no. 57/2019) uniformly regulates the rights, duties and liability regime.

Results and discussion. The Republic of Moldova was defined by the Constitution as a state governed by the rule of law. One of the primary tasks of the new state was to establish a new system of public administration, including the legal framework regulating the legal status of civil servants.

Following the delimitation of competences between the central public administration and the local public administration of the first and second levels, on the one hand, and the institutional and functional changes of public authorities, the activity of civil servants acquires a new content and a new dimension, imposing greater responsibility in the exercise of a public office.

We believe that the prosperity of a state largely depends on the activity of civil servants, respectively, their activity should be studied in all its aspects, and not least, their legal liability.

The political, socio-economic changes in our country also require changes in the legal norms, which should be flexible to changes in society. Accordingly, some gaps have been observed in the study of the given topic and the need for new scientific investigations, related to:

- the imperfection of the legal framework;
- the insufficiency of a comprehensive research of the topic addressed;
- the need to approach a scientific and systematic vision of the legal liability of the civil servant.

Legal liability is traditionally analyzed as a fundamental institution of law, an institution that tends to occupy the center of law in its entirety, reflecting the stage of evolution of the entire society, the level of social consciousness and responsibility [1, p.56].

Referring to this idea, Louis Josserand argues that "in every matter, in all directions, this problem of liability is reached, in public law and in private law, in the field of persons or the family, as well as in that of goods; it is of all moments and all situations, liability becomes the common nerve point of all our institutions"[2].

Legal liability "intervenes on the ground of the wrong done", that is, following the commission of an offense. What is specific to offenses committed by civil servants is the fact that they can occur during the exercise of their function, in connection with the exercise of it or, simply, by deviating from certain norms that have no direct, immediate connection with the function, but which call into question the prestige of the civil servant. Legal liability is an institute that is used in cases of violation of certain legal norms and consists of an official assessment under the law, made, as a rule, by state bodies vested with specific powers for this purpose. Thus, depending on the criteria that underlie the outline of the legal nature of a form of legal liability, civil servants in the state administration may be subjects (passive) of the following forms of legal liability:

- disciplinary liability;
- administrative liability (contraventional liability);
- civil and material liability;
- criminal liability.

Disciplinary liability is regulated by both labor legislation and other normative acts (disciplinary statutes and regulations). It occurs as a result of a disciplinary offense, which is a form of conduct manifested by the civil servant's culpable violation of his/her service obligations and labor discipline.

A disciplinary sanction is applied for committing disciplinary offenses in the manner established by labor legislation. Civil servants may be subject to disciplinary sanctions for:

- a) failure to fulfill service obligations;
- b) inadequacy of the position held or the work performed due to insufficient qualifications, a fact contested following certification;
- c) serious violation of labor discipline;
- d) committing compromising actions, etc.

The Labor Code provides for the following disciplinary sanctions, depending on the degree of guilt and the seriousness of the act, the following disciplinary sanctions may be applied to the civil servant:

- a) observation;
- b) warning;
- c) reprimand;
- d) severe reprimand;
- e) dismissal.

Other disciplinary sanctions may be provided for by statutes and disciplinary regulations of certain categories of civil servants. Law no. 159 IIX/2008 does not establish specific disciplinary sanctions for civil servants, referring to the sanctions provided for by the Labor Code (only in paragraph 4, art. 30 of Law no. 159 IIX/2008 are some disciplinary sanctions provided for: demotion for a term of up to one year and dismissal).

We believe that these measures are insufficient for a disciplinary offense of a civil servant, who exercises an activity of general interest. Disciplinary sanctions are applied by the body that is granted the right to employ the respective civil servant.

For violating the rules of the civil service recruitment competition, for employing persons in the civil service in disregard of the prohibition provided for by law, for failing to comply with the rules for certifying civil servants and conferring qualification degrees, persons holding responsible positions may be subject to demotion in office for a period of up to one year or dismissal as a disciplinary sanction, if their actions do not entail criminal liability.

Disciplinary sanctions may also be applied to civil servants who are subject to disciplinary liability in accordance with the statutes, regulations and other legislative acts on discipline by hierarchically superior bodies. The decision (order, provision) regarding the application of the disciplinary sanction may be appealed before hierarchically superior bodies or a court of law.

The disciplinary sanction is applied immediately after the violation is detected, but not later than one month after the day of its detection, and cannot be applied after 6 months have passed since the day of the violation, and following the review or control of economic and financial activity, no later than 2 years since the date of its commission. If within one year from the date of the application of the disciplinary sanction, a new

disciplinary sanction is not applied to the civil servant, it is considered that he has not been held accountable.

The sanction is declared and finalized by the act of the respective boss, it is brought, against signature, to the knowledge of the sanctioned employee and is attached to his personal file.

The sanctions applied shall expire one year after their application, if the civil servant has not been subject to a new sanction. The sanctions applied may be lifted before the expiry of the one-year period, if the civil servant sanctioned shows spirit, initiative, discipline and conscientiousness in fulfilling his/her official duties. The lifting of the sanction may not be ordered earlier than 6 months.

Material, patrimonial liability occurs when the civil servant, in the exercise of the duties that revoke him/her, causes damage to natural or legal persons, both in the case of the legal exercise of public functions, and of the defective fulfillment of obligations or their failure to fulfill them.

These types of legal liabilities are regulated by the Labor Code, the Civil Code and the Law on Administrative Litigation.

According to the Civil Code (art. 2006) we observe two cases:

- in the first case, the occurrence of material damage to third parties through the exercise of public office gives the right to compensation according to the law, compensation that will be borne by the public administration without imputing the respective damage to the public officials who have fulfilled their duties in the manner prescribed by law.

- In the second case, the function was not performed or was performed defectively and as a result of these actions or inactions, damage was caused to third parties. Material responsibility in this case must fall on the respective public officials, but also on the public administration bodies of which they are part and for which they work.

According to para. (1) art. 53 of the Constitution of the Republic of Moldova, the person injured in a right by a public authority, through an administrative act or by failure to resolve a request within the legal term, is entitled to obtain recognition of the claimed right, annulment of the act and compensation for the damage, a fact also developed by Law no. 793-XIV/2000 [3, p. 56].

According to some authors, the institution of legal liability of the public servant also includes liability in administrative litigation. Thus, prof. M. Preda is of the opinion that liability in administrative litigation should be analyzed in two forms, namely: liability of the public authority and liability of the public servant [4].

Public administration bodies are jointly and severally liable with their officials for the defective performance or non-performance of public functions when this causes damage to third parties. The basis for the liability of public administration bodies for damages caused by their officials lies in the fault of these bodies in not having chosen the best people, capable of exercising the public function, and in the fault of not having sufficiently supervised their activity, so that the performance of the

public function would have been carried out normally without causing damage to third parties.

The persons who have suffered the damage have the possibility of requesting the respective compensation from the guilty officials or from the public administration bodies for which these officials work (paragraph 2 of article 20. Law no. 793-XIV/2000). Of course, in most of these cases, the compensation action is directed against the public administration bodies, because they have the necessary means to compensate third parties, following which these bodies will return the compensation by way of recourse, from the guilty officials.

If he has performed an illegal task, as a result of which damages were caused to third parties, if they have notified their immediate superior or higher hierarchical management in the established manner, the civil servant shall not bear the damage.

This form of legal liability is expressly regulated, for different categories of civil servants, by a series of special laws or their statutes. Sometimes it is regulated together with their material liability.

1. In case the civil servant has been summoned to court for the payment of compensation for the damage caused by issuing an illegal administrative act, according to the provisions of paragraph 3, article 20 of Law no. 793-XIV/2000, the civil servant thus sued in court may call as a guarantee his hierarchical superior from whom he received a written order to sign the act whose legality, total or partial, is subject to verification by the court.

2. In case of admission of the action, if the written order has been proven, the request for summons as a guarantee will also be admitted, in which case the liability for the damage caused will fall on the hierarchically superior civil servant

We believe that the most appropriate name for this form of liability would be "patrimonial liability", since the provisions of the Constitution expressly refer to the patrimonial liability of the state, and the legislation in force frequently uses the notion of "patrimonial property".

Administrative (contraventional) liability is a form of legal liability that occurs in the event of a contraventional offense, a misdemeanor. Administrative liability occurs only when the legal norm that establishes the composition of the contravention has been expressly violated. Contraventional offenses have a higher degree than disciplinary offenses and a lower degree of social danger than crimes.

Thus, if the civil servant has defectively fulfilled or has not fulfilled his obligations by virtue of the public office held and as a result of which an administrative offense was committed, he is subject to administrative punishment according to the provisions of the Code on Administrative Contraventions.

Administrative sanctions are provided for by art. 23 of the Code on Administrative Offences and can be applied for the commission of administrative offences such as: violation of labor legislation (art. 41), violation of land legislation (art. 52), violation of sanitary-hygienic and sanitary-anti-epidemic rules and norms (art. 42); excessive consumption of electricity and heat (art. 96); violation of the legislation on petitions (3) art. 199.

It should also be emphasized, regarding the complementary sanction of confiscation of goods used to commit the offence by the civil servant, if these are in the public or private property of public authorities or institutions, they cannot be confiscated, because they negatively affect the activity of the public authorities in question.

Criminal liability is the most drastic form of legal liability that applies to public officials in cases where crimes are committed in connection with the exercise of their duties according to the positions held. Thus, the Criminal Code establishes and sanctions a series of specific crimes that can be committed by public officials in the exercise of their duties, including:

- abuse of power or abuse of office;
- negligence in office;
- receipt by an official of illicit reward;
- refusal to fulfill the law;
- excess of power or exceeding official duties;
- passive corruption, active corruption, influence peddling;
- forgery of public documents [5].

If the head of the public authority or another person with control responsibilities in the unit has found that the actions of the civil servant, related to the performance of his/her official duties, meet the components of a crime, they are obliged to present the respective materials to the criminal investigation bodies and, based on their decisions, to remove him/her from the performance of his/her official duties with the suspension of his/her salary. Dismissal from office may occur for them even before the pronouncement of the conviction. Thus, in the framework of the criminal investigation, the civil servant may be dismissed from office by the decision of the investigator, which must be authorized by the prosecutor (Art. 135 of the CPP RM). They are also obliged to take measures in necessary cases to ensure that the traces of the crime, the corpus delicti and any other means of evidence do not disappear. In cases where the civil servant suspected of committing a crime has been sent to court, which has found his/her guilt, he/she is considered dismissed from office from the date of taking the measure of suspension.

If, following the criminal investigation, it is found that the decision to remove from office is not legitimate, it is annulled and the civil servant is paid the average monthly salary for the entire period of removal. Removal from office cannot exceed the terms established by the legislation for the investigation, criminal investigation or trial of the case.

As for the decision to remove from office, it should be noted that the legislator was not explicit enough and left without explanation the cases in which these decisions will be issued without grounds. What will be done if the illegality of the suspension will be established in the trial process, but not at the stage of criminal investigation? But what if the court acquits the suspected civil servant, and the illegality of the suspension will not be recognized by the bodies that issued the decision?

We believe that in cases where a criminal case is filed against a public official, on the basis of which the decision to suspend him from office is also taken, his

guilt or innocence must be established during the trial, but not left to the discretion of the prosecution or criminal investigation bodies. Suspension may be ordered at the same time as the criminal case is filed or along the way, without these authorities ruling on the guilt of the public official, thus violating the principle of the presumption of innocence. Although the removal from office aims to eliminate the possibilities of the official, accused of committing a crime, to prevent the complete, objective and all-round investigation of the circumstances of the criminal case.

We believe that since the activity of civil servants is quite important for the success of a country, their activity should be more studied and regulated, and especially their legal liability. In my opinion, the measures to sanction civil servants should be tougher and more drastic compared to the sanctions applied to other people.

Practical recommendations relating to the application. Following the investigation, we came to the following:

- **Multidimensionality of liability:** The liability of a public official is not a unitary concept, but a complex mechanism that combines disciplinary, civil, contravention and criminal forms, ensuring rigorous control over the exercise of public power.

- **Preventive-educational role:** Beyond its sanctioning nature, the legal liability regime functions as a guarantee of good administration, discouraging arbitrary behavior and promoting professionalism in the public sector.

- **Legal balance:** The current legal framework (e.g. the Administrative Code) manages to balance the need to sanction misconduct with the protection of the civil servant against possible hierarchical abuses, through strict administrative procedures.

- **Patrimonial specificity:** The civil liability of the civil servant emphasizes his responsibility towards public money, highlighting the importance of the state's right of recourse as an instrument for recovering damages caused to third parties.

Recommendations (Improvement Proposals)

- **Standardization of procedures:** Greater clarity in the delimitation of the criteria for individualizing sanctions is recommended, in order to avoid the subjectivity of disciplinary committees and ensure a uniform practice at the level of all institutions.

- **Strengthening integrity:** It is necessary to implement periodic ethical and legal training programs, so that officials are aware not only of the risks, but also of good practices that can prevent criminal or administrative liability.

- **Digitalization of monitoring:** The introduction of digital workflow management systems could reduce the risk of human error (negligence) and facilitate the precise identification of the moment when a violation occurred.

- **Decisional transparency:** The publication (under the protection of personal data) of annual reports on violations and sanctions applied could increase citizens' trust in the self-regulation mechanisms of public administration.

In order to make accountability mechanisms more efficient and to strengthen integrity in the exercise of

public office, the following legislative amendments and additions are proposed:

Standardization of criteria for individualizing sanctions: It is proposed to supplement the Administrative Code with a detailed assessment grid of the seriousness of disciplinary offenses. This measure aims to limit the margin of appreciation of disciplinary committees and to ensure a uniform and predictable legal treatment at the level of the entire public administration.

Establishment of mandatory periodic ethical training: It is recommended to introduce a legal provision that would condition advancement in professional rank on participation in training courses on ethical norms and the prevention of forms of criminal liability. Thus, legal liability will acquire a real preventive dimension, not just a punitive one.

Implementation of digital mechanisms for monitoring the decision-making flow: In the context of the digitalization of the administration, it is proposed to

regulate a system for electronic traceability of administrative acts. Such a provision would facilitate the evidence in the case of patrimonial or disciplinary liability, allowing the exact identification of the author of an error or abuse.

Expanding transparency in the matter of disciplinary sanctions: It is proposed to amend the legislation on data protection (by establishing exceptions in the public interest) to allow the publication of synthetic annual reports on the violations found and the sanctions applied. This measure is essential for increasing citizens' trust in the state's self-regulation mechanisms.

Rigorous proceduralization of the right of recourse: It is recommended to clarify the terms and the procedure by which the public institution is obliged to act against the guilty official after having compensated a third party. Stricter regulation of the right of recourse would ensure the effective protection of public money and the patrimonial accountability of the official.

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