

# THE LIABILITY OF PUBLIC SERVANTS

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## **Abstract**

*The data presented in this study was collected by using the content analysis as a research method, starting from the theoretical and practical concepts of administrative law as well as from national legislative regulations adopted with the purpose of delimiting the notion of public office and perceiving the civil servant, through the specifics of the civil service, as a link between the public administration and the served community. The civil servant is the person legally and morally invested with the exercise of the competence of a public authority or institution as a result of the performance of a public office and the exercise of public authority. Starting from the specifics of the public function and the way in which the professional activity of the civil servants is regulated, in the content of this paper I will detail the types of responsibility that precede the public function. Violation of service duties by civil servants attract disciplinary, contraventional, civil or criminal liability, depending on the case. Therefore, the specificity of the deviations is precisely the fact that the deviations can occur during the exercise of the public function, in violation of the norms of conduct influencing the public image of the official, as well as any other actions related to the service relations of the civil servant. By the nature of the occupied position, the civil servant becomes an example of morality, legality and transparency for the members of the community.*

**Keywords:** *civil servant, public office, disciplinary liability, contraventional liability, criminal liability.*

**JEL Classification:** K23

## **1. Grounding the topic**

In order to collect and interpret the necessary data for the elaboration of this article, I have used the method of content analysis research, taking into account the theoretical and practical concepts of administrative law at national level as well as the legislative provisions adopted for the purpose of delimiting the notion of public function and its implications as regards the way in which the work of the civil servants is carried out.

According to Prof. Chelcea Septimiu, the content analysis is considered to be: "... a set of qualitative and quantitative research techniques, and verbal and nonverbal communication, for objective and systematic identification and description of the content of the manifest and/ or as latent, in order to draw conclusions about the individual and society to communicate itself, as a process of social intercourse"<sup>2</sup>.

I think that the interest of society in the implications of the concept of public office as well as the civil servant title is not enough developed, so in some cases the way of reporting and sanctioning the inappropriate actions and attitudes of the employees in the state sector is uncertain.

## **2. Introduction**

The term of public office has been established as the main notion of administrative law, which is complex enough to include within its scope distinct elements such as competences, material means as well as human resources.

Statute of Civil Servants, respectively Law no. 188/1999 was elaborated with the purpose of regulating the juridical relations between the public servants and the state institutions, thus providing significant indications regarding the specifics of the public function.

In this normative act, the public office is defined as "all the duties and responsibilities established under the law in order to achieve the prerogatives of public power by the central public administration, the local public administration and the autonomous administrative authorities".<sup>3</sup>

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<sup>2</sup> Chelcea, Septimiu, *Metodologia cercetării sociale*, Economic Publishing House, Bucharest, 2007, p. 573.

<sup>3</sup> Law no.188 / 1999 on the Statute of civil servants published in the Official Gazette no. 365/2007.

Concerns about the theoretical demarcation of the civil service have revealed that "Public function is the legal status of the natural person- legally invested, attributable to the exercise of the competence of a public authority- consisting in all the rights and obligations that form the complex legal content between the person that physical body and the authority that invested it."<sup>4</sup>

Thus, by exercising a public function, civil servants carry out a complex series of activities involving the exercise of public power, as we shall see below:

- *enforcement of the laws and other normative acts;*
- *elaboration of draft normative acts and other regulations specific to the public authority or function, as well as ensuring their approval;*
- *elaboration of the projects, policies and strategies, programs, studies, analyzes and statistics necessary for the implementation and implementation of public policies, as well as the necessary documentation for the execution of the laws, in order to achieve the competence of the public authority or institution;*
- *public internal counseling, control and auditing;*
- *management of human resources and financial resources;*
- *collection of budgetary receivables;*
- *representing the interest of the public authority or institution in its relations with natural or legal persons of public or private law;*
- *performing activities in accordance with the public administrations computerization strategy.*<sup>5</sup>

Therefore, all these categories of activities specific to the civil service are based on well-defined principles in the Civil Servants Statute as regards the exercise of public office, as follows:

- a) Legality, impartiality and objectivity;
- b) Transparency;
- c) Efficiency and effectiveness;
- d) Responsibility, according to the legal provisions;
- e) Citizenship and its needs;
- f) Stability in the exercise of public office;
- g) Hierarchical subordination.

As noted, the civil servant is "the person legally invested by a unilateral administrative act with the task of fulfilling a public function in the exercise of the competence of a public authority or public institution".<sup>6</sup>

Starting from the specifics of the public function and the way in which the civil servants professional activity is regulated, I will detail the types of accountability that precede the public function.

### 3. Contents

Violation of service duties by civil servants entails disciplinary, contraventional or criminal liability, as the case may be.

As regards the form of liability, it may be engaged if the civil servant concerned fulfills two conditions, as follows:

- The civil servant must violate at least one of his/ her duties;
- The civil servant must act with guilty.

Therefore, the specificity of the deviations is precisely the fact that the deviations can occur during the exercise of the position, in violation of the norms of conduct influencing the public image of the official and any other actions related to the performance of the civil servants' service relations.

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<sup>4</sup> Mățã, Dan-Constantin, *Drept administrativ*, Universul Juridic Publishing House, Bucharest, 2016, p. 272.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

#### 4. Disciplinary liability

Disciplinary liability is the form of legal liability of a civil servant which, apart from the general conditions of any legal liability, also highlights the following specific conditions:

- "a) The active subject is qualified, having the status of civil servant;
- b) The illicit deed is circumscribed to the sphere of disciplinary misconduct;
- c) The dangerous outcome is often an inalienable result, so the causal link between the dangerous outcome and the illicit act is presumed.

The legal report in which the disciplinary liability arises is a legal relationship of hierarchical subordination, a legal relationship of public law, governed by the principles and rules of administrative law<sup>7</sup>.

According to the Civil Servant's Law no. 188/1999, the disciplinary deviations are the following<sup>8</sup>:

- Repeated delays at work;
- Systematic negligence in the performance of the job duties;
- Unjustified absences from the work program;
- Systematic non-compliance with the work program;
- Interventions for carrying out procedures outside the legal regulations;
- Non-observance of professional secrecy;
- Non-observance of the confidentiality clauses regarding the performed work;
- Activities that affect the prestige of the public institution in which the official operates;
- Provision of activities with a political nature during working hours;
- Failure to perform service duties;
- Breach of legal provisions regarding duties, incompatibilities and conflicts of interest established by law;
- Other facts stipulated in the normative acts regarding the positions in the public domain, respectively the civil servants.

Like any disciplinary procedure, the procedure for engaging civil servants liability involves carrying out a disciplinary investigation to find out to what extent the person is guilty. In the course of this procedure, the hearing of the civil servant, as well as the refusal of his participation in the hearing to which he was summoned, shall be recorded in writing, in the form of a report.

In this approach, according to Law no. 188/1999, a disciplinary commission meets with the aim to analyze the disciplinary deviations as well as to propose the sanctions applicable to the civil servant subject to disciplinary research. The disciplinary commissions have a particularly well-regulated framework and organization set out in the GD no. 1344/2007.

As regards the activity of the discipline commission, it starts from the provisions of Article 19 of the above law and is based on the principles:

- "a) *the presumption of innocence that the civil servant is considered innocent of the act as disciplinary offense to the Disciplinary Board as long as the guilt has not been proven;*
- b) *Ensure that the civil servant has the right to be heard, to present evidence in his defense and to be assisted or represented during the administrative inquiry procedure;*
- c) *The contradictory nature of the Disciplinary Board to ensure that persons in divergent positions have the opportunity to express themselves in respect of any act or fact that is related to the disciplinary offense for which the Disciplinary Board has been notified;*
- d) *Proportionality, according to which a correct relationship between the severity of the disciplinary deviation, the circumstances of its commission and the proposed disciplinary sanction must be observed;*
- e) *The lawfulness of the sanction, according to which the disciplinary commission can only propose the disciplinary sanctions provided by the law;*

<sup>7</sup> Mățã, Dan-Constantin, *op. cit.*, 2016, p. 303.

<sup>8</sup> On the analysis of disciplinary deviations of civil servants see Sãraru, Cãtãlin-Silviu, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 417-420.

f) *The uniqueness of the sanction, according to which only one disciplinary sanction can be applied for a disciplinary offense;*

g) *The timeliness of the procedure, according to which the Disciplinary Board has the duty to proceed without delay with the case, respecting the rights of the persons involved and the procedures provided by the law and the present judgment;*

h) *Obligation of opinion, according to which each member of the discipline commission has the obligation to pronounce for each referral to the disciplinary commission.*"<sup>9</sup>

The Disciplinary Board will issue the administrative sanctioning act on the basis of a report drawn up by the same committee, which will contain the following elements:

- description of the offense that constitutes disciplinary offense;
- the legal basis for the application of the disciplinary sanction;
- the term within which the disciplinary sanction may be challenged;
- the competent court to which the disciplinary sanction provided for in the administrative act may be challenged;

The sanctions we discussed above can be applied in various forms based on written reprimand, 5-20% wage reduction for a period of up to three months, suspension of the right to wage growth.

## 5. Counterfeiting liability

Counterfeiting is the responsibility of a civil servant to commit a misdemeanor concerning service duties.

By contravention, according to Art. 1 of Government Ordinance no. 2/2001, we understand "the act committed with guilty, established and sanctioned by law, ordinance, by decision of the Government, or, as the case may be, by a decision of the local council."<sup>10</sup>

The offense is recorded in the form of a report concluded by the person establishing and sanctioning the contravention, according to the normative act.

As in the case of disciplinary liability, the civil servant concerned may file a complaint against the minutes of the sanction at the appropriate court of the public authority or institution where the official carries out his professional activity.

## 6. Civil liability

According to the provisions of Article 84 of Law no. 188/1999, civil liability of civil servants may be committed in the following situations, as follows<sup>11</sup>:

- damages produced to the public institution in which the official is operating;
- non-refunding in due time amounts unduly paid;
- damages paid by the institution to third parties, according to a final judgment.

The first two situations may be settled by issuing a imputation decision or a payment order within 30 days of the act being executed by the head of the unit in which the civil servant is operating. The order issued by the head of the public institution shall be prescribed within three years from the date of the damage and may be challenged by the civil servant before the administrative court.

In the third case, damages can be recovered by the public authority only on the basis of a final court decision, according to the Romanian Constitution.

## 7. Criminal liability

A civil servant shall be liable for criminal offenses committed during or concerning his or

<sup>9</sup> Mățã, Dan-Constantin, *op. cit.*, 2016, p. 303.

<sup>10</sup> *Ibidem.*

<sup>11</sup> On the civil liability of the civil servant see Sãraru, Cãtãlin-Silviu, *op. cit.*, 2016, p. 421, 422.

her duties<sup>12</sup>. Liability in this case is made according to the Criminal Code in respect of offenses in the performance of the service report such as taking bribes, trafficking in influence, misappropriation, abuse and negligence in the service etc.

The civil servant concerned is suspended from public office when he is brought to justice for committing an offense against humanity, national authority or security. Suspension ceases in cases where criminal prosecution is terminated in the event of payment, deferral or relinquishment of punishment by the court or in the event of criminal proceedings being discontinued.

## 8. Conclusions

As I have noted, the types of accountability highlighted above are the result of a misconduct in the service relationship by the civil servant who casts doubt on the prestige of the civil servant and, implicitly, of the institution or public authority in which he operates.

Therefore, I think that both a preventive and a sanctional purpose is achieved through the accountability of civil servants deviations.

Moreover, the four forms of sanction can be as distinct as complex, and they can be applied even concurrently depending on the nature of the offense committed.

In conclusion, the types of sanctions dealt with in the content of this paper are essential for the activity of civil servants, who are perceived to be moral persons of public law directly correlated with the personality of the state, in order to serve the public interest, implicitly of the community.

## Bibliography

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4. Law no. 188/1999 on the Statute of civil servants published in the Official Gazette no. 365/2007, with subsequent modifications.

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<sup>12</sup> For the analysis of criminal liability of civil servants see Săraru, Cătălin-Silviu, *op. cit.*, 2016, p. 422.